

LEADERSHIP



Leadership Team Election
(Lord Mayor and Deputy Lord Mayor)

Candidate Handbook
for the City of Melbourne

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Victorian Electoral Commission, Melbourne

Handbook for Leadership Team Election

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CITY OF MELBOURNE ELECTIONS 2008

LEADERSHIP TEAM ELECTION TIMELINE

Exhibition Roll Date	AUG 21	THU	(100 days before Election Day)
Public Notice of Entitlement Date	SEP 8	MON	
	SEP 11	THU	
Exhibition Period	SEP 29	MON	
Entitlement Date	OCT 3	FRI	(57 days before Election Day)
Publication of Election Notice	OCT 6	MON	Telephone Enquiry Service Commences
	OCT 9	THU	
Opening of Election Office	OCT 22	WED	
Certification of Voters Roll Opening of Nominations	OCT 23	THU	
Nomination Day	OCT 28	TUE	Closes 12 noon Ballot Draw — time to be advised
Team Name Registration	OCT 29	WED	
	OCT 30	THU	Close 4 pm
Team Statements and Preferences	NOV 3	MON	Close 4 pm
Mail-out of Ballot Packs	NOV 11	TUE	
	NOV 13	THU	
Close of Voting	NOV 28	FRI	Voting Closes 6 pm
ELECTION DAY	NOV 29	SAT	Extraction of ballot papers
	NOV 30	SUN	Counting commences

INTRODUCTION

This handbook is intended to assist candidates in the City of Melbourne Leadership Team election conducted by the Victorian Electoral Commission (VEC). It outlines those aspects of electoral law that relate directly to candidates. However, the booklet is not a substitute for the law, and should be read in conjunction with the *Local Government Act 1989*, the Local Government (Elections) Regulations 2005, the *City of Melbourne Act 2001* and the City of Melbourne (Elections) Regulations 2001.

Copies of the above publications 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

The Leadership Team Election for the City of Melbourne involves the election of Lord Mayor and Deputy Lord Mayor to represent the whole municipality. The result of the election is determined by preferential voting.

The election of the seven councillors is conducted simultaneously. A separate handbook is available for the election of councillors.

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 also conduct an information session for prospective candidates and provide a kit containing handbooks and forms for candidates and scrutineers. Details of candidate information sessions will be available on the VEC website at 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

Authorised Person	A person appointed by the Returning Officer to exercise any power or perform any duty delegated by the Returning Officer in connection with the election.
Ballot Paper	A ballot paper is the document on which voters record their preferences for each <i>team</i> in the election.
Ballot Paper Envelope	An envelope used by the voter to enclose their completed ballot paper. The envelope includes a detachable flap containing the name, address, date of birth and signature of voter.
Candidate	A person who nominates to contest an election for a council.
Canvassing	Soliciting of votes at an election for a candidate or group of candidates.
Chief Executive Officer (CEO)	The person appointed by a council to be its Chief Executive Officer or any person acting in that position.
Close of Voting	The last day for ballot material to be accepted in the count.
Computer Count	The electronic counting of votes.
Disadvantaged Voter	Any voter who: <ul style="list-style-type: none">• is wholly or partially blind; or• has a cognitive impairment; or• is unable to read or write; or• has severe difficulty in reading or writing; or• is not sufficiently familiar with the English language to vote without assistance.
Donation Period (Amended 08)	The "donation period" means the period commencing on whichever is the later of: <ul style="list-style-type: none">• 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.
Early Vote	A Returning Officer may issue a voter with a ballot paper prior to the general mail-out if satisfied with the reason for the request. e.g. where a voter is about to go overseas prior to the general mail-out and will not be returning prior to the close of voting.

Election Management System (EMS)	The VEC's computerised Election Management System, used by Returning Officers to capture all election data.
Election Office	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 www.vec.vic.gov.au
Election Period (Amended 08)	In relation to an election, the election period means the 32 day period that: <ul style="list-style-type: none"> • starts on nomination day (close of nominations); and • ends at 6.00pm on election day.
Electoral Advertisement, Handbill, Pamphlet or Notice	Any advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting.
Electoral Matter	Means matter, which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the Returning Officer for the purposes of conducting an election. This includes matter which contains an express or implicit reference to, a comment on: <ul style="list-style-type: none"> • the election; or • a candidate in the election; or • an issue submitted to, or otherwise before, the voters in connection with the election.
Entitlement Date	The date 57 days before election day which is the last date on which a person may apply to be enrolled on the municipal voters roll.
Exhibition Roll (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).
Formal Vote	A formal vote must indicate on the ballot paper a voter's first preference, i.e. the figure 1, opposite the name of one pair of candidates for the Leadership Team and the numbers 2, 3, 4 (and so on as the case requires) opposite the names of either all the other pairs of candidates; or all other pairs of candidates except one.
Indication of Preferences	A statement setting out the <i>team's</i> preferred order of voting for inclusion in the postal ballot pack.
Leadership Team	Consists of a Lord Mayor and Deputy Lord Mayor. Candidates for these positions must nominate jointly and are treated as one candidate.

Legislation	<p><i>Local Government Act 1989</i> and the Local Government (Elections) Regulations 2005 govern these elections in conjunction with the <i>City of Melbourne Act 2001</i> and City of Melbourne (Elections) Regulations 2001.</p> <p>The LGA and LGR apply unless the <i>City of Melbourne Act</i> and City of Melbourne (Elections) Regulations 2001 differ.</p> <p>LGA —<i>Local Government Act 1989</i></p> <p>LGR —Local Government (Elections) Regulations 2005</p> <p>CMA —<i>City of Melbourne Act 2001</i></p> <p>CMR —City of Melbourne (Elections) Regulations 2001</p>
Municipal District	<p>The district under the local government of a council.</p>
Nomination Day (Amended 08)	<p>The last day upon which a person may lodge a nomination form with the Returning Officer. <i>Nomination Forms</i> must be lodged by 12 noon on nomination day.</p>
Nomination Form	<p>The prescribed form that a candidate for an election must complete and lodge with the Returning Officer, together with the nomination fee.</p>
Notice of Election	<p>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.</p>
Postal Ballot Pack	<p>The ballot material mailed to voters in an election conducted by post. It includes two ballot papers, a ballot paper envelope, <i>team</i> statements and indication of preferences, instructions to the voter and a reply paid envelope.</p>
Public Notice (Amended 08)	<p>A notice published in a newspaper generally circulating in the municipal district of the council. Newspapers are chosen by the Returning Officer.</p>
Publish	<p>To publish by any means including by publication on the Internet.</p>
Regulations	<p>The Local Government (Elections) Regulations 2005 [LGR] and City of Melbourne (Elections) Regulations 2001 [CMR].</p>
Registered Political Party (RPP)	<p>The Commission maintains a Register of Political Parties. To be eligible for registration, parties must have at least 500 members who are Victorian electors.</p>
Returning Officer	<p>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>, the Local Government (Elections) Regulations 2005, the <i>City of Melbourne Act 2001</i> and the City of Melbourne (Elections) Regulations 2001.</p>

Scrutineer	A person appointed by a candidate to represent the candidate's interests and observe certain electoral activities to satisfy the candidate that the election was conducted strictly in accordance with the law.
Team Statement	A statement of policies prepared by the <i>team</i> (of no more than 250 words) for inclusion in the postal ballot pack.
Victorian Electoral Commission (VEC)	The Victorian Electoral Commission (VEC) has been appointed by the council to conduct its elections and is responsible for the overall conduct of those elections (which are conducted by a Returning Officer appointed by the Electoral Commissioner).
Voters Roll	An alphabetical list of persons, certified by the Chief Executive Officer of the council, who are eligible to vote at the election. 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.

1. ELIGIBILITY TO STAND FOR COUNCIL

For your information a copy of Section 9 of the *City of Melbourne Act 2001*(CMA) referring to enrolment is provided as an Appendix in this handbook.

Qualifications

Refer to section 14 CMA

Section 14 of the *City of Melbourne Act 2001* 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 9 of the *City of Melbourne Act 2001*.

(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, sub-section (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 9A(1) or 9A(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

All intending candidates are advised to read Appendix 1, section 9 of the *City of Melbourne Act 2001*(CMA), in the back of this handbook. This needs to be read in conjunction with the *Local Government Act 1989*. If interpretation is required it is important to seek legal advice.

The following summary is taken from the *City of Melbourne Act 2001*.

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 [CMA, s.9A(1)];
- up to two owners, not a resident of the municipal district [CMA, s.9A(3)]; and
- up to two occupiers, not a resident of the municipal district [CMA, s.9A(5)].

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/occupiers 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. [CMA, s.9F]

Persons Entitled to Apply to be Enrolled

(Amended 08)

Applications may be made by:

- an owner or occupier of a property not automatically entitled to be enrolled (e.g. non citizens). [CMA, s.9B]. No more than two persons may be enrolled automatically or by application for any one rateable property. [CMA, s.9B (2), (3)]
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. [CMA, s.11C (1)(a)];
- a corporation that owns or occupies rateable property, whether solely or jointly with other persons, may appoint two people to vote on its behalf. [CMA, s.9C]
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. [CMA, s.9G]; and
- if a corporation that owns property does not appoint two voting representatives, the Chief Executive Officer must enrol them from an Australian Securities and Investments Commission list of secretaries and directors of the company [CMA, s.9D], excluding anyone with another entitlement.
NOTE: These appointments do not expire, but may be changed. The Chief Executive Officer must mail the appropriate forms each election cycle. [CMA, s.11C (1)(b)]

**Limitations on
Right of
Entitlement**

A person or corporation is not entitled to elect which right of entitlement conferred by section 9A(1), 9A(3), 9A(5), 9B or 9C(1) to exercise. [CMA, s. 9E] 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.

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 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 that 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

Where and How to Nominate

Nominations for the Lord Mayor and Deputy Lord Mayor positions must be done jointly and specify who is nominating for each position.

Intending candidates must:

- complete a 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 each 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 in the Candidate Kit, which is available from the Returning Officer. Note: The online *Candidate Helper* is not available to candidates standing in the Leadership Team election.

Candidate Unable to Deliver Nomination Form

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

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. i.e. \$500 for the *team*. 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

Candidates must specify the full name and the address under which they are 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 for both the Leadership Team election and the Councillor election.

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).

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, candidate statements, and preferences when rigid timelines are in place.

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

Voters Roll

A copy of the voters roll will be made available to each candidate for election purposes only.

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.

Refund of Fees

Nomination fees are refunded to candidates in the following circumstances:

- if the *team* is declared elected; or
- if the total number of first preference votes received by the *team* is not less than four percent (4%) of the total number of first preference votes received by all *teams* at the election.

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

Withdrawal of a Team

(Amended 08)

A *team* 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 City of Melbourne (Election) Regulations 2001 and must be signed by one of the candidates. 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 nomination fee **will not** be refunded.

Retirement of a Team

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

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

- either or both candidates are not qualified to be a candidate as required by section 28(1) of the *Local Government Act 1989*;
- either or both candidates are disqualified by section 29(1) or 29(2) of the *Local Government Act 1989*.

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

Death of a Candidate

(Amended 08)

If a candidate dies before 12 noon on nomination day, the nomination for the *team* is void and the nomination fee will be refunded to the candidate's personal representative.

If a candidate dies after 12 noon on nomination day but before election day, the election continues, but the *team's* nomination lapses. The Victorian Electoral Commission will make every effort to have ballot papers reprinted or the name of the deceased candidate's *team* removed from the ballot paper.

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

Uncontested Election

If, at the close of nominations or on the retirement of a *team*, there is only one nomination, the Returning Officer must declare the nominated *team* elected and give public notice of their election.

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

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

4. BALLOT DRAW AND TEAM NAMES

Ballot Draw

(Amended 08)

Candidates' names will appear on the ballot paper, in the form specified on the *Nomination Form*. The order of *teams* 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 *teams* with a template listing candidate names in ballot paper order. Teams may use this template to submit their indication of preferences.

The ballot paper for the election will have a single box beside each *team* and will show the names of each candidate, the position they are standing for as well as the *team* name if applicable.

Team Names

A *team* nominating for election as Lord Mayor and Deputy Lord Mayor may make a request to the Returning Officer that a *team* name appear on the ballot paper beside their names.

The request must:

- be in writing;
- be signed by both candidates; and
- delivered to the Returning Officer by 4.00pm on the **second** day after the close of nominations.

Requests should be submitted using the *Request for Team Name —Leadership Team Election* form, which is available from the Returning Officer.

The form asks *teams* to submit a *team* name of not more than 6 words, or letters if the name consists only of abbreviations. The name must not be offensive or misleading (in the opinion of the Returning Officer). If a *team* has been endorsed by two or more RPPs, a composite name may be used.

The form also requires that where a *team* name is:

- (i) requested that implies an association with a registered political party, the *team* will be required to sign a declaration that they are authorised to use that name. Written authorisation from the registered officer of the political party will also be required;

- (ii) the same as a *team* name used at the previous City of Melbourne Council elections, or implies an association with a person or organisation, the *team* will be required to sign a declaration and provide supporting evidence that they are authorised to use that name. *Teams* submitting such a name will be allocated that name on the basis of them providing sufficient authority and their request being received prior to any other appropriately authorised request for the same name; or
- (iii) is a name other than as described in (i) or (ii), the *team* will be required to sign a declaration that they have made enquiries and are unaware of any other person, organisation or *group or team* that has claim to that name.

The Returning Officer will advise candidates of the outcome of their request as soon as practicable after 4.00pm on the second day after nomination day.

Teams should consider an alternative name in the event that the Returning Officer requests that another name be provided. Where the Returning Officer requires an alternative name, *teams* will be required to do so no later than the 10.00am on the day following the close of the registration period.

5. TEAM STATEMENTS, PHOTOGRAPHS AND INDICATION OF PREFERENCES

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

The Returning Officer would like statements and photographs lodged at the time of nomination.

If a person authorised by the team lodges the statement, the signed and dated authorisation must be lodged together with the statement.

The *Team Statement Lodgement Form, which includes a declaration*, is to be used for the lodgement of the statement. Forms are in the Candidate Kit available from the Returning Officer. To assist in the smooth processing of your statement, refer to the checklist on the form.

To avoid considerable waiting times, it is strongly recommended that candidates make an appointment with the Returning Officer to go through their statement to ensure that the requirements of the Regulations have been met and that their statement will not be rejected.

If a *team* does not lodge a statement, photo or indication of preferences, the Returning Officer must include such advice in the ballot pack being mailed to voters.

Submitting the Statement

At the Election Office, the Returning Officer will check the statement and if all details are complete and in accordance with legislation, it will be accepted.

It is preferred that the statement and photos are submitted on a USB memory key with accompanying hardcopy prints. *Teams* submitting handwritten statements must be prepared to wait while the details are entered manually into EMS. Depending on the number of candidates submitting statements, particularly on the last day, **Monday 3 November 2008**, there could be considerable waiting time.

A final statement will be printed for the candidate or authorised person to compare against the original statement. Once details are confirmed the candidate or authorised person signs the form.

Please check the final statement carefully as full responsibility for the accuracy of the statement rests with the candidates.

The Returning Officer will arrange for statements to be printed exactly as signed off by the candidate or their authorised person.

Statement

The statement must be no longer than 250 words and must not refer to another candidate or *team* standing for election without the written consent of that other candidate or *team*. Note: a reference to "another candidate" includes a reference to a particular candidate or class of candidate by name or description).

In order to include a claim of endorsement or support from a party, organisation or person mentioned in the statement, the *team* must provide a document containing the written consent of the party, organisation or person at the time of lodging the statement.

If a *team's* statement exceeds 250 words, only the first 250 words will be printed.

The Returning Officer may reject a *team's* statement if, in the opinion of the Returning Officer, it contains offensive or obscene material or is likely to mislead or deceive a voter in the casting of his or her vote.

Teams are responsible for the accuracy and integrity of the statement's contents.

If your statement does not comply with the following format requirements, the Returning Officer will have to alter the format of submitted statements.

- All statements must be submitted in continuous text with no paragraph breaks.
- **Do not** include any •dot points, underlining, *italics*, **bolding** or CAPITALS (with the exception of common acronyms).
- Align words to the left.
- All statements will be of the same font size, (refer to the sample in the Candidate Kit);
- The Returning Officer is not responsible for correcting any errors in grammar, punctuation or spelling in statements. Candidates are therefore advised to check their statements thoroughly before submitting them to the Returning Officer.
- The statement must be in English.

5. Team Statements, Photographs and Indication of Preferences

- Do not submit a typed or handwritten statement all in upper case as it could then be difficult for staff to determine which words should begin with a capital letter.
- Punctuation, dashes, brackets, etc. are not included in the 250 words.

The following rules will be applied to the counting of words and only normally hyphenated words will be accepted as one word:

17 January 1980 = 3 words
17/1/80 = 1 word
UNESCO = 1 word
DipEd = 1 word
re-election = 1 word
48 = 1 word
a = 1 word
I = 1 word
Telephone number = one word
Email address = one word
Web address = one word

Photograph

Candidates who wish to have a photograph included with their statement are asked to provide two identical hardcopy photographs. Candidates also have the option to supply an electronic version on a USB memory key if they wish. It is requested that the two hardcopy photographs and USB memory key (if submitted) be supplied to the Returning Officer at the time of nomination in the envelope provided with the *Nomination Form*.

Candidate photographs will only be accepted on the following media:

- hardcopy. Note: Instant passport photos are available from most pharmacies and photography stores; and
- optional USB memory key.

Photographs must be:

- recent;
- passport-style (38×32mm for hardcopy);
- head and shoulders only, with light background for better printing; and
- endorsed with the candidate's name and the municipality name written on the reverse of the hardcopy photographs.

Electronic photographs must be submitted in jpg or BMP format and must be named "Council-Last name, TL, Firstname.jpg".

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

Indication of Preferences

A *team's* indication of preferences shows the *team's* preferred allocation of preferences for other *teams* contesting the election.

A *team* may lodge with the Returning Officer an indication of preferences for inclusion in the postal ballot material sent to voters. The preferences must be lodged in person by the team, or a person authorised in writing by the team, no later than **4.00pm on Monday, 3 November 2008**.

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

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

Submitting Preferences

Following the draw for position on the ballot paper, the Returning Officer will provide *teams* with a report listing candidate names in ballot paper order. Candidates may use this report to submit their indication of preferences.

There is provision on the report for *teams* to sign and if necessary to authorise a person to deliver the preferences on their behalf.

Viewing Team Statements and Preferences

Statements and preferences are not available until they have been printed.

Once statements are printed they are available on request at the Election Office.

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

6. PRINTING AND PUBLICATION OF ELECTORAL MATERIAL

A *team* 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. However, all published electoral material must be authorised and must comply with the following requirements within the Act. See also Chapter 15 'Election Offences' and Chapter 17 '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 17 '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 Commission is not in a position to offer any advice regarding the operation of Commonwealth legislation. Any enquiries concerning the operation of the above Commonwealth Act should be directed to:

The Australian Communications and Media Authority
PO Box 13112 Law Courts, Melbourne Vic 8010
Tel: 03 9963 6800 Fax: 03 9963 6899

Local Laws

Teams should check with the City of Melbourne Council to see if there are any local laws that may apply to the distribution and display of advertising material within the municipality.

7. ISSUE OF POSTAL BALLOT PACKS

At least 15 days before the last day of voting, a postal ballot pack will be posted to all voters on the voters roll containing:

- a ballot paper envelope;
- two ballot papers;
- instructions to the voter;
- *team* statements and indications of preferences;
- a multi-language leaflet; and
- a reply paid return envelope.

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

Where appropriate, the Returning Officer will arrange for the hand delivery of ballot material.

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

Security Arrangements

The VEC will have arrangements in place to ensure the secure delivery of ballot paper envelopes and to identify any unlawful electoral activities.

The VEC will not compromise these measures by releasing details.

Early Votes

Regulation 86 provides that an election official may issue a voter with a ballot paper prior to the general mail-out if the election official considers that the reason for the request is reasonable. Such a circumstance might, for example, be where the voter is about to go overseas prior to the general mail-out and will not be returning prior to the close of voting.

Voters requiring early votes may view the copies of the candidates' statements in the Election Office.

Any ballot papers issued **before** the printed ballot papers are available must be initialled by the election official.

Replacement and Unenrolled Ballot Papers

In an election conducted entirely by post, replacement and unenrolled ballot papers can be issued under Regulation 88 and 89 as follows:

Unenrolled Vote - Regulation 88

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

Replacement Vote - Regulation 89

This regulation applies if, on or before the last day of voting, a voter:

- claims that he or she has not received a postal ballot envelope at the address to which the postal ballot envelope was sent;

- claims that he or she is not at the address to which the postal ballot envelope was sent and has not received a postal ballot envelope;
- claims that he or she has lost or destroyed the declaration envelope or ballot paper or both; or
- satisfies an election official that he or she has spoiled the declaration envelope or ballot paper or both and returns the spoiled declaration envelope or the spoiled ballot paper or both.

8. RETURN OF BALLOT PAPER ENVELOPES

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

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

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

9. OBTAINING THE RESULT

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

The count and result of the Leadership Team election will be determined by computer. The Returning Officer will conduct an information session for candidates and scrutineers to explain the process in detail.

All ballot paper envelopes to be admitted to the count will be processed as follows.

On the day following the close of voting:

- the flaps containing voter details on ballot paper envelopes are removed;
- ballot paper envelopes are opened and ballot papers are extracted;

- the total number of ballot papers is determined and reconciled against the number of ballot paper envelopes admitted to the count;
- the number of first preference votes for each *team* is determined; and
- where a *team* does not have an absolute majority of first preference votes, a preference distribution will be conducted to determine the result of the election.

Where there are a large number of *teams* contesting the election the Returning Officer may determine the result by computer.

If this is the case, ballot papers will be batched for data entry and obvious informal votes removed. The preferences on each ballot paper are entered into the computer. Informal ballot papers are rejected at data entry and the result of the election is determined.

The method of counting votes to determine the result of a council election is described in Parts 3 of Schedule 3 of the Act. These sections are re-printed in Chapter 19 of this handbook for your information.

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

10. FORMALITY OF VOTES

- Each ballot paper must have a number 1 in, or adjacent to, or level with one box.
- All boxes should be numbered using the full sequence of numbers as indicated on the ballot paper. The only exception is where one box is left blank and would logically have contained the last preference, e.g. with 6 *teams*, the number 6 may be omitted.
- More than one box left blank makes the vote informal.
- Any duplication or omission of a number from the sequence makes the vote informal.
- Numbers next to, or on the other side of the names, are acceptable providing the voter's intention is clear.
- Amendments are acceptable providing the voter's intention is clear. All other marks are to be ignored.
- The number '0' (zero) makes the vote informal.

11. COUNTING TIMETABLE

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, mis-sorted postal material may need to be delivered to the Election Office from the VEC's Melbourne office or the Returning Officer may find that there is a last minute rush for replacement votes at the close of voting.

Previously, adjustments to totals have been made progressively but it is clear that it is in everyone's interests to have a clear starting figure of ballot paper envelopes to be included in the count.

Adjustments may still be required, for example, where ballot paper envelopes are found to be empty.

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 activities after the close of voting from 6.00pm on Friday 28 November including key reconciliation points during the counting process are included in Appendix 2.

12. RECOUNT OF VOTES

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

- if he or she thinks fit; or
- at the written request of a *team* 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 *teams* 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. SCRUTINEERS

Role of Scrutineers

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

- (a) the posting or delivery of postal ballot envelopes;
- (b) the opening and emptying of a post office box;
- (c) the opening and emptying of a postal ballot receptacle;
- (d) the receipt and processing of declaration envelopes; and
- (e) the counting and recounting of ballot papers.

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

For the purposes of (e), in respect of each candidate only one scrutineer for each authorised person involved in the counting or recounting of ballot papers, or, if a computerised system of counting or recounting ballot papers is used, for each data entry person involved in the counting or recounting of ballot papers, can be present at any one time.

An election official may have a scrutineer removed if:

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

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 Victorian Electoral Commission, the Australian Electoral Commission or any other council to conduct the election, a person appointed by those bodies to be involved in the conduct of the election.

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.

During the Count

Scrutineers are entitled to observe all proceedings during the processing of ballot papers to obtain the results of the election.

Scrutineers may challenge the admission or rejection of voters' ballot paper envelopes and the formality of ballot papers. These must be referred to the Returning Officer for decision. The Returning Officer's decision is final.

Counting must proceed smoothly and efficiently and scrutineers should not unnecessarily communicate with anyone at these proceedings.

Scrutineers **must not** handle ballot papers, ballot paper envelopes or any other election material. Scrutineers are entitled to observe all the markings on ballot papers but they must not delay proceedings except where it is necessary in the performance of their duties.

The Returning Officer must inform scrutineers of any adjournment and advise the location and time when the proceedings will be continued.

Information for Scrutineers

Scrutineers will be informed of the total ballot paper envelopes to be included in the count, prior to the opening of ballot paper envelopes and the extraction of ballot papers. Scrutineers will also be informed of the total number of ballot papers to be accounted for prior to the commencement of data entry for the computer count.

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

- progressive 1st preference results reports during data entry;
- 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; and
- details of the preference distribution. This report shows how preferences are allocated to candidates during the preference distribution. This report will be available as soon as practicable after completion of the calculation of the result.

The Returning Officer will also provide scrutineers, on request, with a record of the preferences on the ballot papers that have been stored in the computer.

The full report for all batches will not be available until after completion of the count.

14. DECLARATION OF THE RESULT

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.

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

15. ELECTION OFFENCES

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

Interference with Rights

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

PENALTY: 1 penalty unit (\$113.42)

False Written Declaration

(Amended 08)

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.

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

Misleading or Deceptive Material

(Amended 08)

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

PENALTY: 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 (unless permitted or required to do so), fraudulently remove a ballot paper from a ballot box or impersonate any voter. [LGA, s.58(3)]

PENALTY: Imprisonment for 6 months.

Infringement of Secrecy

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

PENALTY: Imprisonment for 6 months.

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

PENALTY: Imprisonment for 6 months.

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

PENALTY: Imprisonment for 6 months.

Bribery

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

Unlawful Nomination

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

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

Offence to Interfere with Postal Ballot Materials

A person must not interfere with any material being, or to be, sent or delivered to a voter under section 41A(2)(b). This does not apply to a person who is acting with the authority of the returning officer. [LGA, s.58A (1&2)]

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

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]

16. COMPULSORY VOTING

Voting is compulsory for all voters enrolled in the City of Melbourne. However, voters aged 70 years or over or those with a sufficient excuse for not voting are exempt from compulsory voting.

17. 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, voters 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* and the *City of Melbourne Act 2001*. LGV has responsibility for investigation of alleged breaches of the Acts - 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 Acts. 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 their 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 its 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 15 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 Acts.

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]

18. MUNICIPAL ELECTORAL TRIBUNALS

What is a Municipal Electoral Tribunal?

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

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
2nd 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.

19. DETERMINATION OF ELECTION RESULT

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

These should be read as if references to one 1 councillor or to individual candidates were references to the Leadership Team.

Procedure for Determining a Result

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

9. Only two candidates

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

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

10. More than two candidates

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

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

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

20. DISCLOSURE OF ELECTION DONATIONS

(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)

APPENDIX 1

City of Melbourne Act 2001 No. 5 of 2001

PART 3—ELECTIONS

Division 1— Voters and voters' rolls

9 Entitlements

- (1) A person can only be enrolled on the voters' roll if—
 - (a) the person has an entitlement to be enrolled without application as at the entitlement date; or
 - (b) the person is entitled to apply to be enrolled and the application—
 - (i) complies with subsection (2); and
 - (ii) is accepted in accordance with this Division; or
 - (c) the person is appointed to vote on behalf of a corporation and the application for appointment—
 - (i) complies with subsection (2); and
 - (ii) is accepted in accordance with this Division.
- (2) 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.
- (3) Unless section 9J applies, enrolment under an application referred to in section 9B 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.
- (4) Unless section 9J applies, an appointment made by a corporation under section 9 as in force before the commencement of section 97 of the Local Government (Democratic Reform) Act 2003 of a director or company secretary to represent the corporation continues in force subject to sections 9C and 9G.

9A Persons entitled to be enrolled without application

- (1) A person who on the entitlement date would be an elector in respect of an address in the municipal district if a roll of electors for the Legislative Assembly was compiled from the register of electors, is entitled 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 without application to be enrolled on the voters' roll in respect of that address.
- (3) A person who on the entitlement date—
 - (a) is not a person referred to in subsection (1); 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 without application to be enrolled on the voters' roll in respect of that rateable property.
- (4) For the purposes of subsection (3), only 2 joint owners are entitled to be enrolled in respect of any 1 rateable property.
- (5) A person who on the entitlement date—
- (a) is not a person referred to in subsection (1) or (3); 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, whether solely or jointly with any other person or persons; and
 - (d) is not a resident of the municipal district—
is entitled without application to be enrolled on the voters' roll in respect of that rateable property.
- (6) For the purposes of subsection (5), only 2 joint occupiers are entitled to be enrolled in respect of any rateable property.

9B Persons entitled to apply to be enrolled

- (1) A person who on the entitlement date—
- (a) is not a person referred to in section 9A; 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 or occupier of any rateable property in the municipal district—
is entitled to apply to be enrolled on the voters' roll in respect of that rateable property.
- (2) For the purposes of section 9A(3) and subsection (1), only 2 joint owners are entitled to be enrolled in respect of any 1 rateable property.
- (3) For the purposes of section 9A(5) and subsection (1), only 2 joint occupiers are entitled to be enrolled in respect of any rateable property.

9C Corporations

- (1) If on the entitlement date—
- (a) a corporation is the owner or occupier of any rateable property in the municipal district; or
 - (b) the joint owners or joint occupiers of any rateable property in the municipal district consist of corporations or a combination of people and corporations (of at least 1 person and 1 corporation)—
the corporation or the joint owners or joint occupiers may appoint 2 people to represent it or them at Council elections to vote on its or their behalf.
- (2) A corporation may only exercise the right of entitlement conferred by subsection (1) once, regardless of how many rateable properties it owns or occupies or jointly owns or occupies in the municipal district.
- (3) A person can not be appointed to represent a corporation unless the person is a director or company secretary of the corporation.

9D Procedure in relation to representatives of corporations

- (1) This section applies if a corporation is the sole owner or occupier of any rateable property in the municipal district and the Chief Executive Officer has not received by 4 p.m. on the entitlement date notice under section 9C that the corporation has appointed 2 representatives who are eligible to be enrolled.
- (2) If the corporation has validly appointed 1 representative, the Chief Executive Officer must enrol as a representative of the corporation, the company secretary of the corporation whose name appears first if an alphabetical list of the company secretaries of the corporation is prepared.
- (3) If the corporation has not validly appointed any representatives, the Chief Executive Officer must enrol as representatives of the corporation, the first 2 of the following—
 - (a) the company secretaries of the corporation (to be taken in alphabetical order);
 - (b) the directors of the corporation (to be taken in alphabetical order).
- (4) Despite subsections (2) and (3), if a person required to be enrolled as a representative of the corporation by applying those subsections is otherwise entitled to be enrolled, the Chief Executive Officer must not enrol that person as a representative of that corporation under this section.
- (5) For the purposes of subsections (2) and (3), the Chief Executive Officer may use the most recent information that is available after the exhibition roll date from the Australian Securities and Investments Commission concerning the name, address and age of the persons specified in those subsections.
- (6) The Chief Executive Officer must advise the corporation in writing of any person who has been enrolled as a representative of the corporation under this section.

9E Limitations on right of entitlement

- (1) A person or corporation is not entitled to elect which right of entitlement conferred by section 9A(1), 9A(3), 9A(5), 9B or 9C(1) to exercise.
- (2) Despite anything to the contrary in this Part, a person is only entitled to vote once at any election for the Lord Mayor or Deputy Lord Mayor and once at any election for the other Councillors, regardless of how many different entitlements the person may have.

9F Procedure if there are more than 2 non-resident owners or occupiers

- (1) For the purposes of section 9A(3) or 9A(5), if it appears from the Council records that there are more than 2 owners or more than 2 occupiers of any rateable property, the Chief Executive Officer must enrol without application the 2 owners or 2 occupiers—
 - (a) whose names appear first on the Council 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 9A(3) or paragraphs (b), (c) and (d) of section 9A(5) in respect of that rateable property.
- (2) Despite subsection (1), 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, or occupier or 2 occupiers, of the rateable property specified in the request be enrolled on the voters' roll instead of the owner or 2 owners, or occupier or 2 occupiers, that would otherwise be enrolled by virtue of subsection (1), the Chief Executive Officer must give effect to the request.
- (3) A person enrolled on the voters' roll in accordance with subsection (1) or (2) continues to be enrolled unless 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 occupier specified in the request be enrolled on the voters' roll instead of that person.

9G Provisions relating to appointments for the purposes of section 9C

- (1) An appointment under section 9C(1) is void if at the time the appointment is made the person appointed—
 - (a) is not a director or company secretary 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 already enrolled, or entitled to be enrolled, on the voters' roll in respect of the municipal district.
- (2) An appointment for the purposes of section 9C(1) is revoked if—
 - (a) the person appointed—
 - (i) ceases to be a director or company secretary 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; or
 - (b) notice of revocation containing the details required by the regulations is delivered to the Council office; or
 - (c) the entitlement under section 9C(1) ceases to exist.

9H Procedure on receipt of notice of appointment under section 9C

- (1) On receiving notice of an appointment, the Chief Executive Officer must enrol the person appointed unless he or she believes the person is not entitled to be enrolled.
- (2) If the Chief Executive Officer receives a notice of appointment in respect of any rateable property in respect of which 2 people have already been enrolled—
 - (a) if the notice only appoints one person and does not revoke the appointment of either of the 2 people enrolled, the Chief Executive Officer must refuse to enrol the person;
 - (b) if the notice appoints 2 people, the Chief Executive Officer must enrol those 2 people and must remove the names of the 2 people previously enrolled from the voters' list, regardless of whether or not the notice revokes the earlier appointment.
- (3) If the Chief Executive Officer refuses to enrol an appointed person, he or she must advise the person who submitted the notice of appointment of the refusal in writing and give the person the reason for the refusal.

9I General powers relating to enrolment

- (1) If the Chief Executive Officer refuses an application for enrolment under section 9B, the Chief Executive Officer must advise the applicant that further evidence to his or her satisfaction is required that the applicant is eligible to be enrolled.
- (2) The Chief Executive Officer or a member of the Council staff who is authorised in that behalf by the Chief Executive Officer may either orally or in writing put to any person in occupation of, resident in, in charge of, or any person or corporation who is the owner of, or any person who is the agent for the owner of, any land, questions upon any matter relating to an application and, in the case of questions put in writing, may require the answers to be in writing and signed by the person giving the answers.
- (3) If the Chief Executive Officer refuses to make an enrolment under an application because the Chief Executive Officer is of the opinion that the applicant is not entitled to enrolment the Chief Executive Officer must advise the applicant in writing of the refusal and of the reason for the refusal.

9J Notification of change or cessation of entitlement

- (1) If there has been a change in the particulars (other than age) or a cessation of entitlement to enrolment on the qualification specified for the purposes of section 9B or 9C(1)–
 - (a) the person enrolled, in the case of an enrolment under section 9B; or
 - (b) the corporation on whose behalf a person is enrolled, in the case of an enrolment under section 9C–must notify the Chief Executive Officer in writing within 1 month of that change or cessation of entitlement.
- (2) Any person or corporation that contravenes subsection (1) is guilty of an offence and liable to a penalty of not more than 3 penalty units.


APPENDIX 2

COUNTING TIMETABLE

Date/Time	Activity
Friday 28 November — from 6.00pm	<p>Final processing</p> <ul style="list-style-type: none"> • Final processing of returned postal vote declaration envelopes. • Processing of unenrolled declarations by Council and VEC staff. • The total ballot paper envelopes, to be included for further processing, will be established.
From Saturday 29 November —RO will advise commencement time.	<p>Extraction of ballot papers</p> <ul style="list-style-type: none"> • Removal of identification flaps from ballot paper envelopes. • Opening and extraction of Councillor and Leadership Team ballot papers from ballot paper envelopes. • The total ballot papers to be included in the count for each election will be established (balance figure). Note —this figure may vary from the total number of envelopes as some envelopes are returned empty, with one ballot paper only, and some are returned from members of the same household in the same envelope. This process is expected to take no less than seven hours.
Saturday 29 November —Sunday 30 November	<p>Councillor election – initial sorting and batching</p> <ul style="list-style-type: none"> • Councillor election ballot papers will be sorted to those marked above-the-line, below-the-line and informal. Ballot papers marked below-the-line will be batched in preparation for data entry. This process is expected to take no less than seven hours. • Ballot papers marked above-the-line will be sorted and counted for the respective groups. • The total Councillor election ballot papers after these tasks will be reconciled against the balance figure for that election. • Once reconciled, ballot paper batches will be secured and transported to the computer count venue.
Saturday 29 November —Sunday 30 November	<p>Leadership Team – ballot paper batching</p> <ul style="list-style-type: none"> • Ballot papers for the Leadership Team will be batched in preparation for data entry with obvious informal ballot papers isolated into one batch and batch cover slips attached. • The total Leadership Team ballot papers after batching will be reconciled against the balance figure for that election. • Once reconciled ballot paper batches will be secured and transported to the computer count venue.
From Sunday 30 November —the Returning Officer will advise commencement time.	<p>Computer count – Councillor election</p> <ul style="list-style-type: none"> • Data entry will commence as soon as practicable after batching is complete. It is estimated that data entry will take no less than 11 hours. Expected completion time late Monday 1 December. • The election result for the Councillor election will be calculated once data entry and all reconciliations are complete.

<p>From Sunday 30 November —the Returning Officer will advise commencement time.</p>	<p>Computer count – Leadership Team election</p> <ul style="list-style-type: none"> · Data entry will commence as soon as practicable after batching is complete. It is estimated that data entry will take no less than 38 hours. Expected completion by Tuesday 2 December. · The election result will be calculated once data entry and all reconciliations are complete.
	<p>Recounts</p> <ul style="list-style-type: none"> · 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. · A recount involves repeating all steps in the count, and the result of the recount supersedes the original count.
<p>No earlier than Tuesday 2 December. No later than Friday 5 December.</p>	<p>Declaration of results</p> <ul style="list-style-type: none"> · The Returning Officer will publicly declare the result of each election at a designated time and place after the completion of all counting. · Candidates will be notified of the declaration time and venue.

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August 2008