



COUNTBACK PROCEDURE

**Procedure to fill an extraordinary vacancy
in a multi-councillor electorate**

The countback counting system

The *Local Government Act 1989* (the Act) requires a countback to be used as the first method of filling an extraordinary vacancy that occurs in multi-councillor municipal districts, including wards with more than one councillor and unsubdivided Councils. Countbacks are designed to fill the vacancy in proportion to the amount of support each candidate has in the electorate that elected the vacating councillor. If there is no eligible candidate to fill the vacancy, a by-election is held.

The returning officer may count the votes at a countback manually or by the use of electronic counting equipment and systems. A manual countback can be time consuming as it requires the identification and distribution of the ballot papers received by the vacating councillor.

Returning officer

An extraordinary vacancy to be filled by a countback must be conducted by the returning officer who conducted the last general election of the Council. If that is not possible, by the deputy returning officer, or if that is not possible, by a returning officer appointed in accordance with the Act (section 37A(4) of the Act).

Eligible candidate

An eligible candidate means a person who –

- was a candidate at the relevant election;
- did not withdraw or retire from, and was not elected at, that election; and
- is still eligible to be elected as a Councillor.

Qualification to be a councillor

Section 28 of the Act states that:

- (1) A person is qualified to be a candidate for the office of Councillor if he or she has an entitlement referred to in section 11 [of the Act].
- (1A) A person is qualified to become and continue to be a Councillor at a particular time if, were that particular time the entitlement date and a voters' roll prepared, subsection (1) would apply to that person.

Disqualifications

Sections 28A and 29 of the Act provide that a person is not capable of becoming or continuing to be a councillor if:

- he or she is a member of an Australian Parliament;
- he or she is a councillor of another council, including interstate councils;
- he or she is employed as a Ministerial officer, Parliamentary adviser or an electorate officer by a member of an Australian Parliament, unless he or she has taken leave from their employment and does not perform any of their duties during the election period and, if declared elected, resigns prior to taking the oath of office as a councillor;
- he or she is an undischarged bankrupt;
- his or her property is subject to control under the law relating to bankruptcy;
- he or she is of unsound mind;

- he or she is a member of council staff of the council for which he or she intends to be a councillor, unless he or she has taken leave to stand as a candidate and, if elected, resigns immediately upon the declaration of results;
- he or she has not taken the oath of office of councillor within three months after the day on which he or she was declared elected;
- 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.

A person may also be disqualified if they have been convicted of an offence listed in section 29(2) of the Act or found guilty of certain offences or misconduct by a Court or Tribunal (see section 29(1)(fa) of the Act). In addition, a person who 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 five years or more under any State, Territory or Commonwealth law, is not capable of becoming a councillor for a period of seven years after the conviction.

Essentials of the countback

- Countback fills one vacancy at a time.
- Candidates who participated in the general election who were not elected and are still eligible to be elected may be elected at countback.
- Countback is a counting system not a voting system. There is no special ballot paper and electors do not cast a vote.
- The only ballot papers under scrutiny in a countback are those which elected the candidate whose retirement resulted in the extraordinary vacancy. This means that all candidates participating at countback have zero (0) votes at the beginning of scrutiny. Any votes they received in the original election are not counted.
- A candidate must receive more than half the value of all ballot papers of the vacating councillor to fill the vacancy.

Procedure if there are no eligible candidates

If there are no eligible candidates, the countback fails and a by-election is held to fill the extraordinary vacancy.

Procedure if there is only one eligible candidate

If there is only one eligible candidate, the returning officer must write to the candidate and invite them to complete and return a written declaration of their eligibility within 14 days of the date of the written invitation.

If the candidate complies, the returning officer must declare the candidate elected.

Exclusion of candidate

The returning officer must exclude from participation in a countback any candidate who the returning officer knows has died or has otherwise ceased to be eligible to be elected. The exclusion may be made either before publication of the public notice or after publication of the public notice until the commencement of the countback procedure.

Procedure if there is more than one eligible candidate

Notification of extraordinary vacancy

Within 14 days of an extraordinary vacancy occurring, the returning officer must publish a public notice and give written notice to each eligible candidate at their last known address specifying:

- the date, time and place for the conduct of the countback;
- that an eligible candidate is entitled to appoint scrutineers; and,
- the contact details of the returning officer.

The date for the conduct of the countback must be a date which is at least 14 days after the date of the public notice which, in the opinion of the returning officer, is the earliest practicable date to conduct the countback.

Conduct countback

There are several stages in the counting process:

1. The ballot papers that elected the vacating councillor and the value of those ballot papers are determined. The value of each ballot paper is generally the value at which they were originally received by the vacating candidate.
2. All these ballot papers are then transferred to the candidates participating in the countback according to the next preference (the next higher number) marked by voters on the ballot papers at their respective transfer value beginning with the highest transfer value and ending with the ballot papers with the lowest value.
3. If a candidate achieves an absolute majority, that candidate is elected. The absolute majority is calculated as one more than half the total value of votes in the count, disregarding any remainder.
4. If no candidate has an absolute majority, the candidate with the lowest value is excluded.
5. All of that candidate's ballot papers are then transferred to the remaining candidates according to the next preference marked by voters on the ballot papers.
6. The absolute majority must be recalculated after each transfer is completed.
7. If still no candidate has absolute majority, then the candidate who now has the lowest value is excluded and the ballot papers transferred to the remaining candidates in accordance with steps 5 and 6.
8. This process continues until one candidate achieves an absolute majority.

Notification of candidate who would be declared elected

The returning officer must make reasonable efforts to notify the candidate who would be declared elected as a result of the countback and invite the candidate to complete a written declaration within 48 hours that the candidate is still eligible to become a councillor.

If the candidate who would be declared elected does not complete the written declaration within 48 hours, a further countback is to be conducted as soon as practicable. The candidate who failed to complete the written declaration is not included in the subsequent countback and the preferences for that candidate are distributed to the remaining candidate with the next highest preference.

Declaration of the result

If a successful candidate at a countback completes the written declaration within the specified timeframe, the returning officer must publicly declare the candidate to be elected.

The returning officer must also give public notice of the name of the person elected and advise the Minister for Local Government of the result of the countback.

Procedure if a countback fails

If a countback fails or the returning officer is otherwise unable to fill the extraordinary vacancy by a countback, the returning officer must notify the Chief Executive Officer of the Council and a by-election must be held to fill the extraordinary vacancy.