

Constitution (Proportional Representation) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 4 May 1988

(Brought in by Mr Cain and Mr Fordham)

A BILL

to make provision with respect to the method of election of members of the Legislative Council, to amend the *Constitution Act 1975*, *The Constitution Act Amendment Act 1958* and the *Electoral Commission Act 1982* and for other purposes.

Constitution (Proportional Representation) Act 1988

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purpose.

- 5 1. The purpose of this Act is to make provision with respect to the method of election of members of the Legislative Council.

Commencement.

- 10 2. (1) Sections 1, 2, 3 and 24 (1) come into operation on the day on which this Act receives the Royal Assent.
- (2) Sections 5, 6, 7, 25 and 26 and Part 3 come into operation on the day of the dissolution or other lawful determination of the Legislative Assembly next occurring after the day on which this Act receives the Royal Assent.
- (3) Section 4 comes into operation on the coming into existence of the Assembly first elected after this Act receives the Royal Assent.

(4) Section 24 (2) comes into operation on the coming into existence of the Council first elected after this Act receives the Royal Assent.

(5) Section 8 comes into operation on the day of the dissolution or other lawful determination of the Assembly secondly occurring after the day on which this Act receives the Royal Assent.

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PART 2—AMENDMENT OF THE *CONSTITUTION ACT 1975*

Principal Act.

3. In this Part, the *Constitution Act 1975* is called the Principal Act.

No. 8750.
Reprinted to
No. 10146 and
amended by
Nos. 10244,
1/1986,
16/1986,
61/1986,
110/1986,
117/1986,
41/1987,
46/1987
and 48/1987.

Council term to be concurrent with Assembly term.

4. The Principal Act is amended as follows: 10
- (a) In section 5, in the definition of “General election” after “members of the” insert “Council and”;
- (b) In section 5, the definition of “Periodical election” is repealed;
- (c) In section 8 (2) for paragraphs (a) and (b) substitute— 15
“(a) prorogue the Assembly; or
(b) dissolve the Assembly.”;
- (d) In section 8 (3), for the words and expressions preceding paragraph (a) substitute— 20
“(3) On and from the coming into existence of the
Assembly first elected after the commencement of section 4
of the *Constitution (Proportional Representation) Act 1988*,
the Governor may not dissolve the Assembly unless—”;
- (e) In section 24 (5)— 25
(i) for “either House” substitute “the Assembly”; and
(ii) for “that House” (where first occurring) substitute “a
House”;
- (f) In section 24 (6)— 30
(i) for “either House” substitute “the Assembly”; and
(ii) for “that House” (where first occurring) substitute “a
House”.

Legislative Council.

5. (1) The Principal Act is amended as follows:

(a) In section 26, for “44” substitute “45”;

(b) In section 27 (1)—

(i) for “22” substitute “5”; and

(ii) for “two” substitute “9”;

(c) In section 27 (1A), for “four” substitute “17”.

(2) Despite the amendment of the Principal Act made by sub-section (1) (c), for the purposes of the election of the Council first held after this Act receives the Royal Assent, two provinces shall consist of 17 complete and contiguous districts and three provinces shall consist of 18 complete and contiguous districts.

New section 28 substituted.

6. For section 28 of the Principal Act substitute—

15 Casual vacancies.

“28. (1) If a person ceases to be a member of the Council otherwise than by reason of the dissolution of the Assembly, the vacancy shall be filled as follows:

(a) If the person who ceases to be a member was elected as a member of a registered political party, the vacancy shall be filled by a person who is eligible to be a member of the Council and who is nominated by that party;

(b) If the person who ceases to be a member was not so elected the Electoral Commissioner shall conduct a recount of the ballot-papers in that election in accordance with section 208H of *The Constitution Act Amendment Act 1958* as if the names of candidates appearing on the ballot-papers did not include the name of that person and the vacancy shall be filled by the person who would have been elected on that basis if he or she is willing and eligible to be a member;

(c) If, on a recount under paragraph (b), the vacancy is not filled, a further recount, or further recounts, shall be conducted in accordance with that paragraph as if the names of candidates did not include—

(i) the name of the person who ceased to be a member; or

(ii) a person by whom the vacancy would have been filled under that paragraph if the person had been willing and eligible to fill the vacancy—

until the vacancy is filled in accordance with that paragraph, or cannot be so filled;

(d) If the vacancy is not filled under paragraph (a), (b) or (c), an election shall be held to fill the vacancy.

(2) For the purposes of sub-section (1), a statement in writing signed by the registered officer of a registered political party stating that a person has been nominated by that party shall be conclusive evidence that the person has been so nominated.”

New Subdivision (1A) inserted.

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7. After section 30 of the Principal Act insert—

“Subdivision (1A)—Duration of the Council”

Duration of Council.

“30A. The Council shall exist and continue after a general election until the dissolution or other lawful determination of the Assembly.”

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Assembly.

8. In section 35 (1) of the Principal Act, for “88” substitute “85”.

**PART 3—AMENDMENT OF *THE CONSTITUTION ACT*
*AMENDMENT ACT 1958***

Principal Act.

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9. In this Part, *The Constitution Act Amendment Act 1958* is called the Principal Act.

No. 8224.
Reprinted to
No. 10146 and
amended by
Nos. 10244,
16/1986,
59/1986,
110/1986
and 46/1987.

Amendment of sections 3 and 37.

10. The Principal Act is amended as follows:

(a) In section 3 (1)—

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(i) in the definition of “General election” after “members of the” insert “Council and”;

(ii) omit the definition of “Periodical election”; and

(iii) omit the definition of “Simultaneous election”;

(b) In section 37 (1), in the definition of “Election” for “or” substitute “and”.

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Amendment of sections 149 and 153.

11. The Principal Act is amended as follows:

(a) For sub-sections (1) and (2) of section 149 substitute—

“(1) Writs for a general election of members of the Council and the Assembly shall be issued by the Governor within seven days after the expiration or dissolution of the Assembly.”;

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(b) In section 153 for sub-section (2) substitute—

“(2) In the case of a general election, the Governor shall appoint the same day of nomination and the same day of polling for the election of members of either House.”;

5 (c) Section 155 is repealed.

Amendment of section 159.

12. Section 159 of the Principal Act is amended as follows:

(a) In sub-section (1)—

10 (i) in paragraph (a), after “candidate” (wherever occurring) insert “or each candidate”; and

(ii) in paragraph (b), after “\$250” insert “in respect of each candidate”;

(b) For sub-section (1c) substitute—

15 “(1c) A nomination shall include a statement of the form in which the candidate’s name or candidates’ names, as the case may be, is or are to be printed on the ballot-papers for the election.

(1D) If—

20 (a) persons to be nominated as candidates in a Council election wish to have their names grouped in the ballot-papers; and

(b) those persons have been endorsed for that election by different registered political parties—

25 the nominations of the candidates may be combined in such manner as the Electoral Commissioner approves.”.

New section 159AA inserted.

13. (1) After section 159 of the Principal Act insert—

Grouping of candidates.

30 “159AA. (1) Two or more candidates for election to the Council may make a joint request—

(a) that their names be grouped in the ballot-papers; or

(b) that their names be grouped in the ballot-papers in a specified order.

35 (2) A request under sub-section (1) shall be in writing, signed by the candidates, and shall be given to the returning officer with the nomination or nominations of the candidates or lodged with the Electoral Commissioner before the close of nominations.

(3) A candidate's name may not be included in more than one group.”.

(2) In section 159B, for sub-sections (2) and (3) substitute—

‘(2) Sub-section (1) does not apply in relation to a candidate in a Council election unless—

(a) the request is accompanied by a request under section 159AA by a group of candidates that includes the first-mentioned candidate; or

(b) the request is accompanied by a notice by the candidate under section 165AC (5).

(3) A request under sub-section (1) must be in writing, signed by the person making the request, and must—

(a) in the case of a Council election, be given with the nomination of the candidate or to the Electoral Commissioner before the close of nominations; and

(b) in the case of an Assembly election, be given with the nomination of the candidate or to the Electoral Commissioner before the close of nominations.

(4) Where—

(a) a request has been made under sub-section (1) in respect of candidates in a Council election; and

(b) the candidates propose to have a group voting ticket registered for the purposes of that election —

the request may include a further request that the name of the registered political party that endorsed the candidates, or a composite name formed from the registered names of the registered political parties that endorsed the candidates, be printed on the ballot-papers adjacent to the square printed in relation to the group in accordance with section 165AB (5).

(5) In this section, “**registered abbreviation or initials**”, in relation to the name of a registered political party, has the same meaning as in section 165B.’.

Council ballot-papers.

14. The Principal Act is amended as follows:

(a) In section 165 (2) (a) after “ballot-papers” insert “to be used in an Assembly election”;

(b) After section 165 (2) (a) insert—

“(aa) section 165AA applies in the case of ballot-papers to be used in a Council election; and”.

Amendment of section 165A.

15. Section 165A of the Principal Act is amended as follows:

(a) After "165A." insert "(1)";

5 (b) In paragraph (a) (iii) after "candidates" insert "or groups, as the case may be,";

(c) In paragraph (a) (vi)—

(i) after "opposite to a name" insert "or group, as the case may be,"; and

10 (ii) after "opposite to the first name" insert "or group, as the case may be,";

(d) In paragraph (a) (xi) after "name" insert "or group, as the case may be,";

(e) In paragraph (b), after "order of the names" insert "or groups, as the case may be,";

15 (f) At the end of the section insert—

20 "“(2) Where under sub-section (1) a person is required to set out a group in a list, it is sufficient compliance with that requirement if such description of the group, by reference to the name of the first candidate in it or to the party or parties to which the candidates in the group belong or otherwise, as the person considers to be appropriate, is so set out.””.

New sections 165AA, 165AB and 165AC inserted.

16. After section 165A of the Principal Act insert—

25 Printing of Council ballot-papers.

"165AA. (1) In printing the ballot-papers to be used in a Council election—

30 (a) the names of candidates by whom requests have been made under section 159AA shall be printed in groups on the ballot-papers in accordance with the requests and before the names of candidates who have not made such requests; and

(b) the order of the several groups in the ballot-papers shall be determined by the returning officer in accordance with section 165A; and

35 (c) the order of the names of the candidates whose names are not included in any group shall be determined by the returning officer in accordance with section 165A.

40 (2) Where a candidate in a Council election has given notice of intention to lodge a statement under section 165AC, sub-section (1) applies, and the returning officer shall make the determinations required by that sub-section, as if the candidate were a group of candidates who had made a request under section 159AA."

Group voting tickets.

“165AB. (1) Where the names of candidates nominated in a Council election are included in a group in accordance with a request under section 159AA, the candidates may, after the determinations in relation to the election required by section 165AA have been made and before the expiration of 24 hours after the closing of nominations for the election, lodge with the returning officer a written statement that they wish voters in the election to indicate their preferences in relation to all the candidates in the election in an order specified in the statement, being an order that gives preferences to the candidates lodging the statement before any other candidate. 5 10

(2) Where candidates nominated for election to the Council may lodge a statement referred to in sub-section (1), they may, in lieu of lodging that statement, lodge a written statement stating that they wish voters in the election to indicate their preferences in relation to all the candidates in the election in either of two orders, or any of three orders, specified in the statement, being orders that— 15

- (a) give preferences to the candidates lodging the statement before any other candidate; and
- (b) give the preferences to the candidates lodging the statement in the same order. 20

(3) Without limiting the generality of sub-section (1) or (2), a statement for the purposes of either of those sub-sections may specify an order of preferences by setting out the names of all the candidates in the election in the groups, and in the order, in which they would be set out in a ballot-paper with squares opposite to each name and with a number in each square showing that order of preferences. 25

(4) If a group of candidates in a Council election lodges a statement in accordance with sub-section (1) or (2) in relation to the election, that group of candidates shall be taken to have a group voting ticket, or two or three group voting tickets, as the case requires, registered for the purposes of the election, being the order of preferences, or the orders of preferences, given in that statement, as the case may be. 30

(5) If a group of candidates in a Council election has a group voting ticket, or two or three group voting tickets, registered for the purposes of that election, a square shall be printed on the ballot-papers for use in the election above the names of those candidates. 35

- (6) A statement under sub-section (1) or (2) may be signed—
 - (a) if all the members of the group have been endorsed by the same registered political party, by the registered officer of the party; 40
 - (b) if the members of the group have been endorsed by different registered political parties, by the registered officers of all those parties;

(c) in a case to which neither paragraph (a) nor paragraph (b) applies, by the candidate whose name first appears in the group on the ballot-paper; or

5 (d) in any case, by a person authorised by all the members of the group, by written instrument given to the returning officer with the nomination or nominations of members of the group, to sign such a statement on behalf of the group.

10 (7) A group that lodges a statement under sub-section (2) shall indicate in the statement the order in which the voting tickets of the group are to be displayed in the poster prepared for the purposes of section 165D (1)."

Individual voting tickets.

"165AC. (1) Where—

15 (a) a candidate in a Council election is—

(i) a member of the Council; or

(ii) in the case of an election following a dissolution of the Assembly, a person who was, immediately before the dissolution, a member of the Council; and

20 (b) the candidate has not joined in a request under section 159AA in relation to the election—

the candidate may lodge with the returning officer a written statement that the candidate wishes voters in the election to indicate their preferences in relation to all the candidates in the election in an order specified in the statement, being an order that gives preference to the candidate lodging the statement before any other candidate.

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(2) A candidate who is entitled to lodge a statement under sub-section (1) may, instead of lodging that statement, lodge a written statement that the candidate wishes voters in the election to indicate their preferences in relation to all the candidates in the election in either of two orders, or any of three orders, specified in the statement, being orders that give preference to the candidate lodging the statement before any other candidate.

30

(3) A statement under sub-section (1) or (2) shall—

35 (a) be signed by the candidate; and

(b) be lodged with the returning officer.

(4) A statement under sub-section (1) or (2) shall be lodged after the determinations in relation to the election required by section 165AA have been made and before the expiration of 24 hours after the closing of nominations for the election.

40 (5) A candidate is not entitled to lodge a statement under sub-section (1) or (2) unless there was lodged with the nomination of the candidate written notice by the candidate that the candidate proposed to lodge a statement under this section.

(6) Where a candidate in a Council election has lodged a statement under sub-section (1) or (2), a square shall be printed on the ballot-papers for use in the election above the name of the candidate.

(7) Where—

(a) a candidate has lodged a statement under sub-section (1) or (2); and 5

(b) section 165C (1) requires that the name of a registered political party be printed adjacent to the name of the candidate on the ballot-papers—

the name of that party shall also be printed on the ballot-papers adjacent to the square printed on the ballot-papers in relation to that candidate in accordance with sub-section (6). 10

(8) Without limiting the generality of sub-section (1) or (2), a statement for the purposes of either of those sub-sections may specify an order of preferences by setting out the names of all the candidates in the election in the groups, and in the order, in which they would be set out in a ballot-paper with squares opposite to each name and with a number in each square showing that order of preferences. 15

(9) Where a candidate has lodged a statement under sub-section (1) or (2), section 165D applies as if the candidate were a group that had a group voting ticket, or two or three group voting tickets, as the case requires, registered for the purposes of the election, being the order of preferences, or the orders of preferences, given in that statement, as the case may be, and as if the statement had been lodged under section 165AB. 20
25

(10) A candidate who lodges a statement under sub-section (2) shall indicate in the statement the order in which the voting tickets of the candidate are to be displayed in the poster prepared for the purposes of section 165D (1).”

Amendment of sections 165B and 165C. 30

17. (1) After section 165B (4) of the Principal Act insert—

“(5) The names of registered political parties, or abbreviations of such names, printed adjacent to squares printed in accordance with section 165AB (5), on ballot-papers for use in an election shall be printed in capital letters in type that is uniform in size and style for all names and abbreviations so printed.” 35

(2) In section 165C of the Principal Act—

(a) after “165C.” insert “(1)”; and

(b) at the end of the section insert—

“(2) Where—

(a) two or more persons have been endorsed as candidates in a Council election by a registered political party; and 40

(b) a request has been made in respect of the candidates under section 159AA—

the following requirements shall be observed in the printing of the ballot-papers for use in the election—

5 (c) the registered name of the party by which each candidate was endorsed must be printed adjacent to the name of that candidate on the ballot-papers;

10 (d) where all the candidates were endorsed by the same party and a square is printed, in accordance with section 165AB (5), on the ballot-papers in relation to the candidates, the registered name of that party must be printed on the ballot-papers adjacent to that square;

15 (e) where the request under section 159B included a request that a composite name be printed adjacent to the square printed, in accordance with section 165AB (5), on the ballot-papers in relation to the candidates, that composite name shall be printed on the ballot-papers adjacent to that square.”.

20 **New section 165D inserted.**

18. Before section 166 of the Principal Act insert—

Group voting tickets to be displayed.

25 “165D. (1) Where a group voting ticket is, or group voting tickets are, registered for the purposes of a Council election, the returning officer shall cause a poster showing the ticket, or all the tickets, to be prominently displayed at each polling booth.

(2) A poster for the purpose of sub-section (1) shall be so prepared that—

30 (a) voting tickets are displayed in vertical columns; and

(b) the tickets are displayed in the columns in the same order from the top of each column as the order on the ballot-papers of the groups by which the tickets were lodged; and

35 (c) tickets lodged by the same group are displayed in the same column.

(3) Where a group has more than one group voting ticket, the tickets relating to that group shall be displayed in the order indicated in the statement lodged by the group under section 165AB (2).”.

Amendment of section 187A.

40 **19. In section 187A of the Principal Act, for “simultaneous” substitute “general”.**

New section 191B inserted.**20. After section 191A of the Principal Act insert—****Marking of votes in a Council election.**

“191B. (1) Subject to sub-section (2), in a Council election a voter shall mark his or her vote on the ballot-paper as follows:

- (a) Where the ballot-paper is a ballot-paper in accordance with the Tenth Schedule or is an absent voter ballot-paper—he or she shall place the figure 1 in the square opposite the name of the candidate for whom he or she votes as his or her first preference, and shall place the figures 2, 3, 4 (and so on, as the case requires) in the squares opposite the names of all the remaining candidates so as to indicate the order of his or her preference for them; 5
- (b) Where he or she votes by post under the provisions of Division 15—in the manner prescribed by the regulations relating to voting by post. 10 15

(2) A voter may mark his or her vote on the ballot-paper by placing the figure 1 in a square (if any) printed in accordance with section 165AB (5) or 165AC (6).

(3) For the purposes of this Act, where a voter has placed a tick or a cross in a square printed on a ballot-paper in accordance with section 165AB (5) or 165AC (6), he or she is deemed to have placed the figure 1 in that square. 20

(4) Where a candidate dies between the date of nomination and polling day, and the number of candidates remaining is greater than the number of candidates to be elected, a ballot-paper shall not be informal by reason only— 25

- (a) of the inclusion on the ballot-paper of the name of the deceased candidate; or
- (b) of the marking of any consecutive figure opposite that name; or 30
- (c) of the omission to place any figure opposite that name, or of any resultant failure to indicate in consecutive order the voter's preferences.”.

Voting for the Council. 35

21. (1) For the heading to Division 13 of Part V of the Principal Act, substitute—

“Division 13—Voting for the Assembly”.

- (2) The Principal Act is amended as follows:
- (a) In section 202, omit “for the Council or”; 40
- (b) In section 207, omit “province or”;

(c) In section 208, omit “province or”.

(3) Before section 209 of the Principal Act insert—

“Division 13A—Voting for the Council”

Application and operation of Division.

5 “208C. (1) This Division applies to all elections for the Council.

(2) Section 208 (1) (a), (b), (c) and (d) applies to an election for the Council.

10 (3) Section 208 (1) (ga) applies to an election for the Council as if the reference to a non-defeated candidate were a reference to a continuing candidate within the meaning of section 208H.”

How vote to be recorded.

“208D. A person to whom a ballot-paper has been delivered shall—

- 15 (a) forthwith retire alone to some unoccupied compartment of the polling booth; and
- (b) there in private and without delay mark his or her vote on the ballot-paper in the manner required by this Division; and
- (c) forthwith fold up the ballot-paper in such manner as will conceal the vote; and
- 20 (d) subject to sections 185A, 186 and 187 deposit it in the ballot-box; and
- (e) quit the polling booth.”

Formal votes according to group voting ticket.

25 ‘208E. (1) A ballot-paper shall not be informal by virtue of section 208I (1) (b) if the voter has marked his or her vote on the ballot-paper in accordance with section 191B.

(2) If a ballot-paper in a Council election—

- (a) has been marked in accordance with section 191B (2); and
- 30 (b) has been marked in accordance with section 191B (1) (a) so that, if it were not marked in accordance with section 191B (2), it would not be informal by virtue of section 208I (1) (b)—

the ballot-paper shall, for the purposes of sections 208G and 208H, be deemed not to have been marked in accordance with section 191B (2).

35 (3) For the purposes of this section and sections 208G and 208H, a voter shall not be taken to have marked his or her vote in accordance with section 191B (2) if he or she has placed a preference mark in two or more of the squares printed on the ballot-paper in accordance with section 165AB (5) or 165AC (6).

(4) In this section, "preference mark" means a tick, a cross or the figure 1.'

Certain votes with non-consecutive numbers to be formal.

"208F. (1) Where a ballot-paper in a Council election—

- (a) has the figure 1 in the square opposite to the name of a candidate and does not have that figure in the square opposite to the name of another candidate; and 5
- (b) has—
 - (i) in a case where there are more than 12 candidates in the election—in not less than 90% of the squares opposite the names of the candidates, figures in a sequence of consecutive numbers commencing with the figure 1 or figures that with changes to no more than 3 of them would be in such a sequence; or 10
 - (ii) in any other case—in all the squares opposite the names of candidates or in all those squares except one square that is left blank, numbers in a sequence of consecutive numbers commencing with the figure 1 or figures that with changes to no more than 2 of them would be in such a sequence; and 15
- (c) but for this sub-section, would be informal by virtue of paragraph (b) of section 208i (1)— 20

then—

- (d) the ballot-paper shall not be informal by virtue of that paragraph; and 25
- (e) the figure 1 shall be taken to express the voter's first preference; and
- (f) where figures in squares opposite the names of candidates are in a sequence of consecutive numbers commencing with the figure 1—the voter shall be taken to have expressed a preference by the other figure, or to have expressed preferences by the other figures, in that sequence; and 30
- (g) the voter shall not be taken to have expressed any other preference.

(2) In considering, for the purposes of sub-section (1), whether numbers are in a sequence of consecutive numbers, any number that is repeated shall be disregarded." 35

Council ballot-papers deemed to be marked according to group voting tickets.

"208G. (1) For the purposes of section 208H, where— 40

- (a) a ballot-paper in a Council election has been marked in accordance with section 191B (2) by a mark having been

placed in a square printed above the names of candidates in a group; and

(b) the candidates in that group have only one group voting ticket registered for the purposes of that election—

5 that ballot-paper shall be deemed to have been marked in accordance with that ticket.

(2) For the purposes of section 208H, where—

10 (a) a ballot-paper has, or ballot-papers have, been marked in accordance with section 191B (2) by a mark having been placed in a square printed above the names of candidates in a group; and

(b) the candidates in that group have two group voting tickets registered for the purposes of that election—

then—

15 (c) if the number of ballot-papers is an even number—half of the ballot-papers shall be taken to have been marked in accordance with one of the tickets and the other half in accordance with the other ticket; or

20 (d) if the number of ballot-papers is not an even number—

(i) one of the ballot-papers shall be deemed to have been marked in accordance with whichever of the two tickets is determined by lot by the returning officer; and

25 (ii) half the remainder (if any) of the ballot-papers shall be deemed to have been marked in accordance with one of the tickets and the other half in accordance with the other ticket.

(3) Sub-section (4) applies if, and only if, effect cannot be given to sub-section (2) for any reason.

(4) For the purposes of section 208H, where—

30 (a) a ballot-paper has been marked in accordance with section 191B (2) by a mark having been placed in a square printed above the names of candidates in a group; and

(b) the candidates in that group have two group voting tickets registered for the purposes of that election—

35 then, to the extent that the preferences shown in each ticket commencing with the first preference are the same, the voter shall be taken to have marked the ballot-papers so as to express those preferences and the voter shall be taken not to have expressed any further preferences.

40 (5) If a ballot-paper has, or ballot-papers have, been marked in accordance with section 191B (2) by a mark having been placed in a square printed above the name of a candidate who has lodged a statement under section 165AC, this section applies to that ballot-paper or those ballot-papers as if—

- (a) a reference to the candidates in a group were a reference to the candidate; and
- (b) a reference to the names of the candidates in a group were a reference to the name of the candidate; and
- (c) a reference to a group voting ticket or group voting tickets registered for the purposes of the election were a reference to the order of preferences, or the orders of preferences, given in that statement, as the case may be.” 5

Quotas etc.

‘208H. (1) If, for the purposes of this section— 10

(a) the number of ballot-papers or votes in any category is required to be ascertained; or

(b) a quota, a transfer value or the order of standing of continuing candidates in a poll is required to be determined; or 15

(c) a candidate is required to be identified—

the returning officer for the province shall ascertain the number, determine the quota, transfer value or order, or identify the candidate, as the case may be.

(2) The number of first preference votes given for each candidate and the total number of all such votes shall be ascertained and a quota shall be determined by dividing the total number of first preference votes by one more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by one, and any candidate who has received a number of first preference votes equal to or greater than the quota shall be elected. 20 25

(3) Unless all the vacancies have been filled, the number (if any) of votes in excess of the quota (in this section referred to as “surplus votes”) of each elected candidate shall be transferred to the continuing candidates as follows: 30

(a) The number of surplus votes of the elected candidate shall be divided by the number of first preference votes received by him or her and the resulting fraction shall be the transfer value;

(b) The total number of ballot-papers of the elected candidate that express the first preference vote for him or her and the next available preference for a particular continuing candidate shall be multiplied by the transfer value, the number so obtained (disregarding any fraction) shall be added to the number of first preference votes of the continuing candidate and all those ballot-papers shall be transferred to the continuing candidate— 35 40

and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer shall be elected. 45

(4) Unless all the vacancies have been filled, the surplus votes (if any) of any candidate elected under sub-section (3), or elected subsequently under this sub-section, shall be transferred to the continuing candidates in accordance with sub-section (3) (a) and (b),
5 and any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any such transfer shall be elected.

(5) Where a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer under
10 sub-section (3) or (4) of the surplus votes of a particular elected candidate, no votes of any other candidate shall be transferred to the continuing candidate.

(6) For the purposes of the application of sub-section (3) (a) and (b) in relation to a transfer under sub-section (4) or (12) of the surplus
15 votes of an elected candidate, each ballot-paper of the elected candidate that was obtained by him or her on a transfer under this section shall be dealt with as if any vote it expressed for the elected candidate were a first preference vote, as if the name of any other candidate previously
20 elected or excluded had not been on the ballot-paper and as if the numbers indicating subsequent preferences had been altered accordingly.

(7) Where, after the counting of first preference votes or the transfer of surplus votes (if any) of elected candidates, no candidate has, or
25 fewer than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who stands lowest in the poll shall be excluded or, if a bulk exclusion can be effected in accordance with sub-section (8), the candidates who may be excluded in accordance with that sub-section shall be excluded, and—

(a) the total number of ballot-papers expressing a first preference
30 vote for an excluded candidate and the next available preference for a particular continuing candidate shall be transferred, each ballot-paper at a transfer value of one vote, to the continuing candidate, and added to the number of votes of the continuing candidate; and

(b) the total number (if any) of other ballot-papers obtained by
35 an excluded candidate or candidates, as the case may be, shall be transferred beginning with the ballot-papers received by that candidate or those candidates at the highest transfer value and ending with the ballot-papers received at the
40 lowest transfer value, as follows:

(i) The total number of ballot-papers received by the
45 excluded candidate or candidates, as the case may be, at a particular transfer value and expressing the next available preference for a particular continuing candidate shall be multiplied by that transfer value;

(ii) The number so obtained (disregarding any fraction) shall be added to the number of votes of the continuing candidate;

(iii) All those ballot-papers shall be transferred to the continuing candidate.

5

(8) The procedure for a bulk exclusion, and the circumstances in which such an exclusion may be made, are as follows:

(a) A continuing candidate (in this sub-section called "Candidate A") shall be identified, if possible, who, of the continuing candidates who each have a number of notional votes equal to or greater than the vacancy shortfall, stands lower or lowest in the poll;

10

(b) A continuing candidate (in this sub-section called "Candidate B") shall be identified, if possible, who—

(i) stands lower in the poll than Candidate A, or if Candidate A cannot be identified, has a number of notional votes that is fewer than the vacancy shortfall;

15

(ii) has a number of notional votes that is fewer than the number of votes of the candidate standing immediately higher than him or her in the poll; and

20

(iii) if two or more candidates satisfy sub-paragraphs (i) and (ii)—is the candidate who of those candidates stands higher or highest in the poll;

(c) In a case where Candidate B has been identified and has a number of notional votes fewer than the leading shortfall—Candidate B and any other continuing candidates who stand lower in the poll than that candidate may be excluded in a bulk exclusion; and

25

(d) In a case where Candidate B has been identified and has a number of notional votes equal to or greater than the leading shortfall—

30

(i) a continuing candidate (in this sub-section called "Candidate C") shall be identified who—

(A) has a number of notional votes that is fewer than the leading shortfall; and

35

(B) if two or more candidates satisfy sub-sub-paragraph (A)—is the candidate who of those candidates stands higher or highest in the poll; and

(ii) Candidate C and all other continuing candidates who stand lower in the poll than that candidate may be excluded in a bulk exclusion.

40

(9) Where, apart from this sub-section, the number of continuing candidates after a bulk exclusion under sub-section (8) would be fewer than the number of remaining unfilled vacancies, sub-section (8) shall operate to exclude only the number of candidates, beginning with the

45

candidate who stands lowest in the poll, that would leave sufficient continuing candidates to fill the remaining unfilled vacancies.

5 (10) Notwithstanding any other provision of this section (other than sub-section (13)), where a candidate or candidates has or have been elected and there are surplus votes as a result of that election, paragraphs (a), (b), (c) and (d) of sub-section (8) may be applied as if references in those paragraphs to notional votes were references to adjusted notional votes.

10 (11) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer under sub-section (7) or (12) of ballot-papers of an excluded candidate or candidates, as the case may be, shall be elected, and, unless all the vacancies have been filled, the surplus votes (if any) of the candidate so elected shall be transferred in accordance with sub-section (3) (a) and (b), except that, where the candidate so elected is elected before all the ballot-papers of the excluded candidate or candidates, as the case may be, have been transferred, the surplus votes (if any) of the candidate so elected shall not be transferred until the remaining ballot-papers of the excluded candidate or candidates, as the case may be, have been transferred in accordance with sub-section (7) (a) and (b) to continuing candidates.

25 (12) Subject to sub-section (14), where, after the transfer of all the ballot-papers of an excluded candidate or candidates, as the case may be, no continuing candidate has received a number of votes greater than the quota, the continuing candidate who stands lowest in the poll shall be excluded and his or her ballot-papers transferred in accordance with sub-section (7) (a) and (b).

30 (13) Where a candidate is elected during a transfer of ballot-papers under sub-section (7) or (12), no other ballot-papers of an excluded candidate or candidates, as the case may be, shall be transferred to the candidate so elected.

35 (14) In respect of the last vacancy for which two continuing candidates remain, the continuing candidate who has the larger number of votes shall be elected notwithstanding that that number is below the quota, and if those candidates have an equal number of votes the returning officer shall have a casting vote, but he or she shall not otherwise vote at the election.

40 (15) Despite any other provision of this section, where the number of continuing candidates is equal to the number of remaining unfilled vacancies, those candidates shall be elected.

45 (16) Subject to sub-sections (17) and (18), where, after any count under this section, two or more candidates have surplus votes, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative sizes of the surpluses, the largest surplus being transferred first.

(17) Subject to sub-section (18), where, after any count under this section two or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates shall be in accordance with the relative numbers of votes of those candidates at the last count at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count being transferred first, but if there has been no such count the returning officer shall determine the order in which the surpluses shall be dealt with. 5

(18) Where, after any count under this section, a candidate obtains surplus votes, those surplus votes shall not be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count. 10

(19) Where a candidate is elected by reason that the number of first preference votes received by him or her, or the aggregate of first preference votes received by him or her and all other votes obtained by him or her on transfers under this section is equal to the quota, all the ballot-papers expressing those votes shall be set aside as finally dealt with. 15

(20) A ballot-paper shall be set aside as exhausted where on a transfer it is found that the paper expresses no preference for any continuing candidate. 20

(21) In any case to which sub-section 191B (4) applies, a vote indicated on a ballot-paper opposite the name of a deceased candidate shall be counted to the candidate next in the order of the voter's preference, and the numbers indicating subsequent preferences shall be deemed to be altered accordingly. 25

(22) For the purposes of this section—

(a) a transfer under sub-section (3), (4) or (11) of all the surplus votes of an elected candidate; or 30

(b) a transfer under sub-section (7) (a) of all the ballot-papers expressing a first preference vote for an excluded candidate; or

(c) a transfer under sub-section (7) (b) of all ballot-papers received by the excluded candidate or candidates, as the case may be, at a particular transfer value— 35

each constitutes a separate transfer.

(23) In this section—

“Adjusted notional vote”, in relation to a continuing candidate, means, in a case where a candidate or candidates has or have been elected, the sum of— 40

(a) the number of notional votes of the continuing candidate; and

(b) the number, before the transfer of any of the surplus votes, of those surplus votes. 45

“Continuing candidate” means a candidate not already elected or excluded from the count.

5 **“Leading shortfall”**, in relation to a particular stage during the scrutiny in a Council election, means the shortfall of the continuing candidate standing highest in the poll at that stage.

10 **“Notional vote”**, in relation to a continuing candidate, means the aggregate of the votes obtained by that candidate and the votes obtained by each other candidate who stands lower in the poll than him or her.

“Shortfall”, in relation to a continuing candidate at a particular stage during the scrutiny in a Council election, means the number of votes that the candidate requires at that stage in order to reach the quota referred to in sub-section (2).

15 **“Vacancy shortfall”**, in relation to a particular stage during the scrutiny in a Council election, means the aggregate of the shortfalls of that number of leading candidates equal to the number of remaining unfilled vacancies, the leading candidates being ascertained by taking the continuing candidate who stands highest in the poll, the continuing candidate who stands next highest in the poll, and so on in the order in which the continuing candidates stand in the poll.

25 (24) In this section, a reference to votes or ballot-papers, as the case may be, of or obtained or received by a candidate includes votes or ballot-papers, as the case may be, obtained or received by the candidate on any transfer under this section.

30 (25) For the purposes of this section, at any time after the counting of first preference votes the order of standing of the continuing candidates in the poll shall be determined as follows—

35 (a) subject to paragraph (b), the continuing candidates shall stand in the poll in the order of the relative number of votes of each continuing candidate, with the continuing candidate with the greatest number of votes standing highest in the poll and the continuing candidate with the fewest number of votes standing lowest in the poll;

40 (b) if two or more continuing candidates have the same number of votes, those candidates shall stand in the poll in the order of the relative number of votes of each of those candidates at the last count at which each of them had a different number of votes, with the continuing candidate with the greater or greatest number of votes at that count standing higher in the poll and the continuing candidate with the fewer or fewest number of votes at that count standing lower in the poll, but if there has been no such count the returning officer shall determine the order of standing of those candidates in the poll.’

Informal ballot-papers.

“208i. (1) A ballot-paper shall be rejected as informal at the close of the poll—

(a) if it has not been initialled by the returning officer, deputy returning officer, postal voting officer or assistant postal voting officer or, if it is not so initialled, does not bear the prescribed mark; or 5

(b) subject to sections 208E and 208F, if it has no vote indicated on it, or it does not indicate the voter’s first preference for one candidate and the order of his or her preference for all the remaining candidates; or 10

(c) if it is not marked in a manner prescribed or allowed by this Act.

(2) Except as otherwise expressly provided, a ballot-paper must not be rejected for any reason other than the reasons enumerated in this section but must be given effect according to the elector’s intention so far as it is clear.” 15

“Division 13B—Council and Assembly Elections”.

Amendment of Principal Act.

22. The Principal Act is amended as follows: 20

(a) In section 212 (3) for “for one year” substitute “until the next dissolution or other lawful determination of the Assembly”;

(b) In section 238A for “simultaneous” substitute “general”;

(c) In section 268, in the definition of “Election” for “simultaneous” substitute “general”; 25

(d) In section 306A for “simultaneous” (wherever occurring) substitute “general”;

(e) In section 311 (1A) for “simultaneous” (wherever occurring) substitute “general”; 30

(f) In the Ninth Schedule for “Electoral Province [*or* District]” substitute “Electoral District”.

New Tenth Schedule substituted.

23. For the Tenth Schedule to the Principal Act substitute—

"TENTH SCHEDULE
FORM OF BALLOT-PAPER

Section 165

D I R E C T I O N S	EITHER	Place the single figure 1 in one, and one only of these squares to indicate the group voting ticket which you wish to adopt as your vote	[] 2	OR [] 2	OR [] 2	OR [] 2	Ballot-paper STATE OF VICTORIA [Province] of [4] Election of [5] members of the Legislative Council
			[] 1 3	[] 1 3	[] 1 3	[] 1 3	[] 1 3
			[] 1 3	[] 1 3	[] 1 3	[] 1 3	[] 1 3
			[] 1 3	[] 1 3	[] 1 3	[] 1 3	[] 1 3
	OR	Place the numbers 1 to [6] in the squares immediately to the left of the names of the respective candidates so as to indicate the order of your preference for them	[] 1 3	[] 1 3	[] 1 3	[] 1 3	[] 1 3
			[] 1 3	[] 1 3	[] 1 3	[] 1 3	[] 1 3

- 1 Here insert name of a candidate
- 2 Here insert name of a registered political party or composite name of registered political parties if to be printed
- 3 Here insert name of a registered political party if to be printed
- 4 Here insert name of province
- 5 Here insert number of vacancies
- 6 Here insert number of candidates

PART 4—AMENDMENT OF OTHER ACTS

Amendment of the Electoral Commission Act 1982.

No. 9801 as amended by Nos. 9894 and 41/1987.

24. (1) The Electoral Commission Act 1982 is amended as follows:

(a) After section 9 (2) insert—

‘(3) In allocating districts to a province, the Commissioners shall ensure that two provinces comprise areas that are primarily areas outside the metropolitan area and three provinces comprise areas that are primarily within the metropolitan area. 5

(4) For the purposes of the election of the Council first held after this Act receives the Royal Assent, the Commissioners shall allocate— 10

(a) 17 districts to each of the two provinces comprising areas that are primarily areas outside the metropolitan area; and 15

(b) 18 districts to each of the provinces comprising areas that are primarily within the metropolitan area.

(5) In this section, “Metropolitan area” has the same meaning as in the Melbourne and Metropolitan Board of Works Act 1958.’; 20

(b) In section 14 omit “or a periodical election for the Legislative Council (whichever first occurs)”;

(c) In section 16A—

(i) after “seat of a member for a” insert “province or”; 25
and

(ii) after “election of a member of the” insert “Council or”;
and

(iii) after “electoral” insert “provinces and”.

(2) Section 16 of the Electoral Commission Act 1982 is repealed. 30

Amendment of the Parliamentary Committees Act 1968.

No. 7727. Reprinted to No.10169.

25. The Parliamentary Committees Act 1968 is amended as follows:

(a) In section 4G (1) for paragraphs (a) and (b) and the words “whichever of those events first happens” substitute “the dissolution or other lawful determination of the Assembly”; 35

(b) In section 36 for paragraphs (b) and (c) substitute—

“(b) the dissolution or other lawful determination of the Assembly—”;

(c) In section 48 for paragraphs (b) and (c) substitute—

“(b) the dissolution or other lawful determination of the Assembly—”. 40

Amendment of the *Parliamentary Salaries and Superannuation Act 1968*.

26. The *Parliamentary Salaries and Superannuation Act 1968* is amended as follows:

- (a) In section 7 (2) (b) for “periodical or general election (as the case may be)” substitute “general election”;
- (b) In section 7 (4) after “general election for” insert “the Council and”;
- (c) In section 10 (1), in the definition of “Election” for “or” substitute “and”.

No. 7723.
Reprinted to
No. 9753 and
amended by
Nos. 9883,
10087 and
13/1987.

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