

## DETERMINATION

### Instructions in relation to secrecy during the early processing of votes

*Electoral Act 2002, Section 110J*

Determination 004/2022

#### Keywords

*Candidates, early processing of votes, restricted area, scrutineers, secrecy*

#### Preamble

Section 110J of the *Electoral Act 2002* (Vic) (Electoral Act) allows for the early processing of ballot papers and returned postal vote declarations which have been accepted for further scrutiny.

Early processing can only occur under the conditions stated in section 110(2) of the Electoral Act and within the timeframe fixed by section 110J(6) of the Electoral Act.

Offences relating to early processing and restricted areas are provided by sections 110J(4) and (5) of the Electoral Act.

Early processing is distinct from the counting and scrutiny of votes as detailed in sections 113, 114 and 114A of the Electoral Act, and does not include any sorting of ballot papers according to the preferences marked on them. It is a preparatory activity which contributes to the timely counting and reporting of election results.

This Determination provides secrecy provisions which must be applied and clarifies the extent of activities included in the early processing of votes.

#### Audience

The principal audience for this Determination includes:

- candidates
- registered political parties
- scrutineers.

#### Determination

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

This Determination is made under the power granted by section 110J(2)(d) of the Electoral Act.

## **1. Secrecy provisions**

### *The following instructions must be applied during the early processing of votes*

- 1.1. Early processing may only occur where written notice has been given in accordance with section 110J(3) of the Electoral Act.
- 1.2. Any scrutineer appointed must present a completed scrutineer appointment form signed by the candidate they are representing.
- 1.3. The VEC will appoint an election manager or election official in charge of each restricted area with authority to permit a person to enter, leave or re-enter that area.
- 1.4. Restricted areas must preclude (or be adapted to preclude) any person outside the area from seeing, hearing, or otherwise obtaining information about the early processing of ballot papers.
- 1.5. All persons entering restricted areas must be provided with information regarding electoral offences. All persons will be required to sign a declaration, witnessed by an election official, that they will not disclose or otherwise use information obtained during the early processing of votes and are aware that doing so is an offence.
- 1.6. All persons entering or re-entering the restricted area will be required to surrender all devices that could be used to convey or transmit information to any other person or device located outside the restricted area. This includes mobile devices, tablets, smart watches, cameras, and any similar electronic devices. Writing implements and materials will also be prohibited, except for those items required by election officials to conduct early processing. All surrendered devices will be securely stored until the person leaves the restricted area.
- 1.7. A person may leave a restricted area for permitted reasons, such as during pauses in early processing or to accommodate bathroom breaks, meal breaks or prayer breaks. Surrendered devices will only be made available during these breaks for an essential purpose, such as for official VEC duties or in an emergency. Use of a surrendered device for an essential purpose must be supervised by an election manager or election official in charge. The person will be permitted to re-enter the restricted area after they surrender the device again. In all other circumstances, surrendered devices will not be made available during these breaks. If a person leaves for any other reason or uses a device for a non-essential purpose, they will not be permitted to re-enter the restricted area.
- 1.8. As far as practicable, election officials will be required to conduct early processing activities with ballot papers face down so that preference information is not visible.
- 1.9. The VEC may apply additional secrecy measures at its discretion.

## **2. Permitted activities**

### *Early processing is limited to the following list of activities*

- 2.1. Opening of ballot boxes held under section 99(3) of the Electoral Act and removal of ballot papers and declarations.

- 2.2. Opening of admitted postal envelopes received under section 106 of the Electoral Act and extraction of ballot papers.
- 2.3. Separating district from region ballot papers.
- 2.4. Unfolding, flattening, and batching of ballot papers.
- 2.5. Determining batch sizes using electronic counting machines or manual tally.
- 2.6. Reconciling ballot paper numbers with election official records.
- 2.7. Preparing those ballot papers and declarations for other districts and regions for forwarding in accordance with the regulations.

### Revocation of previous instrument

Determination No. 5 of 2018 ('Instructions in relation to secrecy during the preliminary processing of postal and early votes') made by the Electoral Commissioner on 30 October 2018 is revoked by the commencement of this Determination.

### Commencement of this Determination

This Determination commences on 1 November 2022 and remains in effect until it is amended, revoked, superseded, or otherwise replaced.

Warwick Gately AM  
Electoral Commissioner  
Victorian Electoral Commission

6 October 2022

### Document details

Determination Name	Instructions in relation to secrecy during the early processing of votes			
VEC Electra ref	EDRM155-166419294-42			
Custodian	Director, Electoral Integrity and Regulation			
Scheduled review date	1 July 2026			
Document history	Reference:	Effective date:	Supersedes:	Superseded by:
— Version 1.0	005/2018	30 Nov 2018	Not applicable	004/2022
— Version 2.0	004/2022	01 Nov 2022	005/2018	004/2022 V2.1
— Version 2.1	004/2022	01 Nov 2022	004/2022 V2.0	Not applicable

— END —