

# **Local Government (Elections) Act 1992**

**No. 15/1992**

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No. 15 of 1992

## **Local Government (Elections) Act 1992**

[Assented to 2 June 1992]

**The Parliament of Victoria enacts as follows:**

### **1. *Purpose***

The purpose of this Act is to amend the **Local Government Act 1989** to—

- (a) amend the provisions relating to the conduct of elections; and
- (b) strengthen the provisions relating to municipal electoral tribunals; and
- (c) alter the procedures relating to how-to-vote cards.

### **2. *Commencement***

This Act comes into operation on a day or days to be proclaimed.

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**3. Entitlement to be enrolled—joint occupiers**

In section 11 (5) (a) of the **Local Government Act 1989** for “separate occupancy” substitute “part of the rateable land assessed as a separate occupancy in accordance with section 158A”.

**4. Voters’ list**

In section 22 (6) of the **Local Government Act 1989** omit “2 days after”.

**5. Qualifications to be a Councillor**

(1) In section 28 (1) (a) of the **Local Government Act 1989** after “is” insert “or is entitled to be”.

(2) In the **Local Government Act 1989**—

(a) For section 29 (2) substitute—

“(2) A person who—

(a) is convicted of an offence against section 77 or 79; or

(b) has been convicted of an offence committed when he or she was of or over 18 years of age which is punishable upon first conviction for a term of imprisonment of 5 years or more under the law of Victoria or the law of any other State or Territory of the Commonwealth of Australia or the law of the Commonwealth of Australia—

is not capable of becoming or continuing to be a Councillor for a period of 7 years after the conviction.”;

(b) In section 30 (1) (a) omit—

(i) “or found guilty”; and

(ii) “or made the finding”;

(c) In sections 30 (1) (b) and 30 (2) omit “or found guilty”;

- (d) In section 30 (2) after “and” insert “if the application is made within 30 days of the disqualification occurring,”;
  - (e) In sections 30 (4) and 30 (5) omit “or finding”.
- (3) In clause 5 (2) (a) of Schedule 2 to the **Local Government Act 1989** after “is” insert “or is entitled to be”.

**6. Extraordinary vacancy**

After section 38 (2) of the **Local Government Act 1989** insert—

“(2A) If an extraordinary vacancy is caused by the declaration of a municipal electoral tribunal, the extraordinary vacancy occurs on the following days:

- (a) If an application for review to the Administrative Appeals Tribunal is not served within 7 days of the decision of the municipal electoral tribunal, on the day after that period;
  - (b) If an application for review to the Administrative Appeals Tribunal is dismissed, on the day the decision is given.
- (2B) Sub-section (2A) applies in respect of a triennial election and for that purpose all the extraordinary vacancies are deemed to have occurred on the same day as determined in accordance with that sub-section.
- (2C) Despite sub-section (3), if more than one extraordinary vacancy in a ward is caused by the declaration of a municipal electoral tribunal, an election must be held to fill all the extraordinary vacancies at the same time.”.

**7. Governor in Council may give directions**

In section 43 (1) of the **Local Government Act 1989**—

(a) After paragraph (c) insert—

“(ca) direct that an election or poll is to be held on a specified date; and”;

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- (b) In paragraphs (d) and (e) after “election” (wherever occurring) insert “or poll”.

**8. Section 40 substituted—compulsory voting**

In section 40 of the Local Government Act 1989—

- (a) After “40” insert “(1)”;  
(b) At the end of the section insert—  
(2) In this section—

“infringement” means an offence against this section;

“prescribed penalty” means the penalty prescribed for the purposes of this section;

“prosecution officer” means a returning officer or a person appointed by the returning officer for the purposes of this section.

- (3) A prosecution officer may serve or cause to be served an infringement notice on any person if the prosecution officer has reason to believe that the person has committed an infringement.
- (4) An infringement notice must be addressed to the alleged offender and be signed by the prosecution officer and include the following particulars—
- (a) The day, time and place of the alleged infringement;
- (b) The nature of the alleged infringement;
- (c) The prescribed penalty for the alleged infringement;
- (d) The place or places at which the prescribed penalty may be paid;
- (e) The date of the notice and a statement that the prescribed penalty may be paid within 28 days after the date;
- (f) A statement to the effect that if the prescribed penalty is paid at a place

specified in the notice, the matter will not be brought before a court unless, before the expiration of the period specified in the notice as the period within which payment may be made, notice is given that the infringement notice is withdrawn;

- (g) A summary of the provisions of this Act relating to the withdrawal of infringement notices.
- (5) A prosecution officer may withdraw an infringement notice at any time within 28 days of the date of the infringement notice by serving or causing to be served a withdrawal notice on the alleged offender.
- (6) A withdrawal notice must be signed by the prosecution officer and include—
  - (a) a statement to the effect that the infringement notice has been withdrawn; and
  - (b) a statement to the effect that court proceedings may be instituted against the alleged offender for the alleged infringement specified in the infringement notice.
- (7) An infringement notice may be withdrawn even if the prescribed penalty has been paid.
- (8) Once a withdrawal notice is served, the Council must refund the amount of any penalty which was paid on an infringement notice before it was withdrawn.
- (9) If the amount of the prescribed penalty shown on the infringement notice is paid at the appropriate place before the end of the period for payment set out in the notice, or, if the prosecution officer allows, at any time before the service of a summons in respect of the alleged infringement—
  - (a) the offender has expiated the infringement by payment of the prescribed penalty; and

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- (b) no further proceedings may be taken in respect of the infringement; and
  - (c) no conviction for the infringement may be regarded as having been recorded.
- (10) Every penalty paid under this section must be applied in the same manner as if the offender had been convicted of the infringement in the Magistrates' Court on a charge filed by the prosecution officer who served the infringement notice or caused it to be served.
- (11) Payment of any penalty under this section may be made by cheque or money order either lodged at or sent by post to the place referred to in the notice, but in the case of a cheque payment is not to be taken to be made unless and until the cheque is honoured upon presentation.
- (12) Nothing in this section prejudices the institution or the prosecution of proceedings for an alleged infringement if—
  - (a) an infringement notice has been served in respect of the alleged infringement and the amount of the prescribed penalty is not paid before the end of the period specified in the notice as the time for payment or of any further period allowed by the prosecution officer; or
  - (b) an infringement notice in respect of the alleged infringement has been withdrawn.
- (13) In any proceedings for an alleged infringement, if the court is satisfied that an infringement notice was served in respect of the alleged infringement and has been withdrawn, the conviction imposed by the court must not be taken to be a conviction for any purpose except in relation to—
  - (a) the making of the conviction itself; and
  - (b) subsequent proceedings which may be taken in respect of the conviction itself, including proceedings by way of appeal.

**9. Municipal electoral tribunals**

- (1) For section 44 (1) of the **Local Government Act 1989** substitute—

“(1) There may be established one or more municipal electoral tribunals to consider disputes which may arise from the holding of elections.

(1A) The Minister may determine that one municipal electoral tribunal be established for a period of up to 12 months as the Minister considers appropriate.”.

- (2) In section 45 (1) of the **Local Government Act 1989**—

(a) for “7” substitute “14”;

(b) after “10 voters” insert “or unenrolled voters at that election”.

- (3) For section 46 (1) of the **Local Government Act 1989** substitute—

“(1) A municipal electoral tribunal has the following powers—

(a) To declare that any person declared elected was not duly elected;

(b) To declare any candidate duly elected who was not declared elected;

(c) To declare an election void;

(d) To dismiss or uphold an application in whole or in part;

(e) To amend or permit the amendment of an application;

(f) To order the inspection of, and permit copying of, documents used in connection with an election, subject to such terms and conditions as it considers appropriate;

(g) To undertake a preliminary review of an application;

(h) To require any further information relating to an application.

(1A) A municipal electoral tribunal may impose a financial penalty not exceeding the amount prescribed for the purposes of this section.”.



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- (4) In section 47 of the **Local Government Act 1989** omit “finding of improper conduct or”.
- (5) In section 48 (2) of the **Local Government Act 1989** after “tribunal” insert “within 7 days of the making of the decision”.

**10. *Prohibition of canvassing near polling place***

In section 53 (1) of the **Local Government Act 1989** after “6 metres” insert “(or a lesser distance fixed by the returning officer)”.

**11. *Printing and publication of electoral material***

In section 55 of the **Local Government Act 1989**—

- (a) in sub-section (2) for “or” after paragraph (a) substitute “and”;
- (b) After sub-section (3) insert—

“(4) Sub-section (2) applies in respect of how-to-vote cards as if for the words “appears at the end of” in paragraphs (a) and (b) there were substituted the words “are displayed prominently in”.

- (5) A person must not print, publish or distribute or cause to be printed, published or distributed any electoral material that is likely to mislead or deceive a voter in relation to the casting of the vote of the voter.

Penalty: 10 penalty units if the offender is a natural person or 20 penalty units if the offender is a corporation.

- (6) It is a defence in a prosecution for an offence against sub-section (5) if the person proves that the person did not know, and could not reasonably be expected to have known, that the electoral material was likely to mislead or deceive in relation to the casting of the vote of the voter.”.

**12. New section 57A—Injunction**

After section 57 of the **Local Government Act 1989**  
insert—

**“57A. Injunction**

- (1) If a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute an offence under section 55 or 57, the Supreme Court may on the application of a candidate in an election grant an injunction restraining that person from engaging in the conduct and, if in the opinion of the Supreme Court it is desirable to do so, requiring that person to do any act or thing.
- (2) If an application is made to the Supreme Court for an injunction under sub-section (1), the Supreme Court may, if in the opinion of the Supreme Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in that sub-section pending the determination of the application.
- (3) The Supreme Court may discharge or vary an injunction granted under sub-section (1) or (2).
- (4) If an application is made to the Supreme Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Supreme Court to grant the injunction may be exercised—
  - (a) if the Supreme Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Supreme Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

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(b) if it appears to the Supreme Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(5) The powers conferred on the Supreme Court under this section are in addition to, and not in derogation of, any other powers of the Supreme Court.”

**13. Resignation of Councillor**

- (1) For the purposes of holding an election to fill the extraordinary vacancy caused by the resignation of a Councillor, a Councillor is to be taken to have resigned on the date that the resignation is delivered to the municipal clerk.
- (2) Despite sub-section (1), the Councillor continues to hold office until the date specified in his or her resignation.
- (3) A person cannot revoke his or her resignation as a Councillor after the resignation has been delivered to the municipal clerk.
- (4) Upon the resignation being delivered to the municipal clerk, the municipal clerk may commence the holding of an election to fill the extraordinary vacancy.
- (5) Despite sub-section (4)—
  - (a) the declaration of the election result cannot be made until the date specified in the resignation; and
  - (b) the Councillor elected cannot take office until the declaration is made.

**14. Regulations**

In section 243 (8) of the Local Government Act 1989 after “5,” insert “5B.”

**15. Notices of candidature**

In clause 3 (2) of Schedule 2 to the **Local Government Act 1989** for “up to” insert “during the period beginning on the day that the certified voters’ roll becomes available and ending at”.

**16. Name of candidates**

After clause 5 (5) (b) of Schedule 2 to the **Local Government Act 1989** insert—

“; or

- (c) a commonly used other name specific to the candidate by which the candidate is usually identified.
- (6) A name cannot be specified on a ballot-paper under sub-clause (5) (c) unless the candidate produces evidence to the satisfaction of the returning officer that the proposed name is a commonly used other name specific to the candidate by which the candidate is usually identified.
- (7) A title or other designation cannot be included with, or as part of, the name of a candidate on a ballot-paper.”.

**17. Retirement or death of candidates**

In Schedule 2 to the **Local Government Act 1989**—

- (a) Clause 8 is repealed;
- (b) For clause 9 substitute—

**“9. Death of a candidate**

- (1) If a candidate dies before 4 p.m. on the 24th day before the election, the notice of candidature becomes void.
- (2) If a candidate dies after 4 p.m. on the 24th day before the election but before election day the election fails and the returning officer must give public notice that the election has failed.

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- (3) The returning officer must keep the notice of candidature.
- (4) The returning officer must—
  - (a) if sub-section (1) applies, return the prescribed fee to the candidate's personal representative; or
  - (b) if sub-section (2) applies, return the prescribed fee to the candidate's personal representative and to the other candidates.”;
- (c) In clause 10 (1) omit paragraph (b) and “or” at the end of that paragraph;
- (d) Clause 10 (5) is repealed.

**18. Polling places**

For clause 12 (6) of Schedule 2 to the **Local Government Act 1989** substitute—

- “(6) Subject to sub-clause (6A), no part of any licensed premises within the meaning of the **Liquor Control Act 1987** is to be used for the purposes of a polling place.
- (6A) If the returning officer considers that there are exceptional circumstances which so require, the returning officer may, subject to any conditions the returning officer may impose, authorise the use of any premises which is, or of which any part is, a licensed premises within the meaning of the **Liquor Control Act 1987** for the purpose of a polling place.
- (6B) During any period that any part of any premises is to be used for the purposes of a polling place under sub-section (5), that part of the premises must not be—
  - (a) used for the sale of liquor; or
  - (b) accessible from any other part of the premises which is being used for the sale of liquor.”.

**19. Polling booths**

In clause 13 of Schedule 2 to the Local Government Act 1989—

(a) In sub-clause (2) (b) after “(b)” insert—  
“Subject to sub-clause (2A),”;

(b) After sub-clause (2) insert—

“(2A) The returning officer may determine that one ballot-box be used for the polling place.”.

**20. Commencement of postal and pre-poll voting**

In clause 12 (2) of Schedule 2 to the Local Government Act 1989 after “election” (where last occurring) insert “and of the date from which postal voting and pre-poll voting will be held”.

**21. Scrutineers**

In clause 15 of Schedule 2 to the Local Government Act 1989—

(a) for sub-clause (2) substitute—

“(2) A candidate may appoint only 1 scrutineer for each booth or counting table.

(2A) The appointment of a scrutineer must be made in the prescribed form and delivered to the returning officer.

(2B) A separate form must be used for each appointment of a scrutineer.”;

(b) in sub-clause (3) (c) after “that election” insert “in relation to the same Council”.

**22. Place where votes to be counted**

After clause 5 (1) (c) of Schedule 3 to the Local Government Act 1989 insert—

“; or

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- (d) the count may be conducted partly at the polling booth or polling place and partly at a central counting place.”.

**23. *Adjournment of count***

Clause 12 (1) of Schedule 3 to the Local Government Act 1989 is repealed.

**24. *Schedule 5 substituted—How-to-vote cards***

- (1) For Schedule 5 to the Local Government Act 1989 substitute—

**“SCHEDULE 5** Section 56  
**HOW-TO-VOTE CARDS**

**1. *Registration of how-to-vote cards***

- (1) Any person may apply in the prescribed form to the returning officer within 4 working days after the 24th day before polling day for an election, for the registration of a form or sample of a how-to-vote card proposed to be displayed, handed out, distributed or otherwise made available to persons on polling day for that election.
- (2) The returning officer must within 8 working days after the 24th day before polling day for the election—
- (a) register; or
  - (b) refuse to register; or
  - (c) request the variation of—

the form or sample of the how-to-vote card and submitted for registration.

**2. *Matters to be considered***

- (1) In determining whether to register, refuse to register or request the variation of a form or sample of a how-to-vote card, the returning officer must have regard to the prescribed matters.
- (2) The returning officer must refuse to register or must request the variation of a form or sample of how-to-vote card if—
- (a) the form or sample of how-to-vote card does not contain an indication of the order of voting preference for all the candidates listed on it or a statement that a figure must be placed against the name of each such candidate; or
  - (b) a discrete portion of the form or sample of how-to-vote card represents or purports to represent a ballot paper in which—

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- (i) the candidates are identified by names other than those appearing on the ballot-paper; or
  - (ii) titles or other designations are attached to the names of the candidates.
- (3) The returning officer must refuse to register a form or sample of how-to-vote card which the returning officer is satisfied is likely to mislead or deceive a voter in relation to the casting of the vote of the voter or contains offensive or obscene material.

**3. Procedure for variation**

- (1) If having regard to the matters specified in clause 2 (1) or 2 (2) the returning officer is of the opinion that registration must be refused but that the applicant might be prepared to vary the application in such a way that the returning officer would register the form or sample, the returning officer must—
- (a) give the applicant notice in writing of the changes necessary to the form or sample; and
  - (b) permit the applicant until 4 p.m. on the Monday immediately prior to the polling day for the election to lodge a written request for variation or to proceed with the original application.
- (2) If notice is given under sub-clause (1) in relation to an application, the returning officer is not required to give further consideration to the application unless and until a request is lodged with the returning officer under sub-clause (3).
- (3) If notice is given under sub-clause (1) in relation to an application, the applicant may lodge with the returning officer a written request, signed by the applicant, to—
- (a) vary the application in the manner specified in the notice; or
  - (b) proceed with the application in the form in which it was lodged—

and the returning officer must comply with the request.

**4. Endorsement**

If a form or sample of a how-to-vote card is registered, the applicant for the registration must ensure that any how-to-vote card to which the registration relates is endorsed in the prescribed manner.

**5. Amendment of form or sample**

- (1) An applicant for the registration of a form or sample of how-to-vote card which has been registered or who has received a notice under clause 3 may before 4 p.m. on the Monday immediately prior to polling day in the election apply to the returning officer for the amendment of the registered or varied form or sample if the amendment is immaterial or insignificant.
- (2) The returning officer must approve an application for an amendment if he or she is satisfied that one of the grounds specified in sub-clause (1) applies.



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**6. Cards to be available for inspection**

- (1) As soon as practicable after registering a form or sample of a how-to-vote card, the returning officer must—
  - (a) make a copy available for inspection at the returning officer's office; and
  - (b) cause a copy to be made available for inspection at any other prescribed places.
- (2) On receipt of copies of a how-to-vote card as proposed to be handed out, distributed or otherwise made available the returning officer must—
  - (a) make a copy available for inspection at the returning officer's office; and
  - (b) cause a copy to be made available for inspection at any other prescribed places.

**7. Reviews**

An application may be made to the Administrative Appeals Tribunal at any time up to 5 p.m. on the Tuesday before polling day in the election for the review of a decision of a returning officer—

- (a) to register; or
- (b) to refuse to register; or
- (c) to request the variation of; or
- (d) to approve an amendment to; or
- (e) to refuse to approve an amendment to—

a form or sample of how-to-vote card.

**8. Distribution of printed electoral material**

- (1) A person must not on polling day, within 400 metres of the entrance of or within the building used as a polling place display, hand out, distribute or otherwise make available to any person or authorise the displaying, handing out, distribution or otherwise making available to any person of any printed electoral material other than a how-to-vote card which or a form or sample of which has been registered by the returning officer and that is endorsed in the prescribed manner.

Penalty: 10 penalty units or imprisonment for a period not exceeding 6 months, or both.

- (2) A person must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed a how-to-vote card which has not been registered by the returning officer and which contains a representation or purported representation of an endorsement in the prescribed manner.

Penalty: 10 penalty units or imprisonment for a period not exceeding 6 months, or both.

- (3) Sub-clause (2) does not apply in respect of the form or sample of how-to-vote card printed or published solely for the purpose of being submitted to the returning officer for registration.
- (4) In a prosecution of any person for handing out a how-to-vote

card under sub-clause (1) or (2), it is a defence if the person proves that that person did not know, and could not reasonably be expected to have known, that the card was not a how-to-vote card a form or sample of which was registered by the returning officer.

- (5) Sub-clause (1) does not apply to—
- (a) the display, handing out, distribution or otherwise making available of a newspaper by or on behalf of a newsagent, newspaper seller or distributor if the display, handing out, distribution, sale or making available is in the course of the newsagent's, newspaper seller's or distributor's employment or business; or
  - (b) the display, handing out, distribution or otherwise making available of any printed electoral material in any room or building used as a campaign room or an office by a candidate in the election to which the material relates or by the political party which has endorsed that candidate in that election; or
  - (c) printed electoral material in the form of any poster or notice which is affixed or attached to any vehicle, building, hoarding or structure.

**9. Power to request handing over of how-to-vote cards**

- (1) The person in charge of a polling place or a person authorised by the person in charge to act on that person's behalf under this clause may on polling day request a person reasonably suspected by the first-mentioned person of contravening clause 5 (1) or 5 (2)—
- (a) to produce for inspection to that first-mentioned person any how-to-vote cards in the possession of that other person; and
  - (b) to hand over to the first-mentioned person all such cards other than how-to-vote cards endorsed in the prescribed manner.
- (2) A person must comply with a request under sub-clause (1).  
Penalty: 10 penalty units.
- (3) If a person refuses to comply with a request, a member of the police force or a returning officer may seize any cards in the person's possession which are not endorsed in the prescribed manner.”.
- (2) In item 8 of Schedule 12 to the Local Government Act 1989 for “approve, provisionally approve or refuse to approve” substitute “register, refuse to register or request the variation of”.

**25. Amendment of Schedule 12—Regulations**

- (1) In Schedule 12 to the Local Government Act 1989—
- (a) in item 3 after “pre-poll voting” insert “including the empowering of a returning officer to issue

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guidelines relating to electoral material in relation to pre-poll voting”;

(b) after item 5 insert—

“5A. Providing for unenrolled voters to lodge a vote at an election.

5B. Any matter relating to the holding of a poll of voters.”.

(2) In section 3 (1) of the **Local Government Act 1989** after the definition of “Tribunal” insert—

“**unenrolled voter**” means a person who is entitled to be enrolled on a voter’s roll but is not so enrolled;”.

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NOTES

1. *Minister's second reading speech—*

*Legislative Council: 21 November 1991*

*Legislative Assembly: 14 April 1992*

2. The long title for the Bill for this Act was “A Bill to amend the **Local Government Act 1989** in relation to elections.”.

3. Section headings appear in bold italics and are not part of the Act. (See **Interpretation of Legislation Act 1984**.)