



## DETERMINATION

### Scrutineering at an election

*Electoral Act 2002*, section 9(3)

Determination 003/2024

#### Keywords

*Appointment form, challenging, declaration, devices, expected conduct, observing, quotas, scrutineer, sign in, signatures, venue.*

#### Preamble

Candidates may appoint scrutineers to represent their interests at State and local council elections in accordance with section 76 of the *Electoral Act 2002* (Vic) (**Electoral Act**) and regulations 31 and 64 of the *Local Government (Electoral) Regulations 2020* (Vic) (**LG Regulations**), respectively.

Properly appointed scrutineers have certain entitlements, obligations and prohibitions under legislation and conditions of entry. The Victorian Electoral Commission (**VEC**), election managers and election officials have certain powers in relation to regulating the number and conduct of scrutineers when they are present at an election venue. This includes the power to keep the peace, cause a scrutineer to be removed if they do not comply with their obligations and require a police officer to assist with removing a scrutineer.

This Determination clarifies the VEC's approach to regulating the role and responsibilities that scrutineers have at State and local council elections.

#### Audience

The principal audience for this Determination includes:

- candidates
- election managers and election officials
- registered political parties
- persons who are, or who will be, appointed as scrutineers.

#### Determination

I, Sven Bluemmel, Electoral Commissioner for the State of Victoria, by delegation of the Victorian Electoral Commission, pursuant to section 16(1)(b) of the Electoral Act, make the following determination in accordance with section 9(3) of the Electoral Act.

##### 1. ***Scrutineers observing and challenging***

- 1.1. The VEC may allow scrutineers to observe activities or processes in addition to those prescribed in the Electoral Act and *Local Government Act 2020* (Vic) (**LG Act**), and their associated regulations.
- 1.2. Additional activities or processes must involve used or unused ballot papers or the issuing, receipt or processing of voter declarations.

- 1.3. The VEC will notify candidates of activities or processes available to be observed by properly appointed scrutineers, and if scrutineers can make challenges in accordance with Item 1.6 and Tables 1, 2 and 3 of this Determination. Notification will occur through candidate bulletins, publication in the *Candidate handbook* and *Scrutineer handbook* for the election, and/or by other appropriate means.
- 1.4. A challenge must be directed to the relevant election official supervising the activity or process, such as the election manager or a count team leader. Unless Item 1.5 of this Determination applies, the ruling by the relevant election official is final.
- 1.5. At a recount for an election held under the Electoral Act, a ballot paper challenged during the recount is reserved for a ruling by the Commission about whether it is to be allowed or disallowed in accordance with sections 19(2)(c) and 120(4) of the Electoral Act.
- 1.6. Tables 1, 2 and 3 of this Determination outline election activities that are observable by scrutineers, and which of these are also challengeable. These tables outline the activities according to the type of election—State elections, local council elections, and additional provisions specific to Melbourne City Council elections.

*Table 1. Observable and challengeable activities for scrutineers at State elections.*

<b>Activity</b>	<b>Observable</b>	<b>Challengeable</b>
Printing of ballot papers	Yes	No
Assembling and dispatching postal ballot packs	Yes	No
Exhibiting and sealing of ballot boxes	Yes	No
Issuing ballot papers by an ordinary issuing officer	Yes	No
Issuing declaration votes by a declaration issuing officer	Yes	No
Recording preferences by an election official aiding an elector who is incapable of voting without assistance	Yes	Yes
Receiving and admitting or rejecting declaration votes	Yes	No
Opening and checking sealed ballot boxes or parcels of ballot papers	Yes	Yes
Extracting and sorting early and postal votes, including during the 'authorised period' within a 'restricted area'	Yes	No
Exchanging ballot papers between district and/or region elections	Yes	No
Amalgamating ballot papers prior to a preference distribution	Yes	No
Statistical counts for information purposes only, such as two-candidate-preferred count and two-party-preferred count	Yes	No
Interpreting preferences marked on a ballot paper and deciding formality	Yes	Yes
Counting, rechecking and recounting ballot papers	Yes	Yes

Table 2. Observable and challengeable activities for scrutineers at local council elections. These activities are also applicable for scrutineering in Melbourne City Council elections.

Activity	Observable	Challengeable
Posting ballot packs	Yes	No
Opening and emptying postal ballot receptacles	Yes	No
Receiving and admitting or rejecting returned declaration envelopes	Yes	No
Removing declaration flaps and opening declaration envelopes	Yes	No
Extracting ballot papers from declaration envelopes	Yes	No
Sorting ballot papers to identify obviously informal votes	Yes	No
Interpreting preferences marked on a ballot paper and deciding formality	Yes	Yes
Counting, rechecking and recounting ballot papers	Yes	Yes
Performing a countback of votes to fill an extraordinary vacancy	Yes	Yes

Table 3. Observable and challengeable activities for scrutineers at Melbourne City Council elections, in addition to Table 2.

Activity	Observable	Challengeable
Sorting ballot papers marked above-the-line for the Councillor election	Yes	Yes

- 1.7. During a computerised count of ballot papers, scrutineers can query the data entry of a ballot paper or a batch of ballot papers at any time. Scrutineers can only challenge the formality of a ballot paper while it is being reviewed for formality by the election manager (or delegate) after the computer counting application has flagged the ballot paper as informal.

## 2. ***Processes relating to the appointment and allocation of scrutineers***

### Age requirement

- 2.1. A person must be at least 18 years of age to be appointed as a scrutineer.

### Signatures of candidates and scrutineers

- 2.2. Candidates must sign an appointment of a scrutineer form. Candidates may sign the form by hand or apply their signature digitally, such as inserting an image of their signature or signing using a finger or stylus on a digital version of the form.
- 2.3. Scrutineers must sign the declaration by hand and in the presence of the election manager or an election official. Scrutineers cannot apply a digital signature to the declaration, except when reasonable accommodations are needed due to a scrutineer's disability, incapacity or injury.

2.4. Appointment form

- 2.5. A separate appointment form is required for each scrutineer appointed by a candidate for each venue for an election:
- 2.5.1. If a scrutineer has been appointed by more than one candidate at a single venue, whether for the same election or different elections, the scrutineer must have a separate appointment form showing the appointment by each of the relevant candidates.
- 2.5.2. Except in accordance with Item 2.5 of this Determination, if a scrutineer has been appointed by a candidate for more than one venue, the scrutineer must have a separate appointment form showing the appointment by the candidate for each of the relevant venues.
- 2.6. Activities or processes that occur across multiple buildings or adjacent sites may be considered as being conducted at a single venue for the purpose of appointing scrutineers. Advice will be provided in accordance with Item 1.3 of this Determination when this applies.
- 2.7. An appointment form must be produced for inspection on request by an election manager, election official or other authorised person. The hardcopy form or official scrutineer lanyard must be produced where the original of the appointment form was previously surrendered to the election manager or an election official.

Sign in processes

- 2.8. A scrutineer must sign into a venue and present their appointment form before they may be admitted into the venue. A scrutineer must also sign out when leaving the venue.
- 2.9. A scrutineer must identify which candidate or candidates they are representing at any activity or process. This is necessary to administer the scrutineer quota.
- 2.10. The VEC may establish further requirements relating to the signing in of scrutineers. Any further requirements will be communicated to candidates for the purpose of briefing their scrutineers.

Scrutineer quota

- 2.11. For the purpose of scrutineer quotas prescribed at section 76(3) of the Electoral Act and regulations 31(7) and 64(1) of the LG Regulations, an election manager or election official is “engaged in” or “involved in” an activity when they are participating, overseeing, monitoring, or otherwise involved in an activity or process.
- 2.12. An election manager or election official remains “engaged in” or “involved in” an activity even when the election manager or election official is temporarily absent.

- 2.13. Except when prescribed by law, the VEC or an election manager or election official shall determine the scrutineer quota. The scrutineer quota will be determined based on relevant considerations, including the size of the venue and available staffing, and will be communicated to candidates for the purpose of briefing their scrutineers.
- 2.14. From time to time, the VEC or an election manager or election official may vary a scrutineer quota or place reasonable limits on the number of scrutineers able to represent any one candidate for an activity or process in order to maintain fair access for scrutineers, to meet health and safety requirements, or other lawful obligations. Any such variations will be communicated to candidates for the purpose of briefing their scrutineers.

### **3. *Expected conduct***

- 3.1. A scrutineer who fails to meet the conditions of the scrutineer declaration or who does not comply with a lawful direction of an election manager, election official or other authorised person may be required to leave the venue. A person who fails to leave when required may be removed with the assistance of police.
- 3.2. A scrutineer who offends against the entitlements, obligations or prohibitions governing their conduct under the relevant legislation may be prosecuted.

#### Restriction on devices

- 3.3. Scrutineers are directed to refrain from using any device to record or photograph a ballot paper, declaration or form, or any agent, appointee, contractor or employee of the VEC (including election managers and election officials) while performing their role as a properly appointed scrutineer.
- 3.4. This requirement is a direction by the VEC which forms part of the scrutineer declaration.
- 3.5. For the purpose of this Determination, a 'device' includes an item capable or potentially capable of capturing, recording, saving or transmitting images, audio, videos or other information.

### **4. *Meaning of 'venue'***

- 4.1. For the purpose of this Determination, a venue includes a voting centre, counting centre or any other place where a scrutineer has an entitlement to attend to observe an activity or process related to an election.

### **5. *Candidate as scrutineer***

- 5.1. A candidate in an election conducted under the Electoral Act cannot be appointed as a scrutineer for any district or region at the election, except for the purpose of scrutineering a recount which does not involve the district or region for which the candidate has nominated.
- 5.2. A candidate in an election conducted under the LG Act or the *City of Melbourne Act 2001* (Vic) may be a scrutineer when permitted by regulations 31 and 64 of the LG Regulations.
- 5.3. The VEC requires scrutineers to identify if they are a candidate in the election.

**6. Retired candidate as scrutineer**

6.1. A person who is retired or taken to be retired as a candidate in an election may be appointed by a candidate to be a scrutineer provided that the person is otherwise eligible to be appointed as a scrutineer.

**7. Former councillor as scrutineer**

7.1. A person who was a councillor of a local council may become eligible to be a scrutineer on or after the election day for a local council election, as long as they are not a candidate for the election and are otherwise permitted by regulations 31 and 64 of the LG Regulations.

**8. Transitional and savings**

8.1. Any decision, action, proceeding or matter made, taken or commenced under 'Determination No. 2 of 2022 – Scrutineering at an election', dated 9 September 2022, is not affected by this Determination.

**Revocation of previous instrument**

This Determination revokes and replaces Determination 002/2022 – Scrutineering at an election, dated 16 September 2022.

**Commencement of this Determination**

This Determination commences on 25 October 2024 and remains in effect until such time as it is amended, revoked, superseded, or otherwise replaced.

Sven Bluemmel  
 Electoral Commissioner  
 Victorian Electoral Commission

25 October 2024

**Document details**

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