

Countback Procedure to fill an extraordinary vacancy in a multi-councillor electorate





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Introduction

The introduction of the *Local Government Act 2020 (the Act)* included changes to the way a countback is to be conducted. Previously, only the ballot papers that elected the vacating councillor were included in the countback, however under the new legislation all ballot papers included in the original election are to be included. Also, under previous legislation, to be elected a candidate had to receive an absolute majority (more than 50% of the formal votes). The new countback method is based on proportional representation (PR) counting whereby a participating candidate must achieve a quota to be elected; the quota is the same as at the original election.

The countback counting system

The *Local Government Act 2020 (the Act)* requires a countback to be used as the first method of filling an extraordinary vacancy that occurs in multi-councillor municipal districts, including wards with more than one councillor and unsubdivided Councils where there is one or more previously unsuccessful candidates. Countbacks are designed to fill the vacancy in proportion to the amount of support each candidate has in the electorate that elected the vacating councillor. If there is no eligible candidate to fill the vacancy, a by-election is held.

The Victorian Electoral Commission's (**VEC**) electronic counting equipment and systems are used to conduct the countback.

Election Manager

An election manager will conduct a countback to fill an extraordinary vacancy. The election manager may be the same election manager who conducted the original election of the Council, a newly appointed election manager or a member of VEC staff appointed as the election manager for the countback.

Eligible candidate

An eligible candidate means a person who -

- was a candidate at the original election (the original election is the most recent election that was not conducted by a countback);
- did not withdraw or retire from, and was not elected at that election; and
- is still qualified to be a Councillor.

Qualification to be a councillor

Section 34 (1) of the Act states that:

A person is qualified to be a Councillor of a Council if the person—

- a) has attained the age of 18 years; and
- b) is an Australian citizen or an eligible British subject referred to in section 48 (1) (a) of the *Constitution Act 1975*; and
- c) is enrolled on the voters' roll for the Council or would be enrolled on the voters' roll for the Council on a particular day if a voters' roll were to be prepared on that particular day; and
- d) is not disqualified from being a councillor.

Disqualifications

The Act lists circumstances which disqualify a person from becoming a councillor or nominating as a candidate. These include if the person:

- is a member of an Australian Parliament, including the Federal Parliament or a Parliament of a State or Territory of the Commonwealth of Australia.
- is employed as a Ministerial officer, Parliamentary adviser or an electorate officer (however designated) by a member of an Australian Parliament, including the Federal Parliament or a Parliament of a State or Territory of the Commonwealth of Australia (unless the person has taken leave from that office or position for the election period – see section 256 (8) of the Act
- is a councillor of another council, including interstate councils
- is a member of council staff of the council (unless the person has taken leave from that office or position for the election period – see section 256 (8) of the Act
- is an undischarged bankrupt
- has property that is subject to control under the law relating to bankruptcy
- has been convicted of any of the offences referred to in section 34 (2) of the Act, or
- is otherwise incapable of becoming or continuing to be a councillor.

The above list is not exhausted. It is important that candidates familiarise themselves with the Act for a full list of qualification requirements to be elected as a Councillor.

Essentials of the countback

- Countback fills one vacancy at a time.
- Countback includes candidates from the original election who were not elected and are still eligible to participate in the countback.
- All candidates from the original election (excluding the vacating candidate, any deceased candidates and any candidates who have ceased to be qualified to be a councillor) are included in the countback however, only a previously unsuccessful candidate can be elected at the countback.
- A candidate who was previously elected cannot be un-elected at the countback.
- Countback is a counting system not a voting system. There is no special ballot paper and electors do not cast a vote.
- Countback is based on the proportional representation method of counting.

- The quota for the countback is the same quota as at the original election
- All formal ballot papers from the original election are included in a countback.
- To be elected a participating candidate must achieve the quota or be the only candidate remaining in the count.

Procedure if there is only one eligible candidate

If there is only one eligible candidate, the election manager must write to the candidate and invite them to complete and return a written declaration within 14 days of the date of the written invitation specifying they are still qualified to be a councillor.

If the candidate complies, the election manager must declare the candidate elected.

If the candidate does not comply the countback fails and a by-election must be held to fill the vacancy.

Procedure if there are no eligible candidates

If there are no eligible candidates, the countback fails and a by-election is held to fill the extraordinary vacancy.

Exclusion of candidate

As above, the election manager must exclude from participation in a countback any candidate who the election manager knows has died or has otherwise ceased to be qualified to be a councillor. An exclusion cannot be made on the countback procedure once it has commenced.

A candidate from a previous countback who failed to complete the declaration of their qualification to be a candidate within the required time frame is not to be excluded in a countback.

Procedure if there is more than one eligible candidate

Notification of extraordinary vacancy

Within 14 days of an extraordinary vacancy occurring, the election manager must publish a notice on the VEC's website and give written notice to each eligible candidate at their last known address specifying:

- the date, time and place for the conduct of the countback;
- that an eligible candidate is entitled to appoint scrutineers for the countback; and
- the contact details of the election manager.

The date for the conduct of the countback must be the date which is at least 14 days after the date of the notice which, in the opinion of the election manager, is the earliest practicable date to conduct the countback.

Process for conduct of countback

There are several stages in the countback process

1. All first preferences for all candidates included in the countback are ascertained.
2. First preferences from the vacating candidate or any deceased or ineligible candidate are allocated to the candidates participating in the countback from the voters second or subsequent preference.
3. If at this stage a participating candidate who was not previously elected obtains the quota, the countback stops, and that candidate is deemed successful.
4. If at the first stage no previously unsuccessful candidate achieves the quota the distribution continues.
5. If after the distribution of all votes no previously unsuccessful candidate achieves the quota and more than one previously unsuccessful candidate remains, the candidate with the lowest votes is excluded and their votes are distributed according to the next preference to the remaining candidates.
6. If there is only one candidate remaining in the count who was not previously elected the countback stops and that candidate will be elected.

Note: Under the Act a countback does not affect the election of a previously elected candidate and the election or exclusion of a previously elected candidate has effect only for the purpose of the continuation of the count.

Notification of candidate who would be declared elected

The election manager must make reasonable efforts to notify the candidate who would be declared elected as a result of the countback and invite the candidate to complete a written declaration within 48 hours that the candidate is still qualified to be a councillor.

If the candidate who would be declared elected does not complete the written declaration within the required 48 hours, a further countback is to be conducted as soon as practicable after the period has expired. The candidate who failed to complete the written declaration is not included in the subsequent countback.

Declaration of the result

If a successful candidate at a countback completes the written declaration within the specified 48 hour timeframe, the election manager must, as soon as possible after the successful candidate has completed the declaration publicly declare the candidate to be elected.

The election manager must also give public notice of the name of the person elected and advise the Minister for Local Government of the result of the countback.

Procedure if a countback fails

If a successful candidate does not complete their written declaration within the required timeframe a further countback is to be conducted. If there is only one candidate remaining and they are invited to complete the required written declaration and fail to do so, or if there are no remaining eligible candidates the countback fails.

If a countback fails or the election manager is otherwise unable to fill the extraordinary vacancy by a countback, the election manager must notify the Chief Executive Officer of the Council and a by-election must be held to fill the extraordinary vacancy.

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