

DETERMINATION

Nominations from candidates impacted by COVID-19 Public Health Directions in respect to local government elections

City of Melbourne (Electoral) Regulations 2012 [Regulation 51(3)]
Local Government (Electoral) Regulations 2020 [Regulation 90(3)]
Determination 001/2020

Keywords

Nomination of candidates, notice of candidature, nomination form, nomination fee, local government elections, COVID-19, Novel coronavirus 2019 (2019-nCoV), Public Health and Wellbeing Act 2008, Public Health Directions, Chief Health Officer

Preamble

The Victorian Government declared a State of Emergency in Victoria under the *Public Health and Wellbeing Act 2008* on 16 March 2020. Further declarations have been made to continue the State of Emergency in accordance with the *Public Health and Wellbeing Act 2008*.

On 1 September 2020, the Governor in Council made the *City of Melbourne (Electoral) and Local Government (Electoral) Amendment Regulations 2020* to, in part, insert regulatory relief into the *City of Melbourne (Electoral) Regulations 2012* and *Local Government (Electoral) Regulations 2020* effective to 26 April 2021. The regulatory relief intends to mitigate specific impacts of the directions made under the *Public Health and Wellbeing Act 2008* and the ongoing coronavirus (COVID-19) pandemic on the local government elections in October 2020, including the nomination of candidates and the payment of the nomination fee.

This Determination relates to the requirement for prospective candidates to:

1. sign the declaration on the nomination form or notice of candidature in the presence of the relevant Election Manager, and
2. pay the nomination fee (\$250.00 per candidate) by cash or by cheque drawn on an account of an authorised deposit-taking institution (e.g. a bank cheque).

Melbourne City Council Leadership Team election (Lord Mayor and Deputy Lord Mayor)

Regulation 20 of the *City of Melbourne (Electoral) Regulations 2012* requires candidates nominating for Lord Mayor or Deputy Lord Mayor for Melbourne City Council to complete a joint notice of candidature and pay a nomination fee. The notice of candidature includes a declaration to affirm the candidate's eligibility, as set out in Regulation 20(3) of the *City of Melbourne (Electoral) Regulations 2012*.

Except as provided by this Determination, the declaration on the notice of candidature must be signed by each candidate in the presence of the Election Manager for Melbourne City Council under

Regulation 20(4) of the *City of Melbourne (Electoral) Regulations 2012* and the nomination fee must be paid by cash or by cheque drawn on an account of an authorised deposit-taking institution (e.g. a bank cheque) under Regulation 20(1)(d) of the *City of Melbourne (Electoral) Regulations 2012*.

All council elections (excluding the Melbourne City Council Leadership Team election)

Regulation 24 of the *Local Government (Electoral) Regulations 2020* requires that candidates nominating for election to the office of Councillor must complete a nomination form and pay a nomination fee. The nomination form includes a declaration to affirm the candidate's eligibility, as set out in Regulation 24(2) of the *Local Government (Electoral) Regulations 2020*.

Except as provided by this Determination, the declaration on the nomination form must be signed by the candidate in the presence of the relevant Election Manager under Regulation 24(4) of the *Local Government (Electoral) Regulations 2020* and the nomination fee must be paid by cash or by cheque drawn on an account of an authorised deposit-taking institution (e.g. a bank cheque) under Regulation 24(1)(d) of the *Local Government (Electoral) Regulations 2020*.

Electronic Submission

Regulation 51(3) of the *City of Melbourne (Electoral) Regulations 2012* (in respect to candidates for election to the offices of Lord Mayor and Deputy Lord Mayor of Melbourne City Council) and Regulation 90(3) of the *Local Government (Electoral) Regulations 2020* (in respect to candidates for election to the office of Councillor in any local council election) provides for the Victorian Electoral Commission to make a determination that either or both a nomination form or notice of candidature and nomination fee may be submitted electronically to the Election Manager.

A determination may be made by the Victorian Electoral Commission if it reasonably believes it is necessary to address the serious public health risk posed by the Novel coronavirus 2019 (2019 n-CoV). The Novel coronavirus 2019 (2019 n-CoV) is the virus resulting in COVID-19.

This Determination is made pursuant to the above and provides the circumstances in which it will be acceptable for a nomination form or notice of candidature and a nomination fee to be submitted electronically.

This Determination also addresses the means by which a nomination form or notice of candidature may be submitted and a nomination fee may be paid in person with the Election Manager by a person on behalf of a prospective candidate.

Audience

The primary audience for this determination includes the following stakeholders:

- Prospective candidates
- Election Managers

Determination

This Determination is made under Regulation 51(3) of the *City of Melbourne (Electoral) Regulations 2012* and Regulation 90(3) of the *Local Government (Electoral) Regulations 2020*.

This Determination relates to restrictions and prohibitions by the operation of a Direction of the Chief Health Officer under the *Public Health and Wellbeing Act 2008* ("Public Health Direction").

Restriction or prohibition due to a Public Health Direction

In any circumstance in which the operation of a Public Health Direction prevents a person from attending an Election Office for the purposes of nominating themselves for election to the office of Councillor, Lord Mayor or Deputy Lord Mayor, as the case may be, the electronic submission of the nomination form or notice of candidature and the electronic payment of the nomination fee will be acceptable to the Victorian Electoral Commission.

For the purpose of this Determination, a person who is prevented from attending an Election Office as a result of a Public Health Direction may include a person who:

- has been diagnosed with COVID-19, if the diagnosis is current, or
- has been identified as a suspected case of COVID-19, if the suspected case is current, or
- has been identified as a close contact of another person currently diagnosed with or currently a suspected case of COVID-19, or
- has recently undertaken a COVID-19 test and is currently waiting for the result of that test, or
- is subject to specific detention directions or quarantine requirements made under the *Public Health and Wellbeing Act 2008* (e.g. returned travellers in isolation).

The electronic submission of a nomination form or notice of candidature and the electronic payment of a nomination fee may also be available, on application, to a person who is immunocompromised, immunosuppressed or experiencing any symptoms indicating that they could be unwell (such as those consistent with COVID-19).

The above circumstances are **indicative only and not exhaustive**. The circumstances may be varied by a Public Health Direction published by the Department of Health and Human Services on behalf of the Chief Health Officer (or delegate). For more information, see the relevant list of current Public Health directions at <https://www.dhhs.vic.gov.au/victorias-restriction-levels-covid-19>.

Please note that a Stay at Home Direction of the Chief Health Officer under the *Public Health and Wellbeing Act 2008* (“Stay at Home Direction”) does not prevent, by itself, a person from leaving their home for permitted reasons, including for reasons prescribed or required by law. A Stay at Home Direction does not, therefore, prevent a person from attending an Election Office in order to nominate for an election in person with an Election Manager.

Nomination form or notice of candidature (as applicable)

A person who is prevented from attending an Election Office for the purpose of nominating for election may lodge a nomination form or notice of candidature (as applicable) by email. The declaration on the nomination form or notice of candidature must be signed by the prospective candidate prior to electronic submission and the nomination form or notice of candidature must be submitted to the relevant Election Manager with valid evidence of the person’s identity.

For the purpose of this Determination, evidence of the person’s identity includes identification that clearly shows the person’s full name, current address, signature and a photograph of the candidate, such as a driver licence. This could take the form of more than one document.

The Victorian Electoral Commission will also accept a nomination form or notice of candidature to be lodged by a representative on behalf of a person who would otherwise be eligible to access this Determination. In such circumstances, and in addition to the above, the representative must also provide written authorisation from the person in order to lodge the nomination form or notice of candidature on behalf of the prospective candidate.

Nomination fee

A person who is prevented from attending an Election Office for the purpose of nominating for election may pay the nomination fee by electronic funds transfer to the account specified by the

Victorian Electoral Commission. Payment of the nomination fee must be made at the time directed by the Election Manager during the nomination appointment. Evidence of the payment must be forwarded to the Election Manager immediately after making the electronic funds transfer, but no later than 30 minutes after the person has completed their nomination appointment.

A nomination fee paid by electronic funds transfer will only be 'paid' upon the Election Manager's receipt of this evidence and a receipt for the nomination fee will be issued.

For the purpose of this Determination, evidence of the electronic funds transfer is the confirmation or transaction receipt generated by the person's authorised deposit-taking institution (e.g. bank) that clearly shows the institution's receipt or transaction number, the amount transferred, the date and/or time of the payment, the Victorian Electoral Commission's relevant BSB and account number as the recipient, and the unique payment reference issued by the Election Manager.

The Victorian Electoral Commission will also accept a nomination fee to be lodged by cash or by cheque drawn on an account of an authorised deposit-taking institution (e.g. a bank cheque) on behalf of a person who would otherwise be eligible to access this Determination. In such circumstances, the representative must also provide written authorisation from the person in order to pay the nomination fee on behalf of the prospective candidate.

Procedures

All prospective candidates for the 2020 local government elections are requested to lodge their nomination form or notice of candidature by appointment with the relevant Election Manager. This includes prospective candidates who are eligible to access this Determination.

In accordance with Regulation 51(1) of the *City of Melbourne (Electoral) Regulations 2012* and Regulation 90(1) of the *Local Government (Electoral) Regulations 2020*, it is unreasonable to require a prospective candidate to sign the declaration on the nomination form or notice of candidature in the presence of the Election Manager or pay the nomination fee by cash or by cheque drawn on the account of an authorised deposit-taking institution (e.g. a bank cheque) if the prospective candidate is prevented from doing so by a Public Health Direction.

For relief under this Determination, prospective candidates must make an application to the Election Manager at the time of making their nomination appointment. The application includes a verbal declaration confirming the prospective candidate's eligibility for relief under this Determination.¹

Once satisfied, the Election Manager will arrange for the prospective candidate's nomination appointment to be completed by telephone. The Election Manager will also provide an email address for the prospective candidate to send, in advance of the nomination appointment, the following:

- the nomination form or notice of candidature, including the signed declaration, and
- a copy of the person's valid evidence of identity, and
- if applicable, written authorisation from the prospective candidate for a representative to lodge the nomination form or notice of candidature and/or pay the nomination fee on behalf of the prospective candidate.

If an electronic funds transfer is required to pay the nomination fee, the Election Manager will provide the details for making the electronic funds transfer once the review of the nomination form or notice of candidature has been completed. This includes the Victorian Electoral Commission's relevant BSB and account number and a unique payment reference.

¹ It is an indictable offence to provide false information under section 293 of the *Local Government Act 2020*. Penalty: 600 penalty units or imprisonment for five (5) years.

It is essential that the prospective candidate is ready to complete the electronic funds transfer immediately after being instructed to do so by the Election Manager. The prospective candidate will need to forward evidence of the electronic funds transfer to the Election Manager as soon as possible, but not later than 30 minutes after the completion of the nomination appointment.

The ballot draw for an election will not be conducted until all nomination fees are received. A nomination fee paid by electronic funds transfer that is not able to be completed will result in the nomination being rejected and/or a payment default. Payment defaults will be immediately referred for overdue debt recovery.

A prospective candidate who has not properly lodged a nomination form or notice of candidature, including completion of the nomination declaration will not be listed as a candidate in the election.

The Victorian Electoral Commission is not responsible for ensuring prospective candidates meet the requirements of this Determination.

Commencement and Review

This Determination commences on 14 September 2020.

This Determination will operate in respect of any local government election or by-election occurring during the *prescribed period* as defined by Regulation 50 of the *City of Melbourne (Electoral) Regulations 2012* and Regulation 89 of the *Local Government (Electoral) Regulations 2020*.

The *prescribed period* ends on 26 April 2021.

Warwick Gately AM
Electoral Commissioner

9 September 2020

This Determination is made by delegation of the Victorian Electoral Commission pursuant to section 16(1)(b) of the *Electoral Act 2002* under section 9(3) of the *Electoral Act 2002*

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