

Victorian Electoral Commission

Candidate Handbook

Council Elections

POSTAL

A large, stylized logo for the Victorian Electoral Commission (VEC) is positioned in the lower half of the page. The logo consists of the letters 'VEC' in a bold, white, sans-serif font. The 'V' is a simple vertical bar on the left. The 'E' is a blocky letter with a horizontal bar across the middle. The 'C' is a thick, rounded letter. The logo is set against a dark green background that forms a large, curved shape at the bottom of the page.

VEC

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Victorian Electoral Commission, Melbourne

Handbook for Candidates at Council Elections Conducted Entirely by Post

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INTRODUCTION

This booklet is intended to assist candidates in Victorian municipal council elections conducted by the Victorian Electoral Commission. It explains those aspects of electoral law that relate directly to candidates. However, the booklet is not a substitute for the law, and should be read in conjunction with the *Local Government Act 1989* (the Act) and the Local Government (Elections) Regulations 1995 (the Regulations), copies of which may be purchased from:

Information Victoria
356 Collins Street
Melbourne VIC 3000.

Phone: 1300 366 356 (toll free).

Candidates are reminded that, while the Victorian Electoral Commission will assist them by providing information, it does not provide legal advice to candidates. Candidates, therefore, must satisfy themselves as to their legal position including, where appropriate, obtaining their own legal advice.

It is the responsibility of individual candidates to ensure that they comply with electoral law.

GLOSSARY OF ELECTORAL TERMS

Act	"Act" means the <i>Local Government Act 1989</i> and amending legislation.
Authorised Person	A person appointed by the Returning Officer to exercise any power or perform any duty delegated by the Returning Officer in connection with the election.
Ballot papers	<p>A ballot paper is the document on which voters record their preferences for each candidate in the election.</p> <p>No affiliations or allegiances (e.g. ALP, Liberal, Democrat) or titles (e.g. Dr, Prof.) may appear on a ballot paper beside the name of any candidate.</p>
By-election	The holding of an election to fill an extraordinary vacancy.
Candidate	A person who nominates to contest an election for a Council.
Canvassing	Soliciting of votes at an election for a candidate or group of candidates.
Chief Executive Officer	The person appointed by a Council to be its Chief Executive Officer or any person acting in that position.
Declaration of Result	The announcement by the Returning Officer of the result of the election by giving the name or names of the candidate or candidates elected.
Disadvantaged Voter	<p>Any voter who:</p> <ul style="list-style-type: none">• is wholly or partly blind; or• is unable to read or write; or• has severe difficulty in reading or writing; or• is not sufficiently familiar with the English language to vote without assistance.
Election Period	<p>In relation to an election, the election period means the period that:</p> <ul style="list-style-type: none">• starts on entitlement date; and• ends at 6.00 pm on election day.
Electoral Advertisement, Handbill, Pamphlet or Notice	Any advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting.

Electoral Matter	Means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the Returning Officer for the purposes of conducting an election. This includes matter which contains an express or implicit reference to, a comment on: <ul style="list-style-type: none"> • the election; or • a candidate in the election; or • an issue submitted to, or otherwise before, the voters in connection with the election.
Entitlement Date	The date fixed by Order in Council as the last date on which a person may apply to be enrolled on the municipal voters' roll.
Formal Vote	A formal vote must indicate on the ballot paper a voter's first preference, i.e. the figure 1, opposite the name of one candidate and the numbers 2, 3, 4 (and so on as the case requires) opposite the names of either all other candidates; or all other candidates except one.
Indication of Preferences	A statement setting out the candidate's preferred order of voting for inclusion in the postal ballot pack.
Municipal District	The district under the local government of a Council.
Nomination Day	The last day upon which a person may lodge a notice of candidature with the Returning Officer. Notices of candidature must be lodged by 4.00 pm on nomination day.
Notice of Candidature	The prescribed form that a candidate for an election must complete and lodge with the Returning Officer or other authorised person together with the nomination fee of \$250.
Notice of Election	Not less than 40 days or more than 60 days before an election, the Returning Officer must give public notice of the election and call for nominations to fill the requisite number of vacant positions.
Personal Statement	A statement of policies prepared by a candidate (of no more than 150 words) for inclusion in the postal ballot pack.
Postal Ballot Pack	The ballot material mailed to voters in an election conducted by post. It includes a ballot paper, the candidates' personal statements and indication of preferences, instructions to the voter and a reply paid return envelope.
Public Notice	A notice published in a newspaper generally circulating in the municipal district of the Council.
Publish	To publish by any means including by publication on the Internet.
Regulations	The Local Government (Elections) Regulations 1995 [LGR].

- Returning Officer** The person charged with the responsibility for conducting an election. The primary duty of the Returning Officer is to ensure that the election is conducted according to the provisions of the *Local Government Act 1989* and the Local Government (Elections) Regulations 1995.
- Scrutineer** A person appointed by a candidate to represent the candidate's interests and observe certain electoral activities to satisfy the candidate that the election was conducted strictly in accordance with the law.
- Victorian Electoral Commission** The Victorian Electoral Commission has been appointed by the Council to conduct the elections and is responsible for the overall conduct of those elections (which are conducted by a Returning Officer appointed by the Electoral Commissioner).
- Voters' Roll** An alphabetical list of persons, certified by the Chief Executive Officer of the Council, who are eligible to vote at the election or by-election. The voters' roll is compiled from a list of Legislative Assembly electors (prepared by the Victorian Electoral Commission) and a list of ratepayers and others (prepared by the Council).
- Ward** A subdivision of a municipal district. In some cases, these subdivisions are referred to as Ridings.

1. ELIGIBILITY TO STAND FOR COUNCIL

	<p>See sections 28 – 30 and 70 of the <i>Local Government Act 1989</i>.</p>
Qualifications	<p>Subject to the disqualifications contained in the next section, a person is qualified to be a candidate for the office of councillor if -</p> <p>(a) in the case of a general election he or she is or is entitled to be; or</p> <p>(b) in the case of a by-election, he or she is or since the preparation of the last voters' roll has become entitled to be -</p> <p>enrolled on the voters' roll in respect of any ward of the council and is capable of becoming and continuing to be a councillor if he or she continues to be entitled to be enrolled.</p>
Disqualifications	<p>A person is not capable of nominating as a candidate at an election if:</p> <ul style="list-style-type: none">• he or she is an undischarged bankrupt;• his or her property is subject to control under the law relating to bankruptcy; or• he or she is of unsound mind; or• he or she is a member of council staff of the council for which he or she intends to be a councillor, unless he or she takes leave to stand for the election and, if elected, resigns from the council staff immediately upon being declared elected; or• he or she has not taken an oath of allegiance or made the declaration of the office of councillor within 3 months after the day on which he or she was declared elected; or• he or she is not a person referred to in section 48(1)(a) of the <i>Constitution Act 1975</i> [i.e. he or she is not an Australian citizen or a British subject who was on an Australian electoral roll at the start of 1984]; or• he or she is otherwise incapable of becoming or continuing to be a councillor. <p>A person who is convicted of an offence against sections 77, 79, 55A(1), 57, 58(1), 58(2), 58(3), 58A, 59 or 60 or clauses 8 or 9 of Schedule 5 of the <i>Local Government Act 1989</i> or has been convicted of an offence committed when he or she was over 18 years of age which is punishable upon first conviction for a term of imprisonment of 5 years or more under any State, Territory or Commonwealth law is not capable of becoming a councillor for a period of 7 years after the conviction.</p> <p>At a by-election a person who has been a Councillor of a Council, cannot nominate as a candidate if the person ceased to be a Councillor of that Council since the last general election by resigning or becoming ineligible under section 69(1) of the Act.</p> <p>A person must not nominate as a candidate for more than one election of Councillors to be held on the same day. If a person makes nominations in contravention of this, all nominations are void.</p>

2. ENROLMENT ON VOTERS' ROLL

The following extracts from the *Local Government Act 1989* are provided for information:

Persons Entitled to be Enrolled without Application.

11. *Persons entitled to be enrolled*

- (1) A person who on the entitlement date would be an elector in respect of an address in a ward if a roll of electors for the Legislative Assembly was prepared, is entitled without application to be enrolled on the voters' roll in respect of that address.

- (2) A person who on the entitlement date -
 - (a) is not a person referred to in sub-section (1); and
 - (b) is not less than 18 years of age; and
 - (c) is the owner of any rateable land in a ward whether solely or jointly with any other person or persons; and
 - (d) is not a resident of the ward in which that rateable land is located -is entitled without application to be enrolled on the voters' roll in respect of that rateable land.

- (3) For the purposes of sub-section (2) only 2 joint owners are entitled to be enrolled in respect of any 1 property which is rateable land.

- (4) A person who on the entitlement date -
 - (a) is not a person referred to in sub-section (1) or (2); and
 - (b) is not less than 18 years of age; and
 - (c) is the occupier of any rateable land, whether solely or jointly with any other person or persons; and
 - (d) is not a resident of the ward in which that rateable land is located -is entitled without application to be enrolled on the voters' roll in respect of that rateable land.

- (5) For the purpose of sub-section (4) -
 - (a) in relation to rateable land any part of which is separately occupied, only 2 joint occupiers are entitled to be enrolled in respect of each part of the rateable land assessed as a separate occupancy in accordance with section 158A; and
 - (b) in relation to any other rateable land, only 2 joint occupiers are entitled to be enrolled in respect of that rateable land.

Persons Entitled to Apply to be Enrolled

12. *Persons entitled to apply to be enrolled*

A person who on the entitlement date -

- (a) is not a person referred to in section 11; and
- (b) is not less than 18 years of age; and
- (c) is an owner or occupier of any rateable land in a ward -

is entitled to apply to be enrolled on the voters' roll in respect of that rateable land.

Corporations

13. *Corporations*

(1) If on the entitlement date -

- (a) a corporation is the sole owner or the sole occupier of any rateable land in a ward; or
- (b) a corporation is the joint owner or the joint occupier of any rateable land in a ward, but none of the other joint owners or occupiers (as the case may be) is a corporation - the corporation may appoint a person to represent it at Council elections to vote on its behalf.

(1A) Notice of an appointment under subsection (1) or (3) must -

- (a) contain the details required by the Regulations; and
- (c) be delivered to the Council office by 4 p.m. on the entitlement date.

(2) A corporation may only be represented by one person under this section at a Council election in respect of a ward, regardless of anything to the contrary in sub-sections (1) and (3).

(3) If, on the entitlement date, any rateable land in a ward is jointly owned or jointly occupied by 2 or more corporations, those corporations may appoint a person to represent them at Council elections to vote on their behalf.

(4) Sub-section (3) applies even if one or more of the joint owners or joint occupiers is a person.

(5) A corporation that is entitled to be represented under sub-section (1) in respect of a ward is not entitled to be represented under sub-section (3) in respect of that ward.

(6) A corporation that is already represented under sub-section (3) in respect of a ward is not entitled to participate in the appointment of another representative under sub-section (3) in respect of that ward.

Limitations on Right of Entitlement

14. *Limitations on right of entitlement*

- (1) A person or corporation is not entitled to elect which right of entitlement conferred by section 11(1), 11(2), 11(4), 12, 13(1) or 13(3) to exercise.
- (2) Despite anything to the contrary in this Part, a person is only entitled to vote once at any election in respect of a ward, regardless of how many different entitlements the person may have to vote in respect of that ward.

Procedure if there are more than 2 Non-resident Owners/Occupiers

15. *Procedure if there are more than 2 non-resident owners/occupiers*

For the purposes of section 11(2) or (4), if it appears from the rate records of the Council that there are more than 2 owners or more than 2 occupiers of any rateable land, the Chief Executive Officer must enrol without application the 2 owners or the 2 occupiers (as the case may be) -

- (a) whose names appear first on the rate records in relation to that land when those names are read in the order in which they appear in those records; and
- (b) who are eligible to be enrolled under that section in respect of that land.

Applications for Enrolment

16. *Applications for enrolment*

An application for a person to be enrolled for the purposes of section 12 or 13(3) must –

- (a) be in writing; and
- (b) contain the details required by the regulations; and
- (d) be delivered to the Council office not later than 4 p.m. on the entitlement date.

3. NOMINATION PROCEDURES

How to Nominate	Intending candidates must complete a notice of candidature containing the details required by the Regulations. <i>Notice of Candidature</i> forms are available from the Returning Officer.
Fee Required	A fee of \$250 must accompany each <i>Notice of Candidature</i> . The nomination fee must be in cash or cheque drawn on a bank, building society or credit union (not a personal cheque). Cheques should be made payable to the "Victorian Electoral Commission".
Refund of Fees	<p>Nomination fees are refunded to candidates in the following circumstances:</p> <ul style="list-style-type: none"> • if the candidate is declared elected for the ward in which the candidate was standing; or • if the total number of first preference votes received by the candidate is not less than four percent (4%) of the total number of first preference votes received by all candidates at the election for the ward in which the candidate was standing. <p>In the case of a candidate who dies, the Returning Officer must refund the nomination fee to that candidate's personal representative.</p>
Notice of Candidature	<p>A candidate must specify his or her full name and the address under which the candidate is enrolled on the voters' roll.</p> <p>If a candidate has changed his or her name from that which appears on the voters' roll, the candidate must attach evidence of the change of name to the <i>Notice of Candidature</i>.</p> <p>A candidate's name will appear on the ballot paper in the form specified in the <i>Notice of Candidature</i>. A given name may be specified by:</p> <ul style="list-style-type: none"> • an initial standing for that name; or • a commonly accepted variation of that name, including an abbreviation or an alternative form of that name; or • a commonly used other name specific to the candidate by which the candidate is usually identified. A candidate will be required to produce evidence to the satisfaction of the Returning Officer that it is a name by which the candidate is usually identified. <p>A person must not nominate as a candidate for more than one election of Councillors to be held on the same day. If a person makes nominations in contravention of this, all nominations are void.</p>
Where to Nominate	<p>A completed <i>Notice of Candidature</i> must be lodged with the Returning Officer. Notices of candidature will not be accepted before the voters' roll has been signed and certified by the Chief Executive Officer or after 4.00 pm on nomination day. The <i>Notice of Candidature</i> may be lodged by another person on behalf of the candidate, but must be signed by the candidate and be accompanied by the \$250 fee.</p> <p>A faxed <i>Notice of Candidature</i> will not be accepted.</p>

Inspection of Notices of Candidature

Any person may inspect the notices of candidature at the Returning Officer's office during normal office hours.

A summary of nominations, including the contact person's details, will be updated at the end of each business day and displayed at the Returning Officer's office.

Order of Names on the Ballot paper

Candidates' names will appear on the ballot paper in the form specified in the *Notice of Candidature*. The order of names on the ballot paper is determined by a single random draw. The Returning Officer will conduct the draw at the Returning Officer's office, at a time to be advised on the day nominations close.

Withdrawal of a Candidate

A candidate may withdraw a *Notice of Candidature* at any time **prior to 4.00 pm on nomination day**. A notice of withdrawal must contain the details required by the regulations and must be signed by the candidate. A form for this purpose is available from the Returning Officer. The notice of withdrawal must be received by the Returning Officer prior to 4.00 pm on nomination day. The candidate's nomination fee **will not** be refunded.

A candidate who withdraws from the election for one ward and wishes to nominate for another ward must produce a fresh *Notice of Candidature* and a fresh nomination fee of \$250 in cash or cheque drawn on a bank, building society or credit union (not a personal cheque), before 4.00pm on nomination day.

Retirement of a Candidate

After nomination day, a candidate is permitted to retire from the election if the retirement will result in an uncontested election.

To retire in other circumstances, a candidate must obtain an order from the Magistrates' Court to the effect that:

- he or she is not qualified to be a candidate as required by section 28(1) of the Act;
- he or she is disqualified by section 29(1) or 29(2) of the Act.

The candidate must give the Returning Officer a notice of retirement signed by the candidate and, if applicable, a copy of the court order. The nomination fee **will not** be refunded.

Death of a Candidate

If a candidate dies before 4.00 pm on nomination day, the nomination is void and the nomination fee will be refunded to the candidate's personal representative.

If the candidate dies after 4.00 pm on nomination day but before election day, the election continues. The Victorian Electoral Commission will make every effort to have ballot papers reprinted or the name of the deceased candidate removed from the ballot paper.

If the death of a candidate results in an uncontested election the remaining candidate will be declared elected.

4. UNCONTESTED ELECTIONS

If, at the close of nominations or on the retirement of a candidate, there are only enough nominations to fill the number of vacancies advertised, the Returning Officer must declare the nominated candidates elected and give public notice of their election.

In the case of a general election, the Returning Officer's declaration must be made at the declaration of results as soon as practicable on or after election day. In a by-election, the declaration is made immediately following the close of nominations or immediately following the date specified in the outgoing councillor's notice of resignation, whichever is the later.

If the number of candidates is less than the number of vacancies to be filled, the Returning Officer must declare those candidates elected. The vacancy will be treated as an extraordinary vacancy.

If there are no candidates for an election, the election fails and the Returning Officer must give public notice that the election has failed.

5. CANDIDATES' STATEMENTS

Personal Statement

A candidate may lodge with the Returning Officer for inclusion in the postal ballot material sent to voters, a personal statement, a photograph and an indication of preferences. The personal statement and the indication of preferences must be lodged in person by the candidate, or by a person authorised in writing by the candidate, no later than by 4.00 pm on the third working day after the close of nominations.

The Returning Officer will provide a suitable form for the lodgement of the personal statement and indication of preferences.

If a candidate does not lodge a personal statement, photo or indication of preferences, the Returning Officer must include advice to voters that the candidate did not lodge the statement or indication of preferences.

A candidate can lodge a personal statement either in hardcopy on the form provided by the Returning Officer, or in electronic format on a disk provided by the Returning Officer.

The personal statement must be no longer than 150 words and must not refer to another candidate standing for election in the municipality without the written consent of that other candidate. If a candidate's statement exceeds 150 words, only the first 150 words will be printed. The Returning Officer may reject a candidate's personal statement if, in the opinion of the Returning Officer, it contains offensive or obscene material or is likely to mislead or deceive a voter in the casting of his or her vote.

A candidate is responsible for the accuracy and integrity of the personal statement's contents.

Please note the following regarding a candidate's statement:

- The Returning Officer is not responsible for correcting any errors in grammar, punctuation or spelling in candidates' statements. Candidates are therefore advised to check their statements thoroughly before submitting them to the Returning Officer.
- The personal statement must be in English.
- The Returning Officer may until the day the statement is printed:
 - liaise with any candidate with respect to the content or form of their statement; or
 - amend a statement in accordance with the written authorisation of the candidates or a person duly authorised by the candidates.
- The print size and style will be standardised so that the statements can be printed in the limited space available.
- So far as practicable, and within printing restrictions, statements will be reproduced in the format provided by the candidate i.e. with any words in italics, or underlined and with paragraph spacing if possible but no bolding is permitted.
- Because statements are formatted to reproduce accurately in both

printed form and on the web, all paragraphs are aligned left.

- Statements will be printed in standard upper and lower case. Do not submit your statement all in upper case as it could then be difficult for staff to determine which words should begin with a capital letter.
- Use dot points sparingly. While dot points may be used, too many dot points could result in your statement being printed in a smaller font than other statements to fit on the page.
- It should also be noted that the use of many short paragraphs or the extensive use of long words can also result in your statement being printed in a smaller font size than the others for the same ward.
- Anything submitted in bold will be printed in plain text. If you wish to emphasize a word or phrase, use italics or underlining.
- Punctuation, dot points, dashes, brackets, etc. are not included in the 150 words.
- The following rules will be applied to the counting of words:

Dates	17 January 1980 = 3 words	17/1/80 = 1 word
Abbreviations	UNESCO = 1 word	DipEd = 1 word
Numbers	forty-eight = 1 word	48 = 1 word
Other	a = 1 word	I = 1 word

Photograph

We ask that candidates wishing to have a photograph included with their personal statement provide **two identical photographs to the Returning Officer at the time of nomination.**

Note: Instant passport photos are available from most pharmacies and photography stores.

Photocopies, scans, draft quality print-outs or pictures cut from group photos or printed documents are **unsuitable** for reproduction.

Photocopies, scans, draft quality print-outs or pictures cut from group photos or printed documents are **unsuitable** for reproduction. The Victorian Electoral Commission cannot accept any responsibility for reproduction of photographs that are provided in this condition.

The photographs must be:

- recent;
- passport-size (38mm x 32mm only);
- head and shoulders only, with light background for better printing; and
- endorsed with the candidate's name, the municipality name and ward name if applicable written on the reverse of the photograph.

Electronic Files

Digital photograph files may be submitted, but due to the evolving nature of this technology, there may be difficulties encountered if uncommon file types are provided.

Digital files should be:

- .jpg files with a resolution of not less than 200 dpi;
- no smaller than 38mm high × 32mm wide (300 × 250 pixels); and
- preferably grayscale with good contrast.

Indication of Preferences

The indication of preferences identifies each candidate in the form and order in which they appear on the ballot paper. It must contain the figures 1, 2, 3, 4 (and so on as the case requires) in the squares opposite the names of the candidates to indicate the candidate's preferred order of voting for them.

The Returning Officer must reject a candidate's indication of preferences if it does not comply with the above requirements.

Viewing Statements and Preferences

Candidate statements and preferences are not available until they have been printed.

Once statements are printed, (this is usually the Monday after the close of candidate statements), they are available on request at the Returning Officer's office.

Candidates' statements will also be available on the Commission's website www.vec.vic.gov.au as soon as possible during the week following the close of candidates' statements.

6. PRINTING AND PUBLICATION OF ELECTORAL MATERIAL

Authorisation of Electoral Material

A person must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, an electoral advertisement, handbill, pamphlet or notice unless:

- the name and address of the person who authorised the electoral advertisement, handbill, pamphlet or notice appears at its end.

The authorisation requirements do not apply to a car sticker, an item of clothing, lapel badge, fridge magnet, pen, pencil or balloon.

Candidates may authorise and print their own electoral material.

Misleading or Deceptive Matter

During an election period it is illegal to print, publish, distribute, permit or authorise:

- anything that is likely to mislead or deceive an elector in relation to the casting of their vote; or
- an electoral advertisement containing a representation of a ballot paper that is likely to induce an elector to vote otherwise than in accordance with the directions on the ballot paper.

Identification of Authors

During an election period, all articles or letters containing electoral matter which are printed, published or distributed in a newspaper, circular or pamphlet must include the name and address of the author at the end.

However, letters simply have to include the author's name and the suburb or locality in which the author's address is located.

The identification requirement does not apply to a newspaper leading article or an article that is solely a report of a meeting.

Matter Broadcast or Televised

The broadcast on radio or television of all political and election matter (including election advertisements), must comply with the requirements set out in Schedule 2 of the *Broadcasting Services Act 1992* (Commonwealth).

The Commission is not in a position to offer any advice regarding the operation of Commonwealth legislation. Any enquiries concerning the operation of the above Commonwealth Act should be directed to:

The Australian Broadcasting Authority
PO Box Q500,
Queen Victoria Building,
SYDNEY NSW 1230
Tel. (02) 9334 7700
Fax. (02) 9334 7799

7. ISSUE OF POSTAL BALLOT PACK

At least 15 days before the last day of voting a postal ballot envelope containing:

- a ballot paper envelope;
- a ballot paper;
- a pre-paid return envelope;
- instructions to the voter; and
- candidates' personal statements and indications of preferences will be posted to all voters on the voters' roll.

The postal ballot envelopes will be posted to voters on a random basis with not more than 35% of the voters to be sent their ballot material on any one day.

Voters who will not be at their enrolled addresses during the voting period can arrange for the ballot material to be sent to another address. A request in writing must be made by each voter to the Returning Officer prior to the close of nominations.

Special Circumstance Votes

Regulation 75(2) provides that the Returning Officer may issue a voter with a ballot paper prior to the general mailout if the Returning Officer is satisfied that special circumstances exist. Such a circumstance might, for example, be where the voter is about to go overseas prior to the general mailout and will not be returning prior to the close of voting.

Voters requiring special circumstance votes may view the copies of the candidates' statements in the Returning Officer's office.

Any ballot papers issued **before** the printed ballot papers are available will:

- be signed on the back of the paper by the issuing officer, and
- have the words *Special Circumstance* written on the back.

Replacement and Unenrolled Ballot Papers

In an election conducted entirely by post, replacement and unenrolled ballot papers can be issued under Regulation 78 as follows:

Unenrolled Vote Regulation 78(1)(a)

Voter whose name cannot be found on the certified voters' roll.

Replacement Vote Regulation 78(1)(b)

Voter who claims that he or she has lost or destroyed the declaration envelope or ballot paper or both.

Replacement Vote Regulation 78(1)(c)

Voter who claims not to have received a postal ballot paper.

Replacement Vote Regulation 78(1)(d)

Voter who satisfied the Returning Officer that he or she has spoilt the declaration envelope or ballot paper or both and returns the spoilt declaration envelope or spoilt ballot paper or both.

8. RETURN OF BALLOT PAPER ENVELOPES

Voters must post or deliver the pre-paid envelope containing the ballot paper envelope and ballot paper to reach the Returning Officer not later than 6.00 pm on the last day of voting.

The Returning Officer may on receipt of the pre-paid return envelopes:

- remove the ballot paper envelopes from the pre-paid envelopes;
- separate the signed ballot paper envelopes from the unsigned ballot paper envelopes;
- disallow the unsigned ballot paper envelopes;
- record the return of the ballot paper envelopes on the voters' roll;
- place the ballot paper envelopes in properly sealed security boxes until after the close of voting; and
- ensure that only one ballot paper envelope is received from each enrolled voter to be included in the count.

9. OBTAINING THE RESULT

All ballot paper envelopes to be admitted to the count will be processed and the votes counted after 6.00 pm on the last day of voting.

The method of counting votes to determine the result of a council election is described in Schedule 3, Parts 3 and 4A of the Act. These sections are re-printed in the chapters 17 and 18 of this handbook for your information.

The Returning Officer may from time to time adjourn the count of votes. If the count is adjourned, the Returning Officer must advise the scrutineers and the authorised persons of the adjournment.

Candidates are not entitled to be present at the counting of votes.

10. RECOUNT OF VOTES

At any time before a candidate has been declared elected, the Returning Officer may:

- if he or she thinks fit; or
 - at the written request of a candidate specifying reasons;
- open any sealed parcel containing ballot papers and recount the ballot papers.

The following applies to recounts:

- a recount may be conducted at the discretion of the Returning Officer;
- the Returning Officer may conduct one or more recounts; and
- the Returning Officer must make reasonable efforts to notify candidates or their representatives before a recount is conducted.

In respect of each candidate only one scrutineer for each authorised person involved in the recounting of ballot papers can be present at any one time. A candidate is not entitled to be present at the recount.

11. SCRUTINEERS

Role of Scrutineers

A scrutineer may be appointed by a candidate to scrutinise the following electoral activities only:

- (a) the posting of postal ballot envelopes at any branch of Australia Post;
- (b) the opening and emptying of a post office box;
- (c) the opening and emptying of a postal ballot receptacle;
- (d) the receipt and processing of ballot paper envelopes; and
- (e) the counting and recounting of ballot papers.

In respect of each candidate, only one scrutineer for each authorised person involved in any of the electoral activities outlined above can be present at each electoral activity at any one time.

The Returning Officer may have a scrutineer removed if:

- more than one scrutineer for each authorised person is present as provided for in the electoral activities described above; or
- the scrutineer commits any breach of the Act; or
- the scrutineer is guilty of misconduct; or
- the scrutineer fails to obey a lawful direction from an authorised person.

[LGR 83]

Appointment and Declaration of Scrutineer

Before a scrutineer acts as such, he or she must make a written declaration containing the details required by the Local Government Act. The declaration is contained on the appointment form available from the Returning Officer.

Before a scrutineer can act as such, the completed appointment form must be signed by the candidate the scrutineer is representing and be submitted to the Returning Officer, Deputy Returning Officer or authorised officer. Returning Officers will advise candidates of the proposed time for counting to commence.

A person cannot be appointed as a scrutineer if he or she is:

- a councillor of the Council;
- a candidate in the election;
- a candidate in any other election for that Council conducted simultaneously with that election; or
- in the case of an election held by postal voting, if the Council has appointed the Victorian Electoral Commission, the Australian Electoral Commission or any other Council to conduct the election, a person appointed by those bodies to be involved in the conduct of the election.

12. DECLARATION OF THE RESULT

As soon as practicable on or after election day, the Returning Officer will publicly declare the result of the election.

The Returning Officer will also give public notice of the person or persons elected and, where appropriate, the order in which they were elected. The Returning Officer will also advise the Minister for Local Government of the result.

13. ELECTION OFFENCES

The following list of offences is NOT all-inclusive. Please refer to the Act and Regulations.

Interference with Rights A person must not hinder or interfere with the free exercise or performance of any other person's political right or duty relevant to an election. [LGA, s.54(1)]

PENALTY: \$100.

Misleading or Deceptive Material A person must not print, publish or distribute or cause to be printed, published or distributed any electoral material that is likely to mislead or deceive a voter in relation to the casting of the vote of a voter. [LGA, s.55A(1)]

PENALTY: \$1000 if the offender is a natural person or \$2000 if the offender is a corporation.

False or Defamatory Statements A person must not make or publish any false or defamatory statement in relation to the personal character or conduct of a candidate. [LGA, s.57(1)]

PENALTY: \$1,000 if the offender is a natural person or \$5,000 if the offender is a corporation.

Offences Relating to Ballot Papers A person must not erase, obliterate or alter any official mark, stamp or writing on a ballot paper or place any writing or other matter on any ballot paper which might lead persons to believe that it was placed under authority. [LGA, s.58(1)]

PENALTY: \$1000

A person must not:

- (a) forge or fraudulently mark, deface or destroy a ballot paper; or
- (b) without authority supply a ballot paper to any person; or
- (c) fraudulently put any unauthorised ballot paper into a ballot box; or
- (d) be in possession of an unauthorised ballot paper; or
- (e) without authority destroy, take, open or otherwise interfere with any ballot box or parcel of ballot papers. [LGA, s.58(2)]

PENALTY: Imprisonment for 2 years if a Returning Officer, authorised person or interpreter or imprisonment for 6 months if any other person.

A person must not vote or attempt to vote more than once at an election (unless permitted or required to do so), fraudulently remove a ballot paper from a ballot box or impersonate any voter. [LGA, s.58(3)]

PENALTY: Imprisonment for 6 months.

Infringement of Secrecy

Except as authorised by law, the Returning Officer and any authorised person, interpreter, scrutineer and member of the police force must not communicate to any person any information likely to defeat the secrecy of voting. [LGA, s.60(2)]

PENALTY: Imprisonment for 6 months.

A person must not interfere with or attempt to interfere with a voter when marking his or her ballot paper. [LGA,s.60(3)]

PENALTY: Imprisonment for 6 months.

A person must not directly or indirectly induce any voter to display his or her ballot paper after he or she has marked it, so as to show to any person the name of the candidate for or against he or she has voted. [LGA, s.60(4)]

PENALTY: Imprisonment for 6 months.

Bribery

Provisions relating to bribery are set out in the Act. [LGA, s.59]

Unlawful Nomination

If a person who is not qualified to be a candidate or is not capable of becoming a Councillor submits a notice of candidature the person is guilty of an offence. [LGA, s.52]

PENALTY: \$2000

14. COMPULSORY VOTING

Voting is compulsory at council elections for all voters whose principal place of residence is in the ward of the municipal district in which an election is being held.

[LGA, s.40]

However, voters aged 70 years or over or those with a sufficient excuse for not voting are exempt from compulsory voting.

[LG(E) R, r.89]

15. COMPLAINTS

Any complaints should be directed, in the first instance to the Returning Officer.

If the complaint relates to:

- The administration of the election – the Returning Officer will handle the matter.
- A possible breach of the *Local Government Act 1989* – the Returning Officer will forward the complaint to Local Government Victoria for investigation. This body is responsible for the administration of the *Local Government Act 1989*.

In all cases the Returning Officer will inform the person lodging the complaint of the action taken.

16. MUNICIPAL ELECTORAL TRIBUNALS

What is a Municipal Electoral Tribunal?

A Municipal Electoral Tribunal is appointed by the Attorney-General to consider disputes as to the validity of local government elections. Tribunals are constituted under the *Local Government Act 1989*, and are intended to provide a forum for the settling of such disputes. A Tribunal consists of a magistrate appointed by the Attorney-General.

What are the Powers of a Tribunal?

A tribunal may:

- declare that any person declared elected was not duly elected;
- declare any candidate duly elected who was not declared elected;
- declare an election void;
- dismiss or uphold an application in whole or in part;
- amend or permit the amendment of an application;
- order the inspection of, and permit copying of, documents used in connection with an election, subject to such terms and conditions as it considers appropriate;
- undertake a preliminary review of an application;
- require any further information relating to an application;
- impose a financial penalty.

Who can Apply for a Hearing?

A candidate or any 10 voters at the election who dispute the validity of the election may apply for a hearing. The application must be made within 14 days of the declaration of the result of the election.

How to Apply

Applications must be in writing and contain the following details as set out in Regulation 93:

- the name of the Council and the Ward (if applicable);
- the full names and addresses of the candidate, or the 10 voters making the application for the inquiry;
- the home and business telephone numbers of the candidate, or in the case of an application by 10 voters, the home and business telephone numbers of a contact person for the purposes of the application;
- the signatures of the candidate or the 10 voters and the date on which the candidate or the voters signed the application; and
- the grounds on which the inquiry into the validity of the election or by-election is sought.

Applications must be accompanied by a fee of \$200 that, at the discretion of the tribunal, may be refunded in whole or in part. Applications, together with any supporting documentation, are available for inspection by any interested party.

Applications together with the fee must be lodged with:

Principal Registrar's Office
Magistrates' Court
2nd Floor, 233 William Street
MELBOURNE VIC 3000

Can a Tribunal Award Costs?

A tribunal may award costs to the applicant or respondent if it considers such an action just. Costs can be substantial.

Withdrawal of an Application

Applicants that withdraw an application before the date of a hearing may be liable for costs incurred by other parties arising from the preparation for the hearing.

Further Information

Information on Municipal Electoral Tribunals is available from Local Government Victoria in the Department for Victorian Communities.

17. RESULT WHERE ONLY ONE CANDIDATE IS TO BE ELECTED

The following extracts from Schedule 3 of the *Local Government Act 1989* are provided for your information:

Procedure for Determining a Result

PART 3—RESULT WHERE ONLY ONE COUNCILLOR IS TO BE ELECTED

9. Only two candidates

If only 1 Councillor is to be elected and there are only 2 candidates the result is to be determined as follows—

- (a) the candidate who has received the greater number of first preference votes is to be declared elected by the Returning Officer;
- (b) if the 2 candidates have received an equal number of votes the result is to be determined by lot by the Returning Officer.

10. More than two candidates

If only 1 Councillor is to be elected and there are more than 2 candidates the result is to be determined as follows—

- (a) the candidate who has received the greatest number of first preference votes if that number constitutes an absolute majority of votes is to be declared elected by the Returning Officer;
- (b) **"Absolute majority of votes"** means a number of votes greater than one-half of the total number of ballot papers (excluding ballot papers which are rejected) and if necessary includes the vote by lot ;
- (c) if no candidate has received an absolute majority of votes, the Returning Officer upon receipt of the several sealed parcels from any authorised person and with the assistance of any authorised persons and in the presence and subject to the inspection of any 1 scrutineer, if present, appointed by each candidate but of no other person, must—
 - (i) open all the sealed parcels containing used ballot papers; and
 - (ii) arrange such ballot papers together with the allowed postal ballot papers, if any, by placing in a separate parcel all those on which a first preference is indicated for the same candidate and preference votes are also duly given for all the remaining candidates, omitting ballot papers which are rejected; and
 - (iii) declare the candidate who has received the fewest first preference votes a defeated candidate; and
 - (iv) distribute the ballot papers counted to the defeated candidate amongst the non-defeated candidates next in order of the voters' preference; and
 - (v) after the distribution again ascertain the total number of votes given to each non-defeated candidate;
- (d) the candidate who has then received the greatest number of votes if that number constitutes an absolute majority of votes is

- to be declared elected by the Returning Officer;
- (e) if no candidate then has an absolute majority of votes the process of declaring the candidate who has the fewest votes a defeated candidate and distributing the ballot papers counted to the defeated candidate amongst the non-defeated candidates next in order of the voters' preference is to be repeated until 1 candidate has received an absolute majority of votes and is declared elected by the Returning Officer;
 - (f) if on any count 2 or more candidates have an equal number of votes and 1 of them has to be declared a defeated candidate, the result is to be determined:
 - (i) by declaring whichever of those candidates had the fewest votes at the last count at which those candidates had a different number of votes to be defeated; or
 - (ii) if a result is still not obtained or there has been no count, by lot by the Returning Officer;
 - (g) if on the final count 2 candidates have an equal number of votes, the result is to be determined:
 - (i) by declaring whichever of those candidates had the fewest votes at the last count at which those candidates had a different number of votes to be defeated; or
 - (ii) if a result is still not obtained or there has been no count, by lot by the Returning Officer.

18. RESULT WHERE TWO OR MORE COUNCILLORS ARE TO BE ELECTED

The following extracts from Schedule 3 of the *Local Government Act 1989* are provided for your information:

Procedure for Determining a Result

PART 4A—RESULT WHERE TWO OR MORE COUNCILLORS ARE TO BE ELECTED

11B. 2 or more Councillors to be elected

- (1) The result is to be determined as set out in this clause.
- (2) In this clause—
 - “**continuing candidate**” means a candidate not already elected or excluded from the count;
 - “**quota**” means the number determined by dividing the number of first preference votes by 1 more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by 1;
 - “**surplus votes**” means the number, if any, of votes in excess of the quota of each elected candidate.
- (3) A reference to votes of or obtained or received by a candidate includes votes obtained or received by the candidate on any transfer.
- (4) The Returning Officer upon receipt of the several sealed parcels from any authorised person and with the assistance of any authorised persons and in the presence and subject to the inspection of any 1 scrutineer, if present, appointed by each candidate but of no other person must—
 - (a) open all the sealed parcels containing used ballot papers; and
 - (b) arrange the ballot papers together with the allowed postal ballot papers, if any, by placing in a separate parcel all those on which a first preference is indicated for the same candidate and preference votes are also duly given for all the remaining candidates, omitting ballot papers which are rejected; and
 - (c) ascertain—
 - (i) the number of first preference votes given for each candidate; and
 - (ii) the total number of first preference votes.
- (5) A quota is to be determined.
- (6) Any candidate who has received a number of first preference votes equal to or greater than the quota is to be declared duly elected by the Returning Officer.
- (7) Unless all the vacancies have been filled, the surplus votes of each elected candidate are to be transferred to the continuing

candidates as follows—

- (a) the number of surplus votes of the elected candidate is to be divided by the number of first preference votes received by the elected candidate and the resulting fraction is the transfer value;
 - (b) the total number of ballot papers of the elected candidate that express the first preference vote for the elected candidate and the next available preference for a particular continuing candidate is to be multiplied by the transfer value;
 - (c) the number obtained under paragraph (b) (disregarding any fraction) is to be added to the number of first preference votes of the continuing candidate and all those ballot papers are to be transferred to the continuing candidate.
- (8) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any transfer under sub-clause (7) is to be declared duly elected by the Returning Officer.
- (9) Unless all the vacancies have been filled, the surplus votes, if any, of any candidate elected under sub-clause (8) or elected subsequently under this sub-clause are to be transferred to the continuing candidates in accordance with sub-clause (7) and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of the transfer is to be declared duly elected by the Returning Officer.
- (10) If a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer of the surplus votes of a particular elected candidate under sub-clause (7) or (9), no votes of any other candidate are to be transferred to the continuing candidate.
- (11) For the purposes of the application of sub-clause (7) in relation to a transfer of the surplus votes of an elected candidate under sub-clause (9) or (14), each ballot paper of the elected candidate obtained by the elected candidate on a transfer is to be dealt with as if—
- (a) any vote it expressed for the elected candidate were a first preference vote; and
 - (b) the name of any other candidate previously elected or excluded had not been on the ballot paper; and
 - (c) the numbers indicating subsequent preferences had been altered accordingly.
- (12) If, after the counting of first preference votes or the transfer of any surplus votes of elected candidates, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes is to be excluded and all that candidate's votes are to be transferred to the continuing candidates as follows—
- (a) the total number of ballot papers of the excluded candidate that express the first preference vote for the excluded candidate and the next available preference for a particular continuing candidate are to be transferred at a transfer value of 1 for each ballot paper and added to the number of votes of the continuing candidate and all those ballot

- papers are to be transferred to the continuing candidate;
- (b) the total number, if any, of other votes obtained by the excluded candidate on transfers are to be transferred from the excluded candidate beginning with the highest transfer value and ending with the ballot papers received at the lowest transfer value, as follows—
- (i) the total number of ballot papers received by the excluded candidate at a particular transfer value and expressing the next available preference for a particular continuing candidate is to be multiplied by that transfer value; and
 - (ii) the number so obtained (disregarding any fraction) is to be added to the number of votes of the continuing candidate; and
 - (iii) all those ballot papers are to be transferred to the continuing candidate.
- (13) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer of votes of an excluded candidate under sub-clause (12) or (16) is to be declared duly elected by the Returning Officer.
- (14) Subject to sub-clause (15), unless all the vacancies have been filled, the surplus votes, if any, of a candidate elected under sub-clause (13) are to be transferred in accordance with sub-clause (7).
- (15) If a candidate elected under sub-clause (13) is elected before all the votes of the excluded candidate have been transferred, the surplus votes, if any, of the elected candidate are not to be transferred until the remaining votes of the excluded candidate have been transferred in accordance with sub-clause (12) to continuing candidates.
- (16) Subject to sub-clause (18), if after the transfer of all the votes of an excluded candidate no continuing candidate has received a number of votes greater than the quota—
- (a) the continuing candidate who has the fewest votes must be excluded; and
 - (b) that candidate's votes must be transferred in accordance with sub-clause (12).
- (17) If a candidate is elected as a result of a transfer of ballot papers under clauses 12 and 16, no other ballot papers of an excluded candidate are to be transferred to the candidate so elected.
- (18) In respect of the last vacancy for which 2 continuing candidates remain, the continuing candidate who has the larger number of votes is to be elected notwithstanding that that number is below the quota and if those candidates have an equal number of votes the result is to be determined by lot.
- (19) Despite any other provision of this clause, if the number of continuing candidates is equal to the number of remaining unfilled vacancies, those candidates are to be declared duly elected by the Returning Officer.
- (20) Subject to sub-clauses (21), (22) and (23), if after any count or transfer, 2 or more candidates have surplus votes the order of any transfers of the surplus votes of those candidates is to be in accordance with the relative size of the surpluses, the largest

surplus being transferred first.

- (21) Subject to sub-clause (23), if after any count or transfer, 2 or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates is to be in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count or transfer being transferred first.
- (22) For the purposes of sub-clause (21), if there has been no count or transfer the returning officer must determine the order in which the surpluses are to be dealt with.
- (23) If after any count or transfer, a candidate obtains surplus votes, those surplus votes are not to be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count or transfer.
- (24) If on any count or transfer 2 or more candidates have the fewest number of votes and the candidate who has the fewest number of votes is required to be excluded, the result is to be determined—
 - (a) by declaring whichever of those candidates had the fewest votes at the last count at which those candidates had a different number of votes to be excluded; or
 - (b) if a result is still not obtained or there has been no count or transfer, by lot by the Returning Officer.
- (25) If on the final count or transfer 2 candidates have an equal number of votes, the result is to be determined—
 - (a) by declaring whichever of those candidates had the fewest votes at the last count or transfer at which those candidates had a different number of votes to be excluded; or
 - (b) if a result is still not obtained or there has been no count, by lot by the Returning Officer.
- (26) If a candidate is elected by reason that—
 - (a) the number of first preference votes received by the candidate; or
 - (b) the aggregate of first preference votes received by the candidate and all other votes obtained by the candidate on transfers—

is equal to the quota, all the ballot papers expressing those votes are to be set aside as finally dealt with.
- (27) For the purposes of this clause each of the following constitutes a separate transfer—
 - (a) a transfer under sub-clause (7), (9) or (14) of all the surplus votes of an elected candidate;
 - (b) a transfer in accordance with sub-clause (12)(a) of all first preference votes of an excluded candidate;
 - (c) a transfer in accordance with sub-clause (12)(b) of all the votes of an excluded candidate that were transferred to that candidate from a particular candidate.

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Victorian Electoral Commission 

Level 8, 505 Little Collins Street, Melbourne, Vic. 3000

Tel 131 832 Fax (03) 9629 8624

www.vec.vic.gov.au

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