

**ATTENDANCE**

**VEC**

**Candidate  
Handbook**

**Local Government  
Election Information Series**

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Victorian Electoral Commission, Melbourne

# Handbook for Candidates at Council Elections

## Attendance Voting

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## LOCAL GOVERNMENT ELECTIONS 2008

### ATTENDANCE ELECTION TIMELINE

Exhibition Roll Date	AUG 21	THU	(100 days before Election Day)
Public Notice of Entitlement Date	SEP 10	WED	
	SEP 16	TUE	
Exhibition Period	SEP 29	MON	
Entitlement Date	OCT 3	FRI	(57 days before Election Day)
Publication of Election Notice	OCT 6	MON	
	OCT 11	SAT	
<b>Opening of Election Office</b>	OCT 22	WED	
Certification of Voters Roll Opening of Nominations	OCT 23	THU	
<b>Nomination Day</b>	OCT 28	TUE	Closes 12 noon
Commence Postal and Early Voting First day for Registration of How-to-Vote cards	OCT 29	WED	
Mailout EasyVote Card	NOV 14	FRI	
Last day for Registration of How-to-Vote cards	NOV 21	FRI	Closes 12 Noon
Close of Postal Voting Applications	NOV 27	THU	Closes 12 Noon
Close of Early Voting	NOV 28	FRI	
<b>ELECTION DAY</b>	NOV 29	SAT	Voting Closes 6.00pm
	NOV 30	SUN	Counting

## INTRODUCTION

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This handbook is intended to assist candidates in Victorian municipal council elections conducted by the Victorian Electoral Commission (VEC). It outlines those aspects of electoral law that relate directly to candidates. However, the handbook should not be seen as a substitute for the law, and should be read in conjunction with the *Local Government Act 1989* and the Local Government (Electoral) Regulations 2005, copies of which may be purchased from:

Information Victoria  
505 Little Collins Street  
Melbourne 3000.

Phone: 1300 366 356 (toll free); or

on the Victorian Government website [www.vic.gov.au](http://www.vic.gov.au)

Candidates must note that recent changes to the *Local Government Act 1989* came into operation on 15 August, 2008. Many of these changes impact on candidates. Candidates must check the contents of this handbook very carefully to ensure that they meet current requirements. Those sections affected by the recent changes to legislation in this handbook are labelled (Amended 08).

Candidates are encouraged to make an appointment with the Returning Officer early in the election period to discuss election arrangements.

The Returning Officer will conduct an information session for prospective candidates and provide a kit containing handbooks and forms for candidates and scrutineers.

The VEC will also provide information on the proportional representation counting system for elections involving multiple vacancies. Details will be available on the VEC website at [www.vec.vic.gov.au](http://www.vec.vic.gov.au)

**Candidates are reminded that, while the VEC 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

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<b>Absent Voting</b>	Absent voting is available to voters who attend a voting centre outside their ward and within the boundaries of the municipality. There is no absent voting across councils.
<b>Act</b>	'Act' means the <i>Local Government Act 1989</i> . [LGA]
<b>Authorised Person</b>	A person or persons appointed by the Returning Officer to exercise or perform any power or duty delegated by the Returning Officer in connection with the election.
<b>Ballot paper</b>	A ballot paper is the document on which voters record their preferences for each candidate in the election.
<b>By-election</b>	The holding of an election to fill an extraordinary vacancy when a countback does not apply.
<b>Candidate</b>	A person who nominates to contest an election for a council.
<b>Canvassing</b>	Soliciting of votes at an election for a candidate or group of candidates.
<b>Chief Executive Officer (CEO)</b>	The person appointed by a council to be its Chief Executive Officer or any person acting in that position.
<b>Close of Voting</b>	The last day for ballot material to be accepted in the count.
<b>Computer Count</b>	The electronic counting of votes.
<b>Countback</b>	A method to fill an extraordinary vacancy where councillors were originally elected using the proportional representation method.
<b>Disadvantaged Voter</b>	Any voter who: <ul style="list-style-type: none"><li>• is wholly or partially blind; or</li><li>• has a cognitive impairment; or</li><li>• is unable to read or write; or</li><li>• has severe difficulty in reading or writing; or</li><li>• is not sufficiently familiar with the English language to vote without assistance.</li></ul>
<b>Donation Period</b> (Amended 08)	The "donation period" means the period commencing on whichever is the later of: <ul style="list-style-type: none"><li>• 30 days after the last general election for the council; or</li><li>• 30 days after the last election for the council at which the person required to give the election campaign donation return was a candidate; and</li></ul> ending 30 days after election day in the current election for the council.
<b>Early Voting</b>	A facility for voters who wish to vote prior to election day. A council must provide early voting from the day after the close of nominations up to and including the Friday immediately before election day.
<b>Election Management System (EMS)</b>	The VEC's computerised Election Management System, used by Returning Officers to capture all election data.

<b>Election Office</b>	The location from where the Returning Officer conducts the election. Details of the Election Office for each election will be available on the VEC website at <a href="http://www.vec.vic.gov.au">www.vec.vic.gov.au</a>
<b>Election Period</b> (Amended 08)	In relation to an election, the election period means the 32 day period that: <ul style="list-style-type: none"> <li>• starts on nomination day (close of nominations); and</li> <li>• ends at 6.00pm on election day.</li> </ul>
<b>Electoral Advertisement, Handbill, Pamphlet or Notice</b>	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.
<b>Electoral Matter</b>	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"> <li>• the election; or</li> <li>• a candidate in the election; or</li> <li>• an issue submitted to, or otherwise before, the voters in connection with the election.</li> </ul>
<b>Entitlement Date</b>	The date 57 days before election day which is the last date on which a person may apply to be enrolled on the municipal voters roll.
<b>Exhibition Roll</b> (Amended 08)	The exhibition roll is a merged roll consisting of the Electoral Commission list and the Chief Executive Officer list as at exhibition roll date (100 days before election day). This roll will be on public display for a period of 5 working days, ending on entitlement day (57 days before election day).
<b>Formal Vote</b>	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.
<b>General Postal Voter (GPV)</b>	Is a person whose application to be a general postal voter is accepted under section 24 of the <i>Electoral Act 2002</i> . Ballot material is automatically forwarded to GPVs after the close of nominations.
<b>How-to-vote Card</b>	Any card, handbill, pamphlet or notice: <ul style="list-style-type: none"> <li>• which is or includes a representation or partial representation or purported representation or purported partial representation of a ballot paper for use in an election; or</li> <li>• which lists the names of any or all of the candidates for an election with a number indicating an order of voting preference against the names of any or all of those candidates or a statement that a number indicating an order of voting preference must be placed against the name of each candidate.</li> </ul>
<b>Municipal District</b>	The district under the local government of a council.
<b>Nomination Day</b> (Amended 08)	The last day upon which a person may lodge a <i>Nomination Form</i> with the Returning Officer. <i>Nomination Forms</i> must be lodged by 12 noon on nomination day.
<b>Nomination Form</b>	The prescribed form that a candidate for an election must complete and lodge with the Returning Officer together with the nomination fee.

<b>Notice of Election</b>	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.
<b>Power to Keep the Peace</b>	<p>The Returning Officer and any person authorised by the Returning Officer for that purpose have the following powers:</p> <ul style="list-style-type: none"><li>• to maintain and enforce order and keep the peace at any election or voting centre;</li><li>• without any warrant can cause any person who -<ul style="list-style-type: none"><li>(i) obstructs the approaches to any voting centre; or</li><li>(ii) behaves in a disorderly manner to be removed; and</li></ul></li><li>• without warrant can cause any person reasonably suspected of committing an offence against the Act to be arrested.</li></ul>
<b>Public Notice</b> (Amended 08)	A notice published in a newspaper generally circulating in the municipal district of the council. Newspapers are chosen by the Returning Officer.
<b>Publish</b>	To publish by any means including by publication on the Internet.
<b>Registered How-to-vote Card</b>	Any how-to-vote card to be handed out within 400 metres of a voting centre during the hours of voting (including those days on which early voting is taking place) must be registered with the Returning Officer for the municipal district concerned.
<b>Regulations</b>	The Local Government (Electoral) Regulations 2005.
<b>Returning Officer</b>	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 <i>Local Government Act 1989</i> and the Local Government (Electoral) Regulations 2005.
<b>Scrutineer</b>	A person appointed by a candidate to represent the candidate's interests and observe voting and counting procedures to satisfy the candidate that the election was conducted strictly in accordance with the law.
<b>Victorian Electoral Commission (VEC)</b>	The Victorian Electoral Commission (VEC) has been appointed by the council to conduct its elections and is then responsible for the proper conduct of those elections (which are conducted by a Returning Officer appointed by the Electoral Commissioner).
<b>Voters Roll</b>	An alphabetical list of persons, certified by the Chief Executive Officer of the council, who are eligible to vote at the election. The council's CEO's list of non-resident ratepayers, representatives of corporations and other ratepayers (who have applied to be on the roll) is merged with the Electoral Commission list of State electors to create the voters roll. There is a separate roll for each ward.
<b>Voting Centre</b>	A building, structure, vehicle or enclosure at which voters can attend to record their votes.
<b>Ward</b>	A sub-division of a municipal district. In subdivided councils, councillors are elected to represent a ward.

# 1. ELIGIBILITY TO STAND FOR COUNCIL

For your information a copy of sections 11 to 17 of the *Local Government Act 1989* referring to enrolment is provided as Appendix 1 in this handbook.

## Qualifications

Refer to sections 28 & 70  
LGA

Section 28 of the *Local Government Act 1989* states that:

*(1) A person is qualified to be a candidate for the office of Councillor if he or she has an entitlement referred to in section 11.*

*(1A) A person is qualified to become and continue to be a Councillor at a particular time if, were that particular time the entitlement date and a voters' roll prepared, subsection (1) would apply to that person.*

The Returning Officer must reject as being void a nomination from a person who is not enrolled on the voters' roll for the election, unless the nomination is accompanied by a statutory declaration stating that the person is entitled to be enrolled being an entitlement other than under section 12(1) or 12(2).

## Disqualifications

Refer to sections 29, 30,  
63, 70 & 85 LGA  
(Amended 08)

A person is not capable of becoming or continuing to be a councillor or nominating as a candidate at an election if:

- 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; or
- he or she has not taken the oath of 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 *Constitution Act 1975* [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.

If a person who has been a councillor of a council ceased to be a councillor of that council because:

- the person failed to take the oath of office as required by section 63; or
- the person was absent from 4 consecutive ordinary meetings of the council without leave obtained from the council; or
- the Minister has made an order under section 85(6) in respect of the person;

the person cannot nominate as a candidate for an election for that council to be held during the period ending 4 years after the person ceased to be a councillor of that council. (Applicable from 15 August 2008 —not retrospective).

A person who is convicted of an offence against sections 55A(1), 56, 56A, 57, 58(1),58(2),58(3), 58A, 59, 60, 76B(3), 77 or 79 of the *Local Government Act 1989*, 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.

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.

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.

## 2. ENROLMENT ON VOTERS ROLL

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All intending candidates are advised to read Appendix 1, sections 11 to 17 of the *Local Government Act 1989*, in the back of this handbook. If interpretation is required it is important to seek legal advice.

The following summary is taken from the *Local Government Act 1989*.

### **Persons Entitled to be Enrolled without Application**

(Amended 08)

The following are entitled to be enrolled without application:

- a person who on entitlement date would be an elector in respect of an address in a ward if a roll for the Legislative Assembly was prepared, is entitled without application to be enrolled on the voters' roll in respect of that address [LGA, s.12]; and
- up to two owners, not a resident of the municipal district [LGA, s.13].

Note: Multiple property owners who do not live within the municipality may nominate which property is used for voting purposes. If no written request is received, council must choose one and may use capital improved value [LGA, s.13(6), s.13(7)].

### **Procedure if there are more than 2 Non-resident Owners**

If it appears from the rate records of the council that there are more than 2 owners of any rateable land entitled to be enrolled under section 13(1), the Chief Executive Officer must enrol without application the 2 owners

- (a) whose names appear first on the rate records in relation to that rateable property when those names are read in the order in which they appear in those records; and
- (b) who satisfy the requirements of paragraphs (b), (c) and (d) of section 13(1) in respect of that rateable property,

unless a written request has been received by 4.00pm on the entitlement date, requesting that the owner or 2 owners of the rateable property specified in the request be enrolled on the voters' roll instead of the owner or 2 owners whose names(s) appear first.

## **Only Two Ratepayer Entitlements for any Rateable Property**

There must be no more than 2 voting entitlements of any kind for any one rateable property on the CEO's List. The owners may determine which two owners are to appear on the roll by submitting an application —by default, it is the first two named on council records. [sections 13, 14, 15 & 16]

## **Persons Entitled to Apply to be Enrolled**

(Amended 08)

Applications may be made by:

- a resident owner of a property not automatically entitled to be enrolled (e.g. non citizens). [LGA, s.14(1)];
- occupiers who are liable to pay the rates in respect of any rateable property may apply with the owner's consent and replace the owner's voting entitlement. An occupier is typically someone who operates a business in rented premises within the municipality. [LGA, s.15];
- a corporation that owns or occupies rateable property, whether solely or jointly with other persons, and is liable to pay rates in respect of the rateable property may apply to appoint a person to vote on its behalf. [LGA, s.16]

Note: Corporation appointees must be a director or company secretary (however styled), over 18 with no other entitlement or appointment within the municipality and must have consented in writing to their appointment. [LGA s.16(9)]

Note: Enrolments by application are only valid for one election cycle; from one entitlement day until the day before the next entitlement day. The Chief Executive Officer of the council must mail renewal forms to all applicants each election cycle. [LGA, s.11(7), s.23A(1)]

## **Applications for Enrolment**

Section 11(6) —An application 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 4.00pm on the entitlement date.

## **Penalties**

(Amended 08)

Section 17 provides a penalty for false information in relation to enrolment and candidate statements.

## **Limitations on Right of Entitlement**

A person or corporation is not entitled to elect which right of entitlement conferred by section 12(1), 13(1) 14(1) or 15(1) to exercise [section 11(4)]. These categories are hierarchical and a person must be in the first category in which an entitlement is held.

Despite anything to the contrary in this Part, a person is only entitled to vote once at any election, regardless of how many different entitlements the person may have to vote in respect of any ward [section 11(3)].

## Exhibition Roll

The exhibition roll is a merged roll consisting of the Electoral Commission list and the Chief Executive Officer list as at exhibition roll date (100 days before election day). This roll will be on public display for at least 5 days, ending on entitlement day (57 days before election day).

The exhibition roll will be updated with additions and deletions that occur between the exhibition roll date and the entitlement date to create the certified roll for the election.

Candidates who nominate for an election must be enrolled on the certified roll for the election for the nomination to be eligible, or provide a statutory declaration stating that they are entitled to be enrolled as a ratepayer. (Schedule 2, Clause 6(3A))

It is vital for intending candidates to check the exhibition roll and to ensure that they will still be correctly enrolled when the changes between the exhibition roll date and the entitlement date are applied. People who need to renew their application to vote will be included on the exhibition roll, but will only be included on the certified roll if a valid application renewal form is received by the council on or before entitlement day.

## 3. NOMINATION PROCEDURES

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### Complete a Nomination Form Online

With the large number of candidates expected for the November 2008 council elections, the VEC encourages candidates to complete their *Nomination Form* online.

The online *Candidate Helper* will guide intending candidates through each part of the *Nomination Form*. This is an easy process and will allow candidates to check and change details before final submission. It is especially important that contact details are correct, as once they are displayed on the web, changes may not be possible. Once the candidate is satisfied that the details are correct, the online form can be printed and issued with a barcode.

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Note: Candidates **have not nominated** at this stage. They must deliver the barcoded *Nomination Form* and the nomination fee to the Returning Officer for processing.

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Significant time will be saved at the Election Office for candidates who submit a pre-populated form that was completed online. These candidates will not have to wait while the data is manually entered into EMS, the VEC's computer system.

At the Election Office, the Returning Officer will check the form and if all details are complete and in accordance with legislation, it will be accepted. The barcoded *Nomination Form* is scanned and all information is loaded into EMS. If a hand completed *Nomination Form* is submitted, candidates must be prepared to wait while the details are entered manually into EMS. Depending on the number of candidates nominating, especially on nomination day, there could be considerable waiting time.

A report is printed for the candidate to compare against the *Nomination Form*. Once details are confirmed, the candidate signs the report. All nomination details confirmed with the Returning Officer are the responsibility of the candidate.

## Where and How to Nominate

(Amended 08)

Intending candidates must:

- complete an online or handwritten *Nomination Form*;
- ensure that their name and their current address for which they are entitled to be enrolled appears on the *Nomination Form*; and
- **deliver in person**, the completed *Nomination Form* and nomination fee of \$250 to the Election Office. Candidates must sign the declaration on their *Nomination Form* in the presence of the Returning Officer.

Nomination forms will not be accepted before the voters roll has been signed and certified by the Chief Executive Officer or after **12 noon** on nomination day.

A faxed *Nomination Form* **will not** be accepted.

Faxed or photocopied signatures will not be accepted.

*Nomination Forms* are available for completion online at [www.vec.vic.gov.au](http://www.vec.vic.gov.au) or from the Returning Officer.

## Candidate Unable to Deliver Nomination Form

(Amended 08)

A candidate who is unable to deliver and sign their *Nomination Form* in the presence of the Returning Officer must provide, with their signed nomination, a statutory declaration specifying that he or she is:

- nominating;
- has personally signed the declaration; and
- is unable to sign the declaration in the presence of the Returning Officer and the reason or reasons he or she is unable to do so.

## Candidate Not on Voters Roll

(Amended 08)

The Returning Officer must reject a nomination from a person who is not enrolled on the voters roll for the municipality unless the nomination is accompanied by a statutory declaration stating that:

- the person is entitled to be enrolled being an entitlement other than under section 12(1) or 12(2) (that is, other than as a State elector);
- the grounds on which he or she claims to be entitled; and
- what steps he or she has taken to be enrolled.

## Fee Required

A fee of \$250 must accompany each *Nomination Form*. The nomination fee must be in cash or cheque drawn on a bank, building society or credit union. Personal cheques or money orders cannot be accepted.

Cheques should be made payable to the "Victorian Electoral Commission".

## Nomination Form

A candidate must specify his or her full name and the address under which the candidate is enrolled on the voters roll.

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 *Nomination Form*.

A candidate's name will appear on the ballot paper in the form specified in the *Nomination Form*. A **given name** may be specified by:

- 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.

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 for that person are void.

## Name on Ballot Paper

When specifying the way a name is to appear on the ballot paper, candidates must:

- print their SURNAME and INITIALS in capitals. If the surname normally has any lower case letters or accents please specify clearly on the form (e.g. MacALISTER, van LEW or GLASÉ); and
- print given name or names in lower case (e.g. SMITH, T. E. or MacALISTER, John P. or de FRIES, Joan Anne).

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.

Candidates taking advantage of the online *Candidate Helper* will be assisted in this process.

## Short Notice Contact

The *Nomination Form* requests that candidates stipulate how they may be contacted at short notice. Candidates may nominate phone, fax or email. This form of contact may be required urgently during the period of lodgement of nominations, how-to-vote cards and during election weekend.

It is essential that candidates can be contacted during these key times.

## Voters Roll

A copy of the voters roll for the nominated ward will be provided on request as candidates nominate. The roll is provided by the Returning Officer on behalf of the Chief Executive Officer.

The roll will be provided on CD with separate files, giving the candidate the ability to print a hardcopy roll, data sort addresses or use the preformatted label files to print resident or non resident labels. Instructions will be included in a Word document on the CD.

Candidates must complete the declaration on the *Nomination Form*. The CD will not be provided without the signed declaration, which states that candidates will only use the roll for election purposes and will destroy or return the roll following the election.

## Inspection of Nomination Forms

Any person may inspect a *Nomination Form* at the Election Office during normal office hours.

If a silent elector nominates, their address is not disclosed.

A summary of nominations, including the contact person's details for each candidate, will be updated at the end of each business day and displayed at the Election Office.

Contact details will also be displayed on the VEC website as soon as practicable at the end of each business day.

## Ballot Draw

(Amended 08)

Candidates' names will appear on the ballot paper, in the form specified on the *Nomination Form*. The order of names on the ballot paper is determined by a computerised single random draw.

The computerised draw is conducted using the VEC's election management system. The software has been independently certified —determining that the draw is completely random.

Electronic ballot draws have been used at State elections in Victoria since 1999 and guarantee fast and accurate transfer of data to the ballot paper printers. The VEC will utilise the electronic ballot draw for the 2008 local government elections to ensure that timelines for the production of ballot material for up to 297 different elections are met.

The Returning Officer will conduct the draw at the Election Office after nominations close. Candidates will be advised of the time for the draw for position on the ballot paper. Candidates and any persons may attend the draw.

Following the draw, the Returning Officer will provide candidates with a report called *Sample How-to-vote Card*. This report shows the order of candidates' names as they will appear on the ballot paper and the correct wording required for registration of a how-to-vote card.

## Refund of Fees

Nomination fees are refunded to candidates in the following circumstances:

- 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.

Refunds will be provided as soon as practicable after all elections have been completed.

In the case of a candidate who dies, the Returning Officer must refund the nomination fee to that candidate's personal representative.

### **Withdrawal of a Candidate**

(Amended 08)

A candidate may withdraw a *Nomination Form* at any time **prior to 12 noon 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 12 noon 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 *Nomination Form* and a fresh nomination fee of \$250 in cash or cheque drawn on a bank, building society or credit union before 12 noon on nomination day. Personal cheques or money orders cannot be accepted.

The original nomination fee **will not** be refunded.

### **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**

(Amended 08)

If a candidate dies the election continues. If the candidate dies before 12 noon on nomination day, the nomination is void. If the candidate dies after 12 noon on nomination day but before election day, the VEC 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(s) will be declared elected.

The nomination fee **will** be refunded to the candidate's personal representative.

## 4. UNCONTESTED ELECTIONS

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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.

At 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. PRINTING AND PUBLICATION OF ELECTORAL MATERIAL

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A candidate may publish electoral material in support of their campaign. Such material does not have the same restrictions that apply to candidate statements that are distributed with the ballot packs in postal elections. However, all published electoral material must be authorised and must comply with the following requirements within the Act. See also Chapter 14 'Election Offences' and Chapter 15 'Complaints'.

### Authorisation of Electoral Material

(Amended 08)

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.

**Please note:** the address must be a physical address. PO boxes are not acceptable.

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**

(Amended 08)

It is illegal to print, publish, distribute, permit or authorise:

- anything that is likely to mislead or deceive a voter in relation to the casting of their vote. (See Chapter 15 'Complaints' for the legal interpretation of "misleading" in regard to election material.); 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 to a newspaper 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 VEC 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 Communications and Media Authority  
PO Box 13112 Law Courts, Melbourne Vic 8010

Tel: 03 9963 6800

Fax: 03 9963 6899

### **Local Laws**

Candidates should check with their local council to see if there are any local laws that may apply to the distribution and display of advertising material within the municipality.

## **6. HOW-TO-VOTE CARDS**

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Registered how-to-vote cards are the only form of printed electoral material which may be lawfully distributed within 400 metres of a voting centre on election day or during early voting.

A how-to-vote card is any card, handbill, pamphlet or notice:

- which is or includes a representation or partial representation or purported representation or purported partial representation of a ballot paper for use in an election; or
- which lists the names of any or all of the candidates for an election with a number indicating an order of voting preference against the names of any or all of those candidates or a statement that a number indicating an order of voting preference must be placed against the name of each candidate.

## Application for Registration

How-to-vote cards can be submitted to the Returning Officer from:

- **the first working day after nomination day until 12 noon on the sixth working day before election day.**

A how-to-vote card must be submitted with the form *Application to Register a How-to-vote Card M304A*. You must submit an application form for **every** card you submit. The Returning Officer will provide you with this form and you may photocopy the number you require.

## Submitting Card for Registration

You may use the *Sample How-to-vote Card* supplied by the Returning Officer, which has the correct spelling of candidate names with their order on the ballot paper and the correct wording for authorisation and registration.

If you do not use the *Sample How-to-vote Card*, you should submit your own card at the finished artwork stage. **Do not** have your cards printed until registration is approved.

The card must meet with certain requirements listed in the **How-to-vote Card Checklist** (at the back of this handbook– Appendix 2).

Check each item as it applies to your card, paying particular attention to the spelling of candidates' names.

In certain areas candidates will be using the same printing firm. It is important to check that the printer has the correct ward in the registration section of your card and not that of another candidate in a different ward.

You **must** include the following endorsement at the bottom of your printed card:

Authorised by (name and address of authoriser)  
Registered by the Returning Officer for (insert name of ward and council)

## Cards Printed on Both Sides

The how-to-vote card must have the full endorsement (as above) on the front of the card. If the card has been printed on the back and only refers to electoral matter it must have the 'Authorised by....' printed on the reverse.

However, if the reverse of the card refers to 'how-to-vote', then the full endorsement must be printed.

## Who can Apply for a How-to-vote Card?

Any person may apply to the Returning Officer for the registration of a how-to-vote card.

If the card is being registered for an organisation, the name of the applicant on the *Application to Register a How-to-vote Card M304A* must be a person's name, not the name of an organisation.

## Endorsed Candidates

If a candidate is claiming endorsement by a political party, group or person or uses a party logo on their how-to-vote card, they must obtain permission from the party or group in the form of a letter. A how-to-vote card claiming endorsement by a political party, group or person, cannot be registered until the Returning Officer receives the appropriate paperwork.

## Registration

Before noon on the next working day after receiving a how-to-vote card the Returning Officer must inform the applicant that they are:

- registering the how-to-vote card; or
- refusing to register the how-to-vote card and the reasons for the decision.

After registration, the Returning Officer must make a copy of the card available for inspection at the Election Office, and at each voting centre.

Any person has the right to inspect your card, once it has been registered.

The Returning Officer will indicate which candidates have registered how-to-vote cards on the VEC 's website [www.vec.vic.gov.au](http://www.vec.vic.gov.au)

## Matters Considered

The Returning Officer will consider a number of matters before deciding whether to register a how-to-vote card. The checklist included at the end of this handbook includes a list of matters that the Returning Officer will consider before registration. The list is provided to assist candidates/persons with the preparation of how-to-vote cards prior to lodgement with the Returning Officer.

Please note that unless candidates are formally endorsed by a particular party, group or person, and provide the Returning Officer with evidence of such an endorsement, they should not include any material on their card that suggests that they are endorsed by the party, group or person.

For example, the following would not be acceptable unless there is formal endorsement by a party or group:

- XXXX Party candidate.
- Use of the party/group logo or part of the logo.

On the other hand, the following would be acceptable for candidates not endorsed by a party or group.

- Member of the XXXX Party
- Candidate with XXXX values

## Grounds for Refusing to Register

The Returning Officer must refuse to register a how-to-vote card, if the Returning Officer is satisfied that the card:

- is likely to induce an elector to mark their vote otherwise in accordance with the directions on the ballot paper;
- is likely to mislead or deceive a voter in casting his or her vote; or
- contains offensive or obscene material.

## Printing of the Card

Once your card is registered, you may arrange the printing of the cards. **Do not print your cards until the Returning Officer has advised you that the card has been registered.**

- You cannot change anything already on the card, unless the change is immaterial or insignificant (e.g. spelling mistake); and
- the Returning Officer has approved the amendment.

Once your card has been printed, you must provide the Returning Officer with copies equal to the number of voting centres (including early voting centres) in the council **plus** five (5).

**Appeal Process**

Any person may apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of a Returning Officer's decision to approve or refuse a how-to-vote card.

An application to VCAT must be made no later than whichever of the following occurs first:

- noon on the second working day after the day on which the Returning Officer has informed the applicant of the decision; or
- noon on the fourth working day before the election day.

**Distribution of How-to-vote Cards**

Registered cards may be distributed anywhere beyond six (6) metres (or a lesser distance fixed by the Returning Officer) from the entrance of a voting centre or early voting centre.

No other printed electoral material may be distributed within 400 metres of a voting centre or early voting centre.

**7. SCRUTINEERS****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 (Electoral) Regulations 2005. The declaration is contained on the appointment form available from the Returning Officer.

The completed appointment form must be signed by the candidate the scrutineer is representing and be submitted to the appropriate election official at the venue. 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
- if the council has appointed the VEC, the Australian Electoral Commission (AEC) or any other council to conduct the election, a person appointed by those bodies to be involved in the conduct of the election.

Each candidate is entitled to appoint scrutineers to be present at each voting centre, but the Act limits the appointment of one scrutineer to each issuing table, or to each authorised person at a counting table or entering data for a computerised count.

If a scrutineer is absent from a voting centre, another scrutineer may take his or her place.

Note: Sitting councillors who are not recontesting the election will be eligible to be appointed as scrutineers for activities taking place after 6.00am on election day. This is the time they go out of office.

### **Scrutineers at the Count**

In respect of each candidate, only one scrutineer for each authorised person involved in the count can be present at any one time.

No person (other than an authorised person) is permitted to enter the voting centre where the preliminary or initial count is taking place after 6.00pm. Therefore, scrutineers are requested to register by 6.00pm.

Where a computerised system of counting or recounting is used, each candidate may only have one scrutineer present for each data entry person involved in the counting or recounting of ballot papers.

A scrutineer may be removed from a voting centre by a member of the police force if the scrutineer:

- is in the counting place in contravention to the Act or Regulations; or
- obstructs or hinders an election official in the performance of any of the official's duties at the voting centre; or
- fails to obey the lawful directions of an election official.

### **Information for Scrutineers**

Scrutineers will be informed of the total number of ballot papers to be accounted for prior to the commencement of all counts.

On request, the Returning Officer will provide scrutineers with the following reports:

- the total first preference votes for each candidate; and
- details of the preference distribution. This report shows how preferences are allocated to candidates during the preference distribution.

Two additional reports will be available to scrutineers for computer counts:

- progressive first preference results reports during data entry; and
- batch details reports —on request, scrutineers may ask that a batch details report is printed for a particular batch so that they may compare the preferences recorded on the computer for that batch against the actual ballot papers.

### **Candidate Helpers Outside Voting Centres**

Candidates often use friends and others to distribute how-to-vote cards outside voting centres. While there is no requirement for these people to be registered with the Returning Officer, there are restrictions on their activities.

Should a person infringe the restrictions on distribution of printed election material outside voting centres, the Returning Officer may confiscate the offending material or request the assistance of the police.

## 8. CONDUCT AT THE VOTING CENTRE

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### **Canvassing Within 6 Metres of Voting Centre**

The following are prohibited during voting hours (or during an adjournment) within 6 metres (or lesser distance fixed by the Returning Officer) of the entrance of, or within, the building used as a voting centre:

- canvassing for or soliciting votes;
- attempting to induce a voter not to vote for a particular candidate or not vote at the election; or
- exhibiting any sign (other than an official notice) relating to the election.  
PENALTY: 10 penalty units (\$1134.20)

The Voting Centre Manager will define the boundaries of the voting centre.

Registered how-to-vote cards are the only printed electoral material that can be distributed within 400 metres of any voting centre. The exceptions to this rule are:

- normal distribution of newspapers;
- material inside a campaign office; or
- posters or notices attached to vehicles, buildings, hoardings or structures (fixed or movable) e.g. "sandwich board, post/stake, boundary fence etc." (provided permission has been granted where applicable).

### **Powers of Voting Centre Manager**

The Voting Centre Manager or a person authorised by him or her may request a person reasonably suspected of distributing:

- unregistered how-to-vote cards within the 400 metre limit; or
  - "bogus" registered how-to-vote cards;
- to produce such cards and to hand over such cards.

In the event of refusal to comply with such requests, the Voting Centre Manager may:

- confiscate any such unregistered or "bogus" registered how-to-vote cards; and/or
- seek the assistance of the police.

## 9. VOTING

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Regardless of the number of properties a voter owns in a municipality they will only be entitled to **one** vote in the municipality.

### **Postal Voting**

Any person who is entitled to vote at the election may make an application to the Returning Officer for a ballot paper to enable him or her to vote by post prior to election day. The application may be made in person at the Election Office by post or by fax. The rules applying to voting by post are set out in detail in the regulations. [LGR, 44-49]

The Returning Officer is required to keep a list of the names of all persons who have been issued with postal votes. A scrutineer is entitled during office hours or during voting hours on election day to examine, in the presence of an election official, all applications for postal ballot papers.

### **Early Voting Prior to Election Day**

Early voting is available in the Election Office from the day following the close of nominations until the day before election day.

A council may also decide to provide for early voting away from the Election Office within the period commencing as soon as practicable after close of nominations and concluding on the Friday prior to election day.

The Returning Officer **must** give public notice of any appointed early voting centres. Registered how-to-vote cards are the only form of printed electoral material that may lawfully be handed out within 400 metres of an early voting centre during the hours of voting.

Procedures for early voting are identical to those on election day. Any person eligible to vote who wishes to do so prior to election day may attend an appointed early voting centre and record his or her vote.

### **Absent Voting**

Absent voting is available to all voters who attend a voting centre outside their ward and within the boundaries of the municipality. There is no absent voting available across councils.

### **Voting Hours**

The hours of voting on election day are 8.00am to 6.00pm.

## 10. OBTAINING THE RESULT

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The method of counting votes to determine the result of a council election is described in Parts 3 and 4A of Schedule 3 of the Act. These sections are re-printed in Chapters 20 and 21 of this handbook for your information.

### **Computer Count**

For elections involving multiple vacancies the counting method is proportional representation and larger counts are often conducted by computer.

Where counts are to be conducted by computer, the Returning Officer will conduct an information session for candidates and scrutineers to explain the process in detail.

For computer counts, ballot papers are batched and the preferences shown on each ballot paper are entered into the computer system by experienced data entry operators. The computer application checks each ballot paper for formality. Only formal ballot papers are saved to the database. When the entry of all ballot papers has been accounted for, the computer system will be activated and the results calculated.

For a number of councils the VEC will use scanners to read the preferences on ballot papers instead of data entry.

Scrutineers may observe all aspects of the computer count process —see Chapter 7 'Scrutineers'.

### **Manual Count**

For elections involving single vacancies, the counting method is full preferential and counts are usually conducted manually. Some counts involving multiple vacancies and proportional representation may be conducted manually.

The Returning Officer will advise candidates of counting arrangements. Candidates are not entitled to be present at the counting of votes.

## 11. COUNTING TIMETABLE

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The VEC has established a counting timetable to ensure that reconciliations can be completed before the commencement of each stage in the count process. In establishing the timetable, the VEC has allowed for events that cannot be predicted prior to election weekend. For example, in situations where the count is close, the greater attention by scrutineers may slow down the count and the conduct of any recounts can delay the final declaration.

The VEC has also been concerned with occupational health and safety issues in relation to staff working very long hours to meet pre-determined declaration times, and has included these considerations into the development of the count timetable. Simply increasing the number of election officials does not guarantee a better or quicker outcome.

Every effort will be made to complete all counts as quickly as is reasonably possible, but the VEC can only guarantee that all elections will be declared by Friday 5 December —five working days after election day. Whilst the process may take longer in the short term, it will pay dividends in the long term.

Further details of count timetables will be available once nominations have closed and the number of candidates is known. However, close elections and where recounts will be required will still be unknown.

The counting activities commencing on Saturday 29 November, including key reconciliation points during the counting process, are included in Appendix 3.

## 12. RECOUNT OF VOTES

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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.

## 13. DECLARATION OF THE RESULT

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The Returning Officer will publicly declare the result of the election at a suitable time following the completion of counting. Candidates will be advised of the declaration time and venue.

This is often performed at a ceremony that could involve the Chief Executive Officer. It may include acceptance speeches by successful and unsuccessful candidates.

The Returning Officer will also give public notice of the persons elected and will advise the Minister for Local Government of the result.

## 14. ELECTION OFFENCES

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**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: 1 penalty unit (\$113.42)

**False Written Declaration** A person who is required to make a written declaration by or under this Act or the regulations as a candidate, scrutineer or voter or as a person submitting a how-to-vote card must not knowingly make a declaration which is false.

(Amended 08)

PENALTY: 20 penalty units (\$2,268.40)

**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 the voter. [LGA, s.55A(1)]

(Amended 08)

PENALTY: 10 penalty units (\$1,134.20) if the offender is a natural person or  
20 penalty units (\$2,268.40) 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: 10 penalty units (\$1,134.20) if the offender is a natural person or  
50 penalty units (\$5,671.00) 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: 10 penalty units (\$1,134.20)

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, or fraudulently remove a ballot paper from a ballot box, or impersonate any voter. [LGA, s.58(3)]

PENALTY: Imprisonment for 6 months

### **Bribery**

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

### **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.

### **Unlawful Nomination**

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

PENALTY: 20 penalty units (\$2,268.40)

### Prohibition of Canvassing Near Voting Centre

- (1) A person must not–
- (a) canvass for votes; or
  - (b) solicit the vote of a person; or
  - (c) attempt to induce a person not to vote for a particular candidate; or
  - (d) attempt to induce a person not to vote at the election; or
  - (e) exhibit any notice or sign (other than an official notice) relating to the election - within 6 metres (or a lesser distance fixed by the returning officer) of any entrance to or within the premises used as a voting centre at any time during polling hours or any adjournment.

PENALTY: 10 penalty units (\$1,134.20)

The authorised person in charge of a voting centre may cause any area in the vicinity of the premises used as a voting centre to be delineated by notices, signs or other means, and that area is to be treated as the voting centre for the purposes of subsection (1).

### Prohibition on Council

A council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process. [LGA, s.55D]

## 15. COMPLAINTS

### Responding to Complaints

Before lodging a complaint with the Returning Officer, candidates are encouraged to carefully consider the following information. Many candidates lose considerable time during an election campaign by becoming involved in the complaints process when there has been no breach of the law.

Elections in Australia allow for robust debate and expression of opinion. Candidates are able to rebut the opinions expressed by others in the public domain during the campaign as long as they do not breach the law.

At the time of voting, electors can then consider all material before them and who authorised it when considering who to vote for.

It is important that election participants understand the different responsibilities that apply in regard to the conduct of local government elections in Victoria.

**Local Government Victoria (LGV)** is responsible for the administration of the *Local Government Act 1989*. LGV has responsibility for investigation of alleged breaches of the Act - for example, authorisation of election material (s.55), misleading electoral material (s.55A) and false or defamatory statements (s.57). Further examples are included in Chapter 14, 'Election Offences'.

**The Returning Officer** is responsible for the administration of the election and has some specific responsibilities under the Act. The application of legislative timelines, the registration of how-to-vote cards and the production of ballot materials are examples of activities that are the responsibility of the Returning Officer.

**The Electoral Commissioner** is responsible for appointing the Returning Officer and for preparing the voters roll. The Electoral Commissioner supports the Returning Officer by providing infrastructure, resources and advice relating to the conduct of the election.

**The Council** is responsible for the enforcement of council local laws and codes of conduct where they apply. For example, placement of campaign posters/signs and use of council resources for campaigning purposes.

All complaints should be addressed in the first instance to the Returning Officer and must be in writing. Complainants in most cases are alleging that there has been a breach of the law and as such there must be an evidentiary trail.

If the complaint relates to:

- **The administration of the election** —the Electoral Commissioner will respond on behalf of the Returning Officer.
- **A possible breach of the Local Government Act 1989** —the Electoral Commissioner will refer the complaint to LGV for its consideration and response. The Electoral Commissioner will also advise the complainant in writing that the complaint has been forwarded to LGV and that any further communication regarding the complaint should be directed to LGV. Contact details are as follows:  
Local Government Victoria  
GPO Box 2392  
Melbourne 3001  
Tel (03) 9651 7026
- **A possible breach of council local laws or council codes of conduct**  
The Electoral Commissioner will refer the matter to the Council CEO for their consideration and response. The Electoral Commissioner will also advise the complainant in writing that the complaint has been forwarded to the Council CEO and that any further communication regarding the complaint should be directed to them.
- **A criminal matter**  
The Electoral Commissioner will advise the complainant to refer the matter directly to the police. Examples include assault and vandalism.

In all cases, the Electoral Commissioner will write to the person who is the subject of the complaint advising them that a complaint has been received and the nature of the complaint. This will allow the person who is the subject of the complaint to rectify the matter if necessary. The Electoral Commissioner may divulge who has made the complaint in some circumstances.

#### **Misleading or deceptive matter (section 55A)**

A high proportion of the complaints received by the VEC during council elections allege the distribution of misleading electoral material. Section 55A of the *Local Government Act 1989* provides that electoral material must not mislead or deceive voters in relation to the casting of their vote.

The Courts have interpreted this phrase narrowly. Courts are particularly concerned with material that is likely to mislead or deceive voters in relation to how they mark their ballot paper.

For example, the following statement might fall within the narrow definition of misleading for an election with more than two candidates:

*The way to vote for candidate A is to place a number 1 beside the candidate's name and to leave all other boxes unnumbered.*

This statement might be misleading because if the voter had decided to vote for candidate A, following these instructions would lead voters to cast an informal vote because all boxes except one would not be completed. It would not result in a valid vote for candidate A.

In this situation, where there appears to have been a breach of the Act, the Electoral Commissioner would refer the matter to LGV for its consideration and response.

### **False or defamatory statements (section 57)**

The VEC also receives a number of complaints during council elections that allege a breach of section 57 of the Act.

Section 57 states that a person must not make or publish any false or defamatory statement in relation to the personal character or conduct of a candidate. For example, consider the following statement included in a candidate's election material.

*I believe that Cr Smith has wasted more money on useless environmental activities than any other councillor in the State.*

While some people may consider that this statement is untrue and possibly misleading, it has been expressed as a statement of opinion. Elections in Australia allow for robust debate and expression of opinion. Those who disagree with a statement of opinion have the opportunity to rebut the statement in the public domain. Testing and debating different opinions is an inherent part of election campaigning in Australia. The requirement for election material to be authorised allows electors to consider who has authorised particular material when considering all material before them before deciding who to vote for.

It is unlikely that a complaint lodged about this statement would be considered to be a breach of section 57 of the Act. In addition, it is unlikely that this statement would be considered to be misleading within the meaning of the Act (s.55A) because it does not relate to how a voter completes their ballot paper.

In contrast, consider the following example of a statement included in a candidate's election material.

*Candidate B received a donation of \$5,000 from XX Development Company in support of their campaign.*

This statement is expressed as a statement of fact, and if not true, would expose the candidate publishing the statement, to possible court action. If a person did lodge a complaint, it would be their responsibility to provide evidence that the statement was untrue.

However, if the statement had been expressed as a statement of opinion, it may be less likely that a breach of section 57 would subsequently be found.

Complaints alleging a breach of section 57 will be referred to LGV.

Chapter 14 covers a number of electoral offences. Please note that this is not an exhaustive list.

Candidates must seek their own legal advice where necessary. The Returning Officer has no authority to provide advice regarding interpretation of the Act.

## **Injunctions**

If a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute an offence under section 55, 55A or 57, the Supreme Court may on the application of a candidate in an election grant an injunction restraining that person from engaging in the conduct and, if in the opinion of the Supreme Court it is desirable to do so, requiring that person to do any act or thing. [LGA, s.57A]

## **16. COMPULSORY VOTING**

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(Amended 08)

Voting is compulsory at council elections for all residents who are enrolled on the State electoral roll for an address in the ward or municipal district where the election is being held.

However, voters aged 70 years or over or those with a sufficient excuse for not voting are not fined for failure to vote. Voting is not compulsory for voters on the Chief Executive Officer's voters lists.

## **17. MUNICIPAL ELECTORAL TRIBUNALS**

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### **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.

### **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 include the grounds on which the inquiry into the validity of the election is sought. 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 120:

- 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 20 fee units (\$227.00) 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  
2<sup>nd</sup> Floor, 233 William Street  
MELBOURNE VIC 3000

### **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.

### **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.

### **Circumstances Where an Election May be Voided**

In determining as to whether an election can be voided or not Courts refer to section 51 of the *Local Government Act 1989* which says:

- (1) The validity of an election or poll is not affected by any defect in the appointment of any person for the purpose of holding the election or poll.
- (2) The validity of an election or poll is not affected by—
  - (a) any irregularity in any of the proceedings preliminary to voting; or
  - (b) any failure to hold the election or poll at any place appointed; or
  - (c) any failure to comply with any directions as to the holding of the election or poll or the counting of the votes; or
  - (d) any mistake in the use of any forms—

if the election or poll was conducted in accordance with the principles in this Act and the irregularity, failure or mistake did not affect the result of the election or poll.

### **Further Information**

Information on Municipal Electoral Tribunals is available from the Principal Registrar's Office and Local Government Victoria.

## 18. DISCLOSURE OF ELECTION DONATIONS

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(Amended 08)

Within 60 days of election day, candidates are required to submit an election campaign donation return to the Chief Executive Officer of the council. (s.62) A form for this purpose is provided in the Candidate Kit.

The return must contain details of any gifts, goods or services of the amount or value of \$200 or more, received during the donation period, by the candidate or on behalf of the candidate, to be used for or in connection with their election campaign.

The "donation period" means the period commencing on whichever is the later of:

- 30 days after the last general election for the council; or
  - 30 days after the last election for the council at which the person required to give the election campaign donation return was a candidate; and
- ending 30 days after election day in the current election for the council.

If a candidate receives no gifts of \$200 or more, a return must still be lodged that includes a statement that no gifts of a kind required to be disclosed were received.

An election campaign donation return must be in writing and include the following details:

- the name of the relevant council;
- if the relevant municipal district is divided into wards, the name of the relevant ward;
- the full name and address of the candidate;
- a declaration signed and dated by the candidate which attests that:
  - the campaign donation return includes a complete record of all gifts required to be disclosed; and
  - that the details provided in the campaign donation return are a true and accurate record.

The election campaign donation return must include the following details in respect of each gift required to be disclosed:

- the full name and address of each person making the gift or gifts to the candidate;
- the date each gift was given to the candidate;
- in respect of each gift in the form of money;
  - the exact value of the gift; and
  - the form in which the gift was given;
- in respect of each gift in the form of goods or services;
  - a description of the gift; and
  - the estimated market value of the gift.

Note:

- It is unlawful for a councillor/candidate or a person acting on behalf of a councillor/candidate to receive a gift of the amount or value of \$200 or more unless
  - the name and address of the person making the gift are known to the person receiving the gift; or
  - at the time when the gift is made
    - the person making the gift gives to the person receiving the gift the person's name and address; and
    - the person receiving the gift has no grounds to believe that the name and address given are not the true name and address of the person making the gift.
- Two or more gifts made by the same person are to be taken to be one donation.
- A candidate who fails to submit a campaign donation return or submits a return that to the knowledge of that person is false or misleading, is guilty of an offence.
- Gifts which must be disclosed under the Act include those made by an individual or organisation, including a corporation, incorporated or unincorporated association, trust fund or foundation.
- If a person receives a gift unlawfully, twice the amount or value of that gift is forfeited to the State. This amount may be recovered from the councillor or candidate.

PENALTY: 50 penalty units (\$5,671.00)

## **19. EXTRAORDINARY VACANCIES, BY-ELECTIONS AND COUNTBACKS**

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An extraordinary vacancy occurs if a councillor vacates their position before the next general election. If a councillor has been elected through full preferential voting, a by-election is necessary to fill the vacancy. Where councillors have been elected by proportional representation, extraordinary vacancies will be filled by countback rather than through a by-election.

All of the candidates who were not elected at the general election and who are still eligible to be a councillor participate in the countback.

A by-election will only be held if none of the remaining candidates from the previous election are eligible to be a councillor.

A countback is conducted using the ballot papers from the last election.

All of the ballot papers allocated to the vacating councillor at the time when he or she was elected are looked at again, and are distributed to the remaining candidates according to the next preference on the ballot papers.

An absolute majority is required for a participating candidate to be elected. If no candidate has an absolute majority, the candidate with the fewest votes is excluded and that candidate's ballot papers are distributed to the remaining candidates. The process continues until one candidate has achieved an absolute majority of the votes from the vacating councillor.

## 20. RESULT WHERE ONLY ONE COUNCILLOR IS TO BE ELECTED

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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 by lot by the returning officer.

## 21. RESULT WHERE TWO OR MORE COUNCILLORS ARE TO BE ELECTED

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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 subclause (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 subclause (8) or elected subsequently under this subclause are to be transferred to the continuing candidates in accordance with subclause (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 subclause (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 subclause (7) in relation to a transfer of the surplus votes of an elected candidate under subclause (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 subclause (12) or (16) is to be declared duly elected by the returning officer.
- (14) Subject to subclause (15), unless all the vacancies have been filled, the surplus votes, if any, of a candidate elected under subclause (13) are to be transferred in accordance with subclause (7).
- (15) If a candidate elected under subclause (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 subclause (12) to continuing candidates.
- (16) Subject to subclause (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 subclause (12).
- (17) If a candidate is elected as a result of a transfer of ballot-papers under subclauses 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.

21. Result where Two or More Councillors are to be Elected

- (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 subclauses (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 subclause (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 subclause (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 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 subclause (7), (9) or (14) of all the surplus votes of an elected candidate;
  - (b) a transfer in accordance with subclause (12)(a) of all first preference votes of an excluded candidate;
  - (c) a transfer in accordance with subclause (12)(b) of all the votes of an excluded candidate or candidates, as the case may be, at a particular transfer value.

(Amended 08)

# APPENDIX 1

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Local Government Act 1989 – Act No. 11/1989

## PART 3—ELECTIONS

Division 1— Voters (Amended 08)

### 11. Entitlements relating to enrolment

- (1) A person can only be enrolled on the voters' roll of a Council if the person is a resident in the municipal district of the Council or a ratepayer to the Council exercising an entitlement under and in accordance with this Division.
- (2) Despite anything to the contrary in this Division, a person can only be enrolled on the voters' roll for one ward in a municipal district.
- (3) Despite anything to the contrary in this Part, a person is only entitled to vote once at any election in respect of a Council, regardless of how many different entitlements the person may have to vote in respect of any ward.
- (4) A person is not entitled to elect which right of entitlement conferred by section 12(1), 13(1), 14(1) or 15(1) to exercise.
- (5) A person can only be enrolled on the voters' roll if—
  - (a) the person has an entitlement as a resident or ratepayer to be enrolled without application as at the entitlement date; or
  - (b) the person is entitled as a ratepayer to apply to be enrolled and the application—
    - (i) complies with subsection (6); and
    - (ii) is accepted in accordance with this Division; or
  - (c) the person is appointed to vote on behalf of a corporation under section 16 and the application for appointment—
    - (i) complies with subsection (6); and
    - (ii) is accepted in accordance with this Division.
- (6) An application must—
  - (a) be in writing;
  - (b) contain the details required by the regulations;
  - (c) be delivered to the Council office by 4 p.m. on the entitlement date.
- (7) Unless section 19 applies, enrolment under an application referred to in subsection (5)(b) or (5)(c) has effect from the next entitlement date after it is accepted and continues in force until the day before the subsequent entitlement date for a general election.

### 12. Residents entitled to be enrolled without application

- (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 compiled from the register of electors, is entitled as a resident without application to be enrolled on the voters' roll in respect of that address.
- (2) Despite subsection (1), a person who—
  - (a) will attain 18 years of age on or before election day; and
  - (b) had the person been not less than 18 years of age 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 compiled from the register of electors—

is entitled as a resident without application to be enrolled on the voters' roll in respect of that address.

### **13. Owner ratepayers entitled to be enrolled without application**

- (1) Subject to subsections (2) and (3), a person who on the entitlement date—
  - (a) is not a person referred to in section 12; and
  - (b) is not less than 18 years of age or is less than 18 years of age but will attain the age of 18 years on or before election day; and
  - (c) is the owner of any rateable property in the municipal district whether solely or jointly with any other person or persons; and
  - (d) is not a resident of the municipal district—

is entitled as a ratepayer without application to be enrolled on the voters' roll in respect of that rateable property.
- (2) For the purposes of subsection (1), only 2 joint owners are entitled to be enrolled in respect of each rateable property.
- (3) A person is not entitled to be enrolled under subsection (1) if an occupier is enrolled as a ratepayer under section 15 in respect of that rateable property.
- (4) For the purposes of subsection (1), if it appears from the rate records of the Council that there are more than 2 owners of any rateable property, the Chief Executive Officer must enrol without application the 2 owners—
  - (a) whose names appear first on the rate records in relation to that rateable property when those names are read in the order in which they appear in those records; and
  - (b) who satisfy the requirements of paragraphs (b), (c) and (d) of subsection (1) in respect of that rateable property.
- (5) Despite subsection (4), if a written request containing the details required by the regulations is delivered to the Council office by 4 p.m. on the entitlement date requesting that the owner or 2 owners of the rateable property specified in the request be enrolled on the voters' roll instead of the owner or 2 owners that would otherwise be enrolled by virtue of subsection (4), the Chief Executive Officer must give effect to the request.
- (6) If a person is the owner of more than one rateable property in a municipal district, the person may by a written request containing the details required by the regulations delivered to the Council office by 4 p.m. on the entitlement date specify the location of the rateable property in respect of which the entitlement under this section is to be exercised.
- (7) If a person is the owner of more than one rateable property in a municipal district and the Council does not receive a written request under subsection (6), the Chief Executive Officer—
  - (a) must choose one rateable property in respect of which the entitlement under this section is to be exercised; and
  - (b) may for the purposes of paragraph (a) choose the rateable property which has the highest capital improved value in the council valuation records at the entitlement date.

### **14. Owner ratepayers may apply for enrolment**

- (1) Subject to subsections (2) and (3), a person who on the entitlement date—
  - (a) is not a person referred to in section 12 or 13; and
  - (b) is not less than 18 years of age or is less than 18 years of age but will attain the age of 18 years on or before election day; and
  - (c) is an owner of any rateable property in the municipal district—

is entitled as a ratepayer to apply to be enrolled on the voters' roll in respect of that rateable property.
- (2) For the purposes of section 13(1) and subsection (1), only 2 joint owners can be enrolled in respect of each rateable property.
- (3) A person is not entitled to apply to be enrolled under subsection (1) if an occupier is enrolled as a ratepayer under section 15 in respect of that rateable property.

- (4) A person who is enrolled on the voters' roll as an owner under this section may renew the enrolment by an application containing the details required by the regulations delivered to the Council office by 4 p.m. on the entitlement date before the next general election.

## **15. Occupier ratepayers may apply to be enrolled**

- (1) A person who on the entitlement date—
- (a) is not a person referred to in section 12, 13 or 14; and
  - (b) is not less than 18 years of age or is less than 18 years of age but will attain the age of 18 years on or before the election day; and
  - (c) is the occupier of any rateable property in the municipal district, whether solely or jointly with any other person or persons and is liable to pay the rates in respect of that rateable property—
- is entitled as a ratepayer to apply to be enrolled on the voters' roll in respect of that rateable property.
- (2) For the purposes of subsection (1), only 2 joint occupiers can be enrolled in respect of each rateable property.
- (3) For the purposes of subsection (1), an occupier is liable to pay the rates in respect of that rateable property if—
- (a) the occupier is paying the rates to the Council; or
  - (b) the lease under which the occupier occupies the rateable property specifies that the occupier is liable to pay the rates.
- (4) Subject to subsection (5), an application under subsection (1) must be accompanied by the written consent of the owner, or if there are joint owners, of at least 2 of the joint owners, of the rateable property.
- (5) Subsection (4) does not apply if it appears from the Council records that the occupier is, or the joint occupiers are, receiving the rate notice.
- (6) If the Council receives an application under subsection (1), the Chief Executive Officer must notify the owner or joint owners that the Council has received the application.
- (7) If an application is in force under subsection (1), an enrolment cannot be made in respect of the same rateable property under section 13 or 14.
- (8) A person who is enrolled on the voters' roll as an occupier under subsection (1) may renew the enrolment by an application containing the details required by the regulations delivered to the Council office by 4 p.m. on the entitlement date before the next general election.
- (9) Subsection (4) does not apply to an application under subsection (8).
- (10) A person who is enrolled on the voters' roll as an occupier under subsection (1) may resign the enrolment by an application containing the details required by the regulations delivered to the Council.
- (11) The owner or any 2 of the joint owners may withdraw a written consent under subsection (4) by an application containing the details required by the regulations delivered to the Council before 4 p.m. on the entitlement date.

## **16. Provisions relating to corporations**

- (1) Subject to subsection (3), if on the entitlement date a corporation is the sole owner of any rateable property in the municipal district, the corporation may apply to appoint a person to represent it at Council elections to vote on its behalf.
- (2) Subject to subsection (3), if on the entitlement date a corporation is a joint owner of any rateable property in the municipal district, the corporation may apply to appoint a person to represent it at Council elections to vote on its behalf.
- (3) If an application is in force under section 15, an enrolment cannot be made in respect of the same rateable property under subsection (1) or (2).

- (4) Section 14(2) applies in respect of an application under subsection (2).
- (5) If on the entitlement date a corporation is the occupier of any rateable property in the municipal district whether solely or jointly and is liable to pay the rates in respect of that rateable property, the corporation may apply to appoint a person to represent it at Council elections to vote on its behalf.
- (6) Sections 15(2), 15(3), 15(4), 15(5), 15(6), 15(7) and 15(11) apply in respect of an application under subsection (5).
- (7) A corporation may only exercise the right of entitlement conferred by subsections (1), (2) and (5) once, regardless of how many rateable properties it owns or occupies or jointly owns or occupies in the municipal district.
- (8) A corporation may only be represented by one person under this section at a Council election in respect of the municipal district, regardless of anything to the contrary in subsections (1), (2) and (5).
- (9) An application for a person to be appointed under this section is void if at the time the appointment is made the person appointed—
  - (a) is not a director or company secretary (however styled) of the corporation; or
  - (b) has not reached 18 years of age and will not attain the age of 18 years on or before election day; or
  - (c) has not consented in writing to be appointed; or
  - (d) is for any other reason entitled to be enrolled on the voters' roll in respect of the municipal district for which the appointment is made; or
  - (e) is as a result of another appointment for the purposes of subsection (1), (2) or (5) which is still in force, already enrolled on the voters' roll in respect of the municipal district for which the appointment is made.
- (10) An appointment for the purposes of subsection (1), (2) or (5) is revoked if—
  - (a) the person appointed—
    - (i) ceases to be a director or company secretary (however styled) of the corporation; or
    - (ii) dies; or
    - (iii) delivers a notice of resignation containing the details required by the regulations to the Council office; or
    - (iv) for any other reason becomes entitled in his or her own right to be enrolled on the voters' roll in respect of the municipal district for which the appointment was made; or
  - (b) notice of revocation containing the details required by the regulations is delivered to the Council office; or
  - (c) the entitlement under subsection (1), (2) or (5) ceases to exist.

## **17. Provisions relating to appointments and enrolments**

- (1) On receiving notice of an appointment under section 13(5), 13(6) or 16 or an application for enrolment under section 14 or 15, the Chief Executive Officer must enrol the person unless the Chief Executive Officer believes that the person is not entitled to be enrolled.
- (2) If the Chief Executive Officer believes the person is not entitled to be enrolled, the Chief Executive Officer must—
  - (a) refuse to enrol the person; and
  - (b) advise the person who submitted the notice of appointment or application for enrolment of the refusal in writing and give the person the reason for the refusal.
- (3) The Chief Executive Officer may either orally or in writing, request any person or corporation to provide information to enable the Chief Executive Officer to determine the eligibility of a person to be enrolled.

- (4) If a request under subsection (3) is made in writing, the Chief Executive Officer may require the information to be given in writing and signed by the person giving the information.
- (5) A person must not knowingly give information in writing under subsection (4) which is false.

PENALTY: 20 penalty units (\$2,268.40).

## APPENDIX 2 – HOW-TO-VOTE CARD CHECKLIST

<b>Candidate Checklist</b>	<b>Check</b>
Application signed by the person on whose behalf it is being distributed.	
Candidates listed in ballot paper order using the ' <i>Sample How-to-vote Card</i> ' report provided by Returning Officer.	
Spelling of candidate names checked and correct. Tick the box on the application form.	
Order of voting preference for all candidates listed, or statement that consecutive numbers must be placed against names of candidates. No number used more than once.	
No titles/other designations against names of candidates.	
If endorsed by a political party/group or person or using a party logo, a letter of permission is attached.	
No council emblems or signs on card.	
No empty boxes.	
Recent photograph attached (if applicable).	
Name and physical address of authoriser (not a PO Box) on bottom of card. Both sides if card is printed on both sides.	
Correct wording for registration and correct Ward name on card. Both sides if applicable.	
Translation attached for cards submitted with a language other than English. Declaration completed on form.	
Card is not misleading, deceptive, offensive or obscene.	
Card will not printed in a colour or on paper so similar to the ballot paper that it is likely to cause confusion.	
If registering more than one card complete a registration form for each card and number each card in the space provided on the form.	


## APPENDIX 3 – COUNTING TIMETABLE

Date/Time	Activity
Saturday 29 November —after 8.00am	<p><b>Preliminary Scrutiny – postal vote declarations</b></p> <ul style="list-style-type: none"> <li>The preliminary scrutiny of returned postal vote declarations involves checking signatures on postal vote applications against the returned declarations. This activity will take place in the Election Office on Saturday 29 November at a time to be advised by the Returning Officer.</li> </ul>
Saturday 29 November —from 6.00pm	<p><b>Postal and early vote counts</b></p> <ul style="list-style-type: none"> <li>The opening and counting to first preferences of postal votes will be conducted in the Election Office from 6.00pm on election day. Early votes will also be counted at the Election Office after 6.00pm on election day.</li> </ul>
Saturday 29 November —from 6.00pm	<p><b>Ordinary vote counts – voting centres</b></p> <ul style="list-style-type: none"> <li>Ordinary votes issued in voting centres on election day will be counted to first preferences in each voting centre after 6.00pm on election night. Each voting centre will reconcile the number of votes issued against the number counted.</li> <li>Results will be phoned through to the Election Office and recorded by the Returning Officer. Interim result reports will be available on request from the Returning Officer once counting is completed on election night.</li> </ul>
Sunday 30 November —morning	<p><b>Absent vote counts</b></p> <ul style="list-style-type: none"> <li>Votes issued to voters attending voting centres on election day outside the ward for which they are enrolled, will be sorted and counted to first preferences in the Election Office on Sunday morning.</li> </ul>
Sunday 30 November —morning	<p><b>Unenrolled declaration checking and counting</b></p> <ul style="list-style-type: none"> <li>Checks to see if voters who completed an unenrolled declaration were eligible to have their vote included in the count, will be carried out by Council and VEC staff on Sunday morning in the Election Office.</li> <li>Once checking is complete, those declarations to be included in the count will be opened, ballot papers extracted, and counted to first preferences.</li> </ul>

<p>Sunday 30 November</p>	<p><b>Check if further counting is required</b></p> <p><b>Single vacancies -</b></p> <ul style="list-style-type: none"> <li>Once all ballot papers have been counted to first preferences, the Returning Officer will check to see if any candidate has an absolute majority. If not, a preference distribution will be required.</li> </ul> <p><b>Multiple vacancies –</b></p> <ul style="list-style-type: none"> <li>Once all ballot papers have been counted to first preferences, the Returning Officer will calculate the quota and check to see if any candidates have achieved a quota. If unfilled vacancies remain, a proportional representation count will be conducted by computer.</li> </ul>
<p>Sunday 30 November</p>	<p><b>Recheck of all ballot papers (Single vacancies where preference distribution is required)</b></p> <ul style="list-style-type: none"> <li>A full recheck of ballot papers from voting centres, early voting centres, postal, absent, unenrolled and other declaration votes will take place in the Election Office from Sunday morning. The recheck involves checking that ballot papers have been correctly sorted and counted prior to the conduct of a preference distribution.</li> <li>Once the recheck is complete, ballot papers for each candidate are amalgamated and the Returning Officer will be able to provide scrutineers with the total number of ballot papers to be accounted for in the preference distribution.</li> </ul>
<p>Will commence no earlier than Sunday afternoon but more likely to be Monday 1 December.</p>	<p><b>Preference distribution (Single vacancies -if required)</b></p> <ul style="list-style-type: none"> <li>Where no candidate receives an absolute majority of first preference votes, preference distributions will take place to determine the successful candidate.</li> <li>All totals will be reconciled at each stage of the preference distribution.</li> </ul>
<p>Will commence no earlier than Sunday afternoon.</p>	<p><b>Check-count and batching (Multiple vacancies - computer counts)</b></p> <ul style="list-style-type: none"> <li>Where a computer count is being conducted, ballot papers from each voting centre, early, postal and other declaration parcels will be checked for correct counting of ballot papers and then batched in preparation for computer counting. Batch cover slips will be attached.</li> <li>The total ballot papers after batching will be reconciled against the balance figure for each ward.</li> <li>Once reconciled, ballot paper batches will be secured and transported to the computer count venue.</li> </ul>
<p>Computer counts will mostly extend from Monday 1 December onwards.</p>	<p><b>Computer counts</b></p> <ul style="list-style-type: none"> <li>Data entry (or scanning for selected councils) will commence as soon as practicable after batching is complete.</li> <li>The election result for each ward will be calculated once data entry and all reconciliations are complete for that ward.</li> </ul>

	<p><b>Recounts</b></p> <ul style="list-style-type: none"> <li>· At any time before the declaration of the result, a recount may be conducted. Candidates may request a recount or they may be initiated by the Returning Officer. The Returning Officer will conduct a recount on request by a candidate if the Returning Officer is satisfied that the reasons provided by the candidate may have affected the election result.</li> <li>· A recount involves repeating all steps in the count, and the result of the recount supersedes the original count.</li> </ul>
<p>Between Monday 1 December and Friday 5 December.</p>	<p><b>Declaration of results</b></p> <ul style="list-style-type: none"> <li>· The Returning Officer will publicly declare the result of the election at a designated time and place after the completion of all counting.</li> <li>· Candidates will be notified of the declaration date, time and venue.</li> </ul>

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August 2008