

# Local Government (Amendment) Bill

## EXPLANATORY MEMORANDUM

### Background

The main purposes of the Bill are to amend the **Local Government Act 1989**—

- (a) to enable certain extraordinary vacancies on particular Councils to be filled by a countback of votes;
- (b) to make various other minor changes to the electoral provisions of the Act;
- (c) to ensure that local laws comply with National Competition Policy principles;
- (d) to generally improve the operation of the Act.

### Proposed Amendments

- Clause 1 sets out the purpose of the Bill.
- Clause 2 provides for the Bill to come into operation on the day on which it receives Royal Assent.
- Clause 3 amends various electoral provisions of the Act by replacing the requirement to comply with a prescribed form with the requirement to supply the details required by the regulations on the form.
- Clause 4 provides that the electoral roll must be updated for a by-election unless the by-election is to be held at the same time as a general election. Where a by-election is to be held for one or more wards only, the roll need only be updated in respect of the relevant ward or wards. The Chief Executive Officer must certify at least 3 days before nomination day for candidates that the roll has been prepared in accordance with the Act.
- Clause 5 provides that if the third Saturday in March in any election year falls on Easter Saturday, the election of Councillors is to be held on the second Saturday in March in that year.

- Clause 6 clarifies that a general election of Councillors of all Councils including the Melbourne City Council must be held on the third Saturday in March in the relevant year.
- Clause 7 inserts a new provision in the Act relating to the filling of an extraordinary vacancy of a district-wide Councillor elected under Schedule 3 (Part 4A) or new Schedule 3A. Where an extraordinary vacancy occurs more than 3 months before a general election or the Council decides to fill the vacancy within 3 months before the election, the vacancy must be filled in accordance with new Schedule 3A. Schedule 3A, which is being inserted by clause 20, provides for the filling of an extraordinary vacancy by a countback of votes.
- An election to fill the extraordinary vacancy must be conducted by the same returning officer who conducted the election at which the departing Councillor was elected or, if that is not possible, the deputy returning officer or a returning officer appointed in accordance with the Act.
- Clause 8 extends the time for the holding of a by-election from 60 to 90 days after the extraordinary vacancy.
- Clause 9 amends section 70 (Councillor may be re-elected) consequent on the provisions of clause 20 relating to the filling of an extraordinary vacancy by a countback of votes. The effect of the amendment is that a vacating Councillor would not be able to participate in a countback of votes.
- Clause 10 provides that the regulations may require Councils to include in their corporate plans specified performance measures.
- Clause 11 amends Schedule 2 (Provisions with respect to the holding of an election) to provide that notices of candidature will be received at a place specified in the public notice issued by the returning officer.
- Clause 12 clarifies that in the case of any Council holding elections for both wards and the municipal district as a whole, if a person has submitted a notice of candidature for both a ward and the whole of the municipal district, the returning officer must only accept the first notice received.

- Clause 13 extends the number of days for the conduct of an election from 30 to 31.
- Clause 14 provides that a ballot-paper must not contain any reference to the allegiance of a candidate to any political party or cause, but the provision does not apply to the candidate's name.
- Clause 15 extends the restrictions on who can be a scrutineer. A person cannot be a scrutineer if he or she is a person appointed by the State Electoral Office, the Australian Electoral Commission or another Council to be involved in the conduct of an election if that organisation has been appointed to conduct the election.
- Clause 16 provides that disadvantaged voters may ask for assistance with postal voting so that a person nominated by the voter or an authorised person may complete a required certificate or declaration on the voter's behalf.
- Clause 17 restricts the number of recounts of votes to one at the instigation of the returning officer and one at the request of any candidate or his or her scrutineer.
- Clause 18 clarifies that Part 4A of Schedule 3 is the method to be used for the election of any number of district-wide Councillors of the City of Melbourne or a Council re-constituted by an Order under section 220Q(na) where the Order so specifies. Part 4A is the proportional representation system.
- Clause 19 inserts a new Schedule 3A into the Act to provide for the filling, by a countback of votes, of extraordinary vacancies of district-wide Councillors of the Melbourne City Council, the Greater Geelong City Council and any other Council to be re-constituted by an Order made under section 220Q(na) where the Order specifies that Part 4A of Schedule 3 applies to the election of the district Councillors.

Part 1 covers preliminary matters.

Clause 1 contains definitions:

The "vacating Councillor" is the person whose departure created the extraordinary vacancy;

"relevant election" is the election at which the vacating Councillor was elected; and

"eligible candidate" is a candidate at the relevant election who was not elected and is still eligible to be elected as a Councillor.

Clause 2 provides that within 14 days of an extraordinary vacancy occurring, the returning officer must invite each eligible candidate to participate in a countback of votes. The clause sets out the required procedure.

Clause 3 covers procedural matters where there is more than one extraordinary vacancy to be filled at any time.

Clause 4 provides that where no eligible candidate gives the returning officer the required notice, the vacancy must be filled by a by-election.

Clause 5 provides that where there is only one eligible candidate, the returning officer must declare that candidate to be elected.

Clause 6 provides that where there is more than one eligible candidate the returning officer must fix a place, date and time for a countback of votes, notify the participating eligible candidates and give public notice of the countback. The date fixed must be the date that is, in the opinion of the returning officer, the first practicable date on which the countback can be held.

Clauses 7 and 8 cover various procedural matters and provide that relevant clauses of Schedules 2 and 3 of the Act apply.

Each eligible candidate may appoint one scrutineer to represent her or him at each counting point.

Part 2 sets out the countback procedure.

Clause 9 provides that the countback of votes may be conducted using an electronic form of the ballot-papers that was compiled for the relevant election where the returning officer is satisfied that the electronic form of the ballot-papers is an accurate copy of all the valid ballot-papers cast at that election.

Clause 10 sets out the procedure for retrieval and opening of parcels of ballot-papers where the countback is not to be conducted using an electronic form of the ballot-papers compiled at the relevant election.

Clauses 11 to 16 set out the procedure for the countback.

The clauses provide that the ballot-papers of the vacating Councillor must be brought together and how they are then to be transferred to the participating eligible candidates.

The counting process is done in stages until a participating eligible candidate has an absolute majority of the ballot-papers of the vacating Councillor.

If no eligible candidate has an absolute majority after the first transfers, the candidate with the fewest number of votes is excluded and his or her ballot-papers transferred to the continuing participating candidates. The process is repeated until an eligible candidate receives an absolute majority.

Clause 17 provides that as soon as possible after the election of a candidate, the returning officer must declare that person elected, give public notice of the name of the elected person and advise the Minister for Planning and Local Government of the result.

Clause 18 deals with the return of ballot-papers, where applicable, and clause 19 extends the application of this Schedule to a vacancy created by a Councillor who was elected as a result of a countback of votes.

Clause 20 amends the Act to ensure that Councils' local laws comply with National Competition Policy principles. Where the Minister is of the opinion that a local law substantially breaches the National Competition Policy principles, she or he may recommend to the Governor in Council that the local law be revoked, provided that she or he has first consulted with the relevant Council about the possible breach.

The revocation provision applies to all local laws made on or after 1 July 1997; local laws made prior to that date will not be subject to the provision until 1 July 1999.

Clause 21 makes a minor technical amendment to Schedule 12 (Regulations).

Clause 22 makes minor technical amendments to the Act as part of statute law revision.

