



DETERMINATION

Sufficient reasons for failing to vote in elections

Electoral Act 2002, section 9(3)

Determination 002/2024

Keywords

Apparent failure to vote notice, compulsory voting, enforcement, excuse, failure to vote, infringement, notice, sufficient reasons for not voting.

Preamble

It is compulsory for enrolled voters to vote in Victorian State elections held under the *Electoral Act 2002* (Vic) (**Electoral Act**) and local government elections held under the *Local Government Act 2020* (Vic) (**Local Government Act**) and *City of Melbourne Act 2001* (Vic) (**City of Melbourne Act**). The law also provides for the VEC to enforce these compulsory voting requirements, including issuing infringement notices.

The VEC recognises that while voting is important and compulsory, there will be instances where voters are unable to cast their vote. The VEC is providing this determination, in the interest of good regulatory practice, to provide transparency to these voters, with the aim of achieving consistency of decision-making across all elections administered by the VEC.

Elections held under the Electoral Act

Elections held under the Electoral Act include general elections, by-elections, supplementary elections and re-elections for the Parliament of Victoria, and referendums.

For each election held under the Electoral Act, the Victorian Electoral Commission (**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 requires the VEC to send an Apparent Failure to Vote Notice (**AFTVN**) to all electors on the list of non-voters within 6 months after an election except when the VEC is satisfied that an elector:

- has died
- was absent from Victoria on election day
- was ineligible to vote at the election
- was issued a ballot paper for the purpose of voting
- was enrolled as a person with no fixed address (itinerant elector), Antarctic elector or overseas elector
- applied for a postal vote, but the application was received late or was rejected
- had a valid and sufficient excuse for not voting.

Elections held under the Local Government Act

Elections held under the Local Government Act include general elections and by-elections for municipal councils in Victoria. References to elections held under the Local Government Act in this Determination include Melbourne City Council elections except where specified.

For each election held under the Local Government Act, the VEC must—in accordance with regulation 85 of the *Local Government (Electoral) Regulations 2020 (Vic)* (**Local Government Regulations**)—prepare a list of persons who were entitled to vote at the election but did not vote. This is the list of non-voters for the purposes of elections held under the Local Government Act.

Regulation 86 of the Local Government Regulations requires the VEC to send an AFTVN to all persons on the list of non-voters within 6 months starting on the day immediately after election day except when the VEC is satisfied that a voter:

- was ill, disabled or infirm and for that reason was unable to vote at the election or could have voted only with difficulty
- was absent from Victoria—
 - for 15 days immediately before the last day of voting; or
 - if the last day of voting is altered, from the last day postal votes are issued under regulation 49(1) until the last day of voting
- returned a declaration envelope within 7 days immediately after the last day for the receipt of declaration envelopes in respect of the election under regulation 57(3)(d)
- returned a declaration envelope that was disallowed under regulation 52(3)
- made a request to have the postal ballot envelope redirected under regulation 54 but did not receive a postal ballot envelope
- was entitled to receive replacement voting material under regulation 56 but did not receive the replacement voting material
- was a person experiencing homelessness and for that reason was unable to vote at the election or could have voted only with difficulty
- was serving a sentence of imprisonment
- was in lawful custody or detention
- had a sufficient excuse for not voting.

Melbourne City Council elections

Melbourne City Council elections have separate excuses for not voting than all other local government elections, described in regulation 95 of the Local Government Regulations. These are when a voter:

- was ill, disabled or infirm and for that reason was unable to vote at the election or could have voted only with difficulty
- was absent from Victoria—
 - for 15 days immediately before the last day of voting; or
 - if the last day of voting is altered under regulation 60, from the last day postal votes are issued under regulation 49(1) until the last day of voting
- returned a declaration envelope within 7 days immediately after the last day of voting
- returned a declaration envelope that was disallowed under regulation 52(3)
- made a request to have the postal ballot envelope redirected under regulation 54 but did not receive a postal ballot envelope
- was entitled to receive replacement voting material under regulation 56 but did not receive the replacement voting material

- was enrolled under section 9A(3) or (5), 9B, 9C or 9D of the City of Melbourne Act and the voter's postal address listed on the voters' roll is an address not located in Australia
- had sufficient excuse for not voting.

In addition, a corporation is not guilty of failing to vote if it did not receive a notice under section 9D(6) of the City of Melbourne Act in respect of the enrolment of the representative before the date of the election.

Determination purpose

This Determination provides guidance on the reasons that would constitute a 'sufficient' excuse 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 a person responding to an AFTVN.

Section 167 of the Electoral Act, section 267 of the Local Government Act and section 19 of the City of Melbourne Act allow for an infringement notice to be issued where an authorised officer of the VEC is satisfied a person has committed an offence. An infringement notice is issued as an infringement offence and is governed by the *Infringements Act 2006* (Vic).

Audience

The principal audience for this Determination includes:

- any person issued an AFTVN
- VEC staff
- Authorised officers.

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

- 1.1 Excuses listed in Table 1 will be 'sufficient' excuses and applied by the VEC when preparing a list of non-voters for elections held under the Electoral Act, Local Government Act and City of Melbourne Act. If the VEC believes that a sufficient excuse applies, the person will be removed from the list of non-voters.

Table 1: Excuses accepted at the pre-enforcement stage

Excuse	Notes
The person has died	A deceased person will not be subjected to enforcement.
The person was ill, disabled or infirm and for that reason was unable to vote at the	Examples include: <ul style="list-style-type: none"> • unwell during the voting period • unwell on the day of the election • experiencing a medical issue

Excuse	Notes
election or could have voted only with difficulty	<ul style="list-style-type: none"> • undergoing medical treatment • cognitive impairment • mental illness or disorder • serious addiction to drugs or alcohol.
The person was absent from Victoria during the voting period for an election	<p>For State elections, the person was absent from Victoria on election day for the relevant election.</p> <p>For local government elections, the person was absent from Victoria for the duration of the postal voting period.</p>
The person for religious reasons was unable to vote	The person's religious or faith-based beliefs precluded them from voting.
The person was, at the time of the election, of or over the age of 70 years	A person who is 70 years of age or older on the election day for the relevant election.
The elector could not vote due to the effects of a declared emergency in Victoria during the election period	An elector who was unable to travel to a voting centre to vote because of a declared emergency to which a determination under regulation 52 of the <i>Electoral Regulations 2022 (Vic)</i> (State Election Regulations) relates.
The person had a sufficient excuse for not voting	<p>The person was unable to vote at the election, or could have voted only with difficulty, for one of the following (or other) reasons:</p> <ul style="list-style-type: none"> • caring responsibilities • an unexpected event • homelessness or lacking secure accommodation • Bereavement • incarceration or otherwise in lawful custody or detention • family violence.

1.2 Item 1.1 of this Determination is not exhaustive. The prosecution officer retains discretion to determine if an excuse known to them at the time of processing the non-voter list is a sufficient reason for failing to vote.

2. **Excuses at the AFTVN stage**

2.1 Excuses listed in Table 2 will be 'sufficient' excuses and accepted by the VEC in response to an AFTVN issued for elections held under the Electoral Act, Local Government Act and City of Melbourne Act.

Table 2: Excuses accepted at the AFTVN stage

Excuse	Notes
The person has died	A deceased person will not be subjected to enforcement.
The person was ill, disabled or infirm and for that reason was unable to vote at the election or could have voted only with difficulty	<p>Examples include:</p> <ul style="list-style-type: none"> • unwell during the voting period • unwell on the day of the election • experiencing a medical issue • undergoing medical treatment • cognitive impairment • mental illness or disorder • serious addiction to drugs or alcohol.
The person was absent from Victoria during the voting period for an election	<p>For State elections, the person was absent from Victoria on election day for the relevant election.</p> <p>For local government elections, the person was absent from Victoria for the duration of the postal voting period.</p>
The person for religious reasons was unable to vote	The person's religious or faith-based beliefs precluded them from voting.
The person was, at the time of the election, of or over the age of 70 years	A person who is 70 years of age or older may receive an AFTVN if an incorrect date of birth is recorded on their enrolment for the election. A person can provide evidence of their date of birth, which is used to update their enrolment for State and local government elections.
The elector could not vote due to the effects of a declared emergency in Victoria during the election period	An elector who was unable to travel to a voting centre to vote because of a declared emergency to which a determination under regulation 52 of the State Election Regulations relates.
The person had a sufficient excuse for not voting	<p>The person was unable to vote at the election, or could have voted only with difficulty, for one of the following (or other) reasons:</p> <ul style="list-style-type: none"> • caring responsibilities • an unexpected event • homelessness or lacking secure accommodation • bereavement • incarceration or otherwise in lawful custody or detention • family violence.

2.2 Item 2.1 of this Determination is not exhaustive. The prosecution officer retains discretion to determine if an excuse given to them in response to an AFTVN is a sufficient reason for failing to vote.

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

3.1 A person is 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 person has died	Examples include: <ul style="list-style-type: none"> • the deceased person's death certificate • statutory declaration from the deceased person's next of kin
The person 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"> • medical certificate • statutory declaration • documentation or records relevant to the relevant illness, disability, infirmity or treatment.
The person was absent from Victoria during the voting period for an election	Examples include: <ul style="list-style-type: none"> • statutory declaration • travel or accommodation booking confirmations • passport or visa documentation.
The person for religious reasons was unable to vote	Examples include: <ul style="list-style-type: none"> • reference(s) to the applicable religious or faith-based scripture • documentation or resources from a religious or faith-based leader • statutory declaration.
The person 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"> • driver licence or learner permit • passport • primary source document recording date of birth.
The elector could not vote due to the effects of a declared emergency in Victoria during the election period	Examples include: <ul style="list-style-type: none"> • evidence of being located within the impacted area • statutory declaration.
The person had a sufficient excuse for not voting	Examples include: <ul style="list-style-type: none"> • relevant documentation • statutory declaration.

3.2 Item 3.1 of this Determination is not exhaustive. The prosecution officer may consider other forms of evidence relevant to an excuse given to them in response to an AFTVN is a sufficient reason for failing to vote.

4. Other elections not affected

4.1 This Determination applies to failing to vote at:

4.1.1 Elections held under the Electoral Act on or after the commencement of this Determination; and

4.1.2 Elections held under the Local Government Act or City of Melbourne Act on or after 26 October 2024.

4.2 This Determination does not affect

4.2.1 Elections held under the Electoral Act prior to the commencement of this Determination; and

4.2.2 Elections held under the Local Government Act or City of Melbourne Act prior to 26 October 2024.

5. Transitional and savings

5.1 Any decision, action, proceeding or matter made, taken or commenced under 'Determination No. 1 of 2023 — Reasons and excuses for failing to vote in an election held under the Electoral Act 2002', dated 12 May 2023, is not affected by this Determination.

Revocation of previous instrument

This Determination revokes and replaces 'Determination No. 1 of 2023 — Reasons and excuses for failing to vote in an election held under the *Electoral Act 2002*', dated 12 May 2023.

Commencement of this Determination

This Determination commences on 13 August 2024 and remains in effect until such time as it is amended, revoked, superseded or otherwise replaced.

Sven Bluemmel
Electoral Commissioner
Victorian Electoral Commission

12 August 2024

Document details

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