



DETERMINATION UNDER THE *ELECTORAL ACT 2002*

DETERMINATION No 5 of 2018

INSTRUCTIONS IN RELATION TO SECRECY DURING THE PRELIMINARY PROCESSING OF POSTAL AND EARLY VOTES

I, Warwick Gately, Electoral Commissioner, by delegation of the Commission pursuant to s 16(1)(b) of the *Electoral Act 2002*, make the following determination under section 9(3) of the *Electoral Act 2002*.

1. Application

This determination will apply in relation to the preliminary processing of early votes and postal votes received under section 106 of the *Electoral Act 2002* (EA). Specifically, the instructions attached will apply during the authorised period and within a restricted area in accordance with section 110J(2) of the *Electoral Act 2002* which states that:

The processing of ballot-papers must be conducted—

- a) during the authorised period; and
- b) within a restricted area; and
- c) in accordance with the regulations; and
- d) in accordance with any instructions in relation to secrecy determined by the Commission.

2. Commencement

This determination commences on 30 October 2018.

3. Authority

This determination is made under sections 110J(2) of the EA.

4. Repeal

Nil

5. Definitions

- Authorised Period:** In the case of ballot-papers deposited at an early voting centre, the period of 2 hours immediately before the close of voting, i.e. 4.00 pm on election day. In the case of ballot-papers received by post, the period of 10 hours immediately before the close of voting, i.e. 8.00 am on election day.
- Restricted Area:** An area specified that precludes any person outside that area from seeing or hearing any aspect of the ballot paper processing and that is under the control of an election manager or election official who can permit a person to enter or leave that area. An election manager or election official cannot conduct any processing of ballot-papers unless



written notice (email or letter) has been provided to each registered political party and each candidate whose name is printed on the ballot paper specifying the authorised period and the location of the restricted area.

Preliminary Processing: Includes one or more of the following activities:

- Opening envelopes and extracting ballot-papers
- Separating district from region ballot-papers
- Separating missorted ballot papers for other districts/regions from ballot boxes containing ballot papers for the district/region in which the voting centre is located.
- Flattening and batching ballot-papers
- Running ballot-papers through counting machines to determine batch sizes
- Reconciling ballot paper numbers with election official records.

Preliminary processing does not include any sorting of ballot-papers according to the preferences marked on them.

6. Purpose

This determination provides instructions relating to secrecy that must be applied during the preliminary processing of early and postal votes. The instructions are designed to allow the administration and integrity requirements associated with in person early votes and postal votes to be met, in strict secrecy, in advance of the close of voting.

The preliminary processing of these classes of votes contributes to the timely counting and reporting of election results.

The process considers the important role played by scrutineers in providing independent assurance to the electorate as to the integrity of preliminary processes while maintaining the secrecy of preference allocations on ballot-papers in advance of the close of voting.


W.M. GATELY AM
Electoral Commissioner



Secrecy Instructions to be applied during the preliminary processing of early and postal votes.

Section 110J of the *Electoral Act 2002 (EA)* allows for the preliminary processing of early votes deposited in ballot-boxes kept at an early voting centre under s. 99(3) and ballot-papers received by post under s. 106. The secrecy instructions to be applied during preliminary processing are as follows:

- The Commission is to identify and make publicly known the location of restricted areas and times when preliminary processing of votes will take place. The restricted areas identified must preclude (or be adapted to preclude) any person outside that area from seeing or hearing any aspect of the preliminary processing.
- The restricted areas apply only for the authorised period. That is from 4.00 pm to 6.00 pm on election day in relation to early vote processing and from 8.00 am to 6.00 pm on election day for postal vote processing.
- The Commission is to appoint an election manager or election official in charge of each restricted area with the authority to permit a person to enter or leave that area. Section 174 of the EA provides powers for the election manager or election official in charge of early processing activities in a restricted area.
- The appointed election manager or election official cannot conduct any processing of ballot-papers unless written notice has been provided to each registered political party and each candidate whose name is printed on the ballot-papers specifying the authorised period and the location of the restricted area.
- Persons entering the restricted area (election staff and scrutineers) will be required to surrender all devices that could be used to convey or transmit any information to a person or device located outside the restricted area. This includes: mobile phones; smart phones and watches; tablets; etc. Pens and paper will also be prohibited. These items will be stored securely until the staff member or scrutineer leaves the restricted area.
- Scrutineers may be appointed in accordance with section 76 of the EA and are required to present a completed scrutineer appointment form, signed by the candidate they are representing when entering the restricted area.
- Scrutineers and election staff will be required to sign a declaration, witnessed by an election official, declaring that: they will not disclose or otherwise use information obtained during the preliminary processing of ballot-papers for any purpose other than the conducting of the processing; and that they are aware that it is an offence to do so.
- Persons entering the restricted area will be unable to leave that area until 6.00 pm on election day without authorisation. If authorisation is provided, they will not be able to return until after 6.00 pm.
- Election officials will be required to carry out preliminary processing tasks, as far as possible, so that ballot papers remain face down.

The Commission may apply additional secrecy measures at its discretion.

