



DETERMINATION

Campaigning at voting centres

Electoral Act 2002, section 9(3)

Determination 010/2022

Keywords

Adjourn voting, behaviour, campaigning, candidate and party workers, close a voting centre, conduct, issue directions, lawful requirement, local laws, police, reasonable constraints, reasonable restrictions, safety, security, suspend voting

Preamble

The *Electoral Act 2002* (Vic) (Electoral Act) establishes the Victorian Electoral Commission (VEC) and requires it to, as a function, administer the Electoral Act, including the conduct of electoral participants. The electoral participants relevant to this Determination include:

- candidates
- people campaigning proximate to voting centres
- people distributing electoral campaign material proximate to voting centres.

Consistent with the VEC's regulatory approach of constructive compliance, the purpose of this Determination is to clarify additional interventions to be taken by the VEC to secure and protect the safe operation of a voting centre. In doing so, this Determination recognises the lawful power and authority of election managers and election officials under section 174 of the Electoral Act to:

- to maintain order and keep the peace at any election or voting at a voting centre
- to cause to be removed any person who delays, disturbs or disrupts the processes for an election, in a voting centre, and the approaches to a voting centre.

This Determination acknowledges that the behaviour, conduct or right of a person may be reasonably constrained or otherwise restricted in order to ensure the safe and secure conduct of an election. Police officers must aid and assist an election manager or election official in the exercise of the powers conferred by the Electoral Act.

Audience

The principal audience for this Determination includes:

- registered political parties and other groups (including non-registered political parties)
- candidates in elections
- candidate and party workers, and
- election managers and election officials.

Determination

I, Dana Fleming, Acting 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. ***Appointment of voting centres***

- 1.1. The VEC must appoint as many voting centres – including early voting centres – as it considers necessary (section 65 of the Electoral Act). In doing so, the Electoral Act requires the VEC to ensure that electors are provided with an accessible service that facilitates their opportunity to vote.
- 1.2. An ‘accessible service’ is considered by the VEC to include, but is not limited to, a voting experience for electors that is free from interference, intimidation, or violence.

2. ***Applicable grounds of a voting centre***

- 2.1. A voting centre may include the grounds of the voting centre, which is referred to in this Determination as the ‘applicable grounds’.
- 2.2. Section 158(3) of the Electoral Act provides that if a building used as a voting centre is situated in grounds within an enclosure, and there is an official notice stating that those grounds are, for the purposes of section 158 of the Electoral Act, part of the voting centre, then those grounds are part of the voting centre. For the purpose of section 158(3) of the Electoral Act:
 - 2.2.1. An official notice is a notice placed by the VEC, including by an election manager or election official.
 - 2.2.2. Business or retail complexes, including business parks, shopping centres, shopping plazas, strip malls, or otherwise similarly grouped premises, may be considered grounds within an enclosure.
- 2.3. The effects of an official notice stating that the applicable grounds of a voting centre are part of the voting centre are that:
 - 2.3.1. Any entrance to the applicable grounds is deemed to be the entrance of a voting centre.
 - 2.3.2. All sections of the Electoral Act which refer to the ‘entrance to a voting centre’ apply in respect to the entrance to the applicable grounds.
 - 2.3.3. The conduct prohibited by section 158(2) of the Electoral Act cannot occur within 6 metres of an entrance to the applicable grounds during the hours of voting.
 - 2.3.4. An election manager or election official has the power to remove, or cause to be removed, any notice or sign in contravention of section 158(2) of the Electoral Act from within 6 metres of the entrance to the applicable grounds.
 - 2.3.5. The VEC may designate an entrance to the applicable grounds as a ‘designated entrance’ under section 158A(5) for the purpose of section 158A of the Electoral Act.

3. *Voting centres and their surrounds may be subject to other lawful requirements*

- 3.1. As the Electoral Act regulates electoral matters, the premises used as voting centres may be separately regulated or subject to other lawful requirements, including local laws and common law property rights. The surroundings of voting centres may be similarly regulated.
- 3.2. Division 6 of Part 5 (Electoral matter) and Division 1 of Part 9 (Enforcement and offences) of the Electoral Act do not guarantee any person with a lawful entitlement which overrides any other lawful requirement.

4. *The VEC may make directions*

- 4.1. The VEC has the power to do all things necessary or convenient to be done for, or in connection with, the performance of its responsibilities and functions (section 9(1) of the Electoral Act). Without limiting this power, the VEC may also make and issue directions for, or with respect to, elections and election procedures (section 9(2) of the Electoral Act).
- 4.2. The VEC may issue directions imposing reasonable constraints or restrictions on a person or a class of person in respect to a voting centre, including any applicable grounds of the voting centre. The reason for such a direction may include, but is not limited to, ensuring an accessible service (see Item 1) that facilitates the opportunity for electors to vote and/or in order to comply with lawful requirements imposed by the owner of the premises (or by an agent, employee or other representative of the owner).

5. *Maintaining order and keeping the peace at a voting centre*

- 5.1. An election manager or election official has the power and authority to maintain order and keep the peace at any election or voting at a voting centre, and cause to be removed any person who acts in a manner specified in section 174(1)(b) of the Electoral Act. Police officers must assist an election manager or election official to exercise these powers.
- 5.2. When determining whether a person may be:
- obstructing an approach to a voting centre,
 - wilfully or unnecessarily obstructing or delaying proceedings at a voting centre,
 - behaving in a disorderly manner, or
 - causing a disturbance

the election manager or election official may consider:

- 5.2.1. The safety of any person or class of persons who may be affected, including those in the vicinity of the voting centre for a reason unconnected with the election.
- 5.2.2. The safe handling and security of ballot material.
- 5.2.3. If the voting centre, its applicable grounds, or its surrounds are separately regulated or subject to other lawful requirements, and the

effect of that regulation or requirement on the operation of the premises as a voting centre.

5.2.4. If the conduct is contrary to any direction issued by the VEC pursuant to section 9(2) of the Electoral Act that is relevant to the voting centre.

5.2.5. In the case of a disturbance, if the disturbance:

5.2.5.1. is hindering other lawful activities in the vicinity of the voting centre

5.2.5.2. is interfering with the performance of duties by the election manager or any election official

5.2.5.3. is causing distress to those in the vicinity of the voting centre.

5.2.6. Any other matter that is considered to be relevant.

5.3. The operation of a voting centre may be adjourned, suspended or otherwise closed where the VEC becomes unable to ensure an accessible service that facilitates the opportunity for electors to vote is available to electors at that voting centre.

6. Operation of a voting centre

6.1. The VEC may, at its complete discretion, close an early voting centre. Any decision to close an early voting centre must have taken into account the VEC's obligation under section 65 of the Electoral Act to ensure that electors are provided with an accessible service that facilitates the opportunity to vote.

6.2. An election manager of an election day voting centre may temporarily suspend voting at an election day voting centre for a period no more than 4 hours in accordance with section 97A of the Electoral Act if the election manager considers it necessary to do so because of reasons which include:

- a riot or open violence, or a serious threat of the same
- a thing which may affect the safety of electors
- a thing which may interrupt or obstruct the proper conduct of voting.

6.3. The VEC must adjourn the holding of the election at an election day voting centre in accordance with section 97 of the Electoral Act if – from any cause – voting does not open, or the holding of an election is interrupted or obstructed.

Revocation of previous instrument

Not applicable.

Commencement of this Determination

This Determination commences on 22 November 2022 and remains in effect until such time as it is amended, revoked, superseded, or otherwise replaced.

Dana Fleming
Acting Electoral Commissioner
Victorian Electoral Commission

22 November 2022

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