

## DETERMINATION

### Reasons and excuses for failing to vote in an election held under the Electoral Act 2002

*Electoral Act 2002, section 9(3)*

Determination 001/2023

#### Keywords

*Apparent failure to vote notice, AFTVN, enforcement, excuse, failure to vote, infringement, valid reasons for not voting.*

#### Preamble

A stated purpose of the *Electoral Act 2002* (Vic) (Electoral Act) is to require compulsory voting and enable the issuing of infringement notices for Victorian State elections.

For each election held under the Electoral Act, the VEC must—in accordance with section 162 of the Electoral Act—prepare a list of electors who were entitled to vote at the election but did not vote (list of non-voters).

Section 163 of the Electoral Act then requires the VEC to send an Apparent Failure to Vote Notice (AFTVN) to all electors on the list of non-voters except when the Victorian Electoral Commission (VEC) is satisfied that an elector:

- has passed away
- was not in Victoria on election day
- was ineligible to vote
- was issued a ballot paper for the purpose of voting
- was enrolled as a person with no fixed address, Antarctic voter or overseas voter
- applied for a postal vote, but the application was received late or was rejected
- had a valid and sufficient excuse for not voting.

This Determination provides guidance on the reasons that would constitute ‘valid and sufficient’ excuses for not voting at an election. The VEC will consider these reasons as they become relevant, including in the preparation of the list of non-voters following an election or when submitted by an elector responding to an AFTVN.

Section 167 of the Electoral Act allows for an infringement notice to be issued where an authorised officer of the VEC is satisfied that a person has committed an offence:

- failed to vote without a valid and sufficient excuse
- failed to provide a reason why the elector failed to vote
- given a false reason for the elector (or another person) not having voted.

An infringement notice issued under section 167 of the Electoral Act is issued as an infringement offence and is governed by the *Infringements Act 2006* (Vic).

**Audience**

The principal audience for this Determination includes:

- electors issued an AFTVN
- VEC staff and authorised officers.

**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. Excuses at the pre-enforcement stage**

1.1 Excuses listed in Table 1 will be ‘valid and sufficient’ excuses and applied by the VEC when preparing a list of non-voters for elections held under the Electoral Act.

*Table 1: Excuses accepted at the pre-enforcement stage*

Excuse	Notes
The elector was ill, disabled or infirm and for that reason was unable to vote at the election or could have voted only with difficulty	Examples include: <ul style="list-style-type: none"> <li>• unwell on the day of the election</li> <li>• experiencing a medical issue</li> <li>• undergoing medical treatment</li> <li>• COVID-19, including isolating following a COVID-19 test result</li> <li>• cognitive impairment</li> <li>• mental illness or disorder</li> <li>• serious addiction to drugs or alcohol.</li> </ul>
The elector was, at the time of the election, of or over the age of 70 years	Electors who are 70 years of age or older at the time of the election will be removed automatically from the list of non-voters.
The elector could not vote due to the effects of flooding in Victoria during the election period	Electors who resided or temporarily resided in an ‘affected place’ named in Determination T01/2022 (Access to electronic assisted voting for flood-affected electors) will be removed automatically from the list of non-voters.
The elector had a valid and sufficient excuse for not voting	The elector was unable to vote at the election, or could have voted only with difficulty, for one of the following (or other) reasons: <ul style="list-style-type: none"> <li>• caring responsibilities</li> <li>• an unexpected event</li> <li>• lack of secure housing</li> <li>• bereavement</li> <li>• incarceration</li> <li>• family violence.</li> </ul>

**2. Excuses at the AFTVN stage**

2.1 Excuses listed in Table 2 will be ‘valid and sufficient’ excuses and accepted by the VEC in response to an AFTVN issued for elections held under the Electoral Act.

*Table 2: Excuses accepted at the AFTVN stage*

Excuse	Notes
The elector was ill, disabled or infirm and for that reason was unable to vote at the election or could have voted only with difficulty	Examples include: <ul style="list-style-type: none"> <li>• elector was unwell on election day</li> <li>• elector was experiencing a medical issue which would prevent the elector from voting</li> <li>• COVID-19, including isolating following a COVID-19 test result</li> <li>• cognitive impairment</li> <li>• mental illness or disorder</li> <li>• serious addiction to drugs and alcohol.</li> </ul>
The elector for religious reasons was unable to vote	The elector’s religious or faith-based beliefs precluded them from voting.
The elector was, at the time of the election, of or over the age of 70 years	Electors who are 70 years of age or older may receive an AFTVN if an incorrect date of birth is recorded on the electoral roll. Electors can provide evidence of their date of birth, which is used to update the Victorian register of electors.
The elector could not vote due to the effects of flooding in Victoria during the election period	Electors who resided or temporarily resided in an ‘affected place’ named in Determination T01/2022 (Access to electronic assisted voting for flood-affected electors).
The elector had a valid and sufficient excuse for not voting	The elector was unable to vote at the election, or could have voted only with difficulty, for one of the following (or other) reasons: <ul style="list-style-type: none"> <li>• caring responsibilities</li> <li>• an unexpected event</li> <li>• lack of secure housing</li> <li>• bereavement</li> <li>• incarceration</li> <li>• family violence.</li> </ul>

**3. Evidence which may be provided in support of a reason or excuse at the AFTVN stage**

3.1 Electors are encouraged to provide evidence in support of their reason or excuse for not voting at an election. Table 3 lists the types of evidence which may be provided in response to an AFTVN. This list is not exhaustive and depends on an elector’s individual circumstances.

Table 3: Types of evidence which may be provided at the AFTVN stage

Excuse	Evidence
The elector was ill, disabled or infirm and for that reason was unable to vote at the election or could have voted only with difficulty	Examples include: <ul style="list-style-type: none"> <li>• medical certificate</li> <li>• record of a COVID test result</li> <li>• statutory declaration</li> <li>• documentation or records relevant to the relevant illness, disability or infirmity.</li> </ul>
The elector for religious reasons was unable to vote	Examples include: <ul style="list-style-type: none"> <li>• references to the applicable religious or faith-based scripture</li> <li>• documentation or resources from a religious or faith-based leader</li> <li>• statutory declaration.</li> </ul>
The elector was, at the time of the election, of or over the age of 70 years	Forms of evidence or identification include: <ul style="list-style-type: none"> <li>• driver licence or learner permit</li> <li>• passport</li> <li>• primary document recording date of birth.</li> </ul>
The elector could not vote due to the effects of flooding in Victoria during the election period	Examples include: <ul style="list-style-type: none"> <li>• insurance claims</li> <li>• photos</li> <li>• statutory declaration.</li> </ul>
The elector had a valid and sufficient excuse for not voting	Examples include: <ul style="list-style-type: none"> <li>• relevant documentation to support claim</li> <li>• statutory declaration.</li> </ul>

#### 4. ***Other elections not affected***

4.1 This Determination applies to failing to vote at Victorian State elections, including general elections, by-elections, supplementary elections, re-elections, and referendums held on or after 26 November 2022.

4.2 Elections held under any other Act and Victorian State elections held prior to 26 November 2022 are not affected by this Determination.

#### **Revocation of previous instrument**

Not applicable.

## Commencement of this Determination

This Determination commences on 12 May 2023 and remains in effect until such time as it is amended, revoked, superseded or otherwise replaced.

Dana Fleming  
Acting Electoral Commissioner  
Victorian Electoral Commission

12 May 2023

## Document details

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