Victorian Electoral Commission

DETERMINATION

Filling extraordinary vacancies on local councils

Electoral Act 2002, section 9(3)
Local Government Act 2020, section 259(1)

Determination 009/2026

Keywords

By-election, candidate, council, councillor, countback, Deputy Lord Mayor, election, extraordinary vacancy, general election, local government, Lord Mayor, Melbourne City Council, office of Councillor, vacancy

Preamble

The *Electoral Act 2002* (Vic) (Electoral Act) requires the Victorian Electoral Commission (VEC) to administer local government elections, including:

- producing voters' rolls for local government elections (sections 8(2)(c) and 8(2)(ca))
- conducting all local government elections (section 8(2)(cb)).

The *Local Government Act 2020* (Vic) (Local Government Act) defines an election as a general election, a by-election, or a countback. By-elections and countbacks are used in different circumstances to fill extraordinary vacancies on councils, including when an extraordinary vacancy is caused by the Victorian Civil and Administrative Tribunal (VCAT) exercising its powers under section 312 of the Local Government Act.

For a by-election, the Local Government Act requires the VEC to fix the election day on a Saturday within 100 days of the extraordinary vacancy occurring. If the VEC considers that the process for holding a by-election would be adversely affected by a public holiday or a school holiday, the VEC may fix for the by-election:

- an election day on a Saturday not later than 150 days after the vacancy occurred
- a different date for the close of the roll
- a different nomination day.

This determination sets the broad parameters for scheduling by-elections during the 4-year council term to October 2028. Countbacks are subject to separate requirements under the Local Government Act and the dates in 1 of this determination do not apply to countbacks, except where the countback fails.

Extraordinary vacancies that occur within 3 months of a general election are not permitted by the Local Government Act to be filled. Further, section 259 of the Local Government Act allows the VEC to determine that there is insufficient time to conduct a by-election or countback before the period of 3 months before a general election.

This determination provides that the VEC considers there is insufficient time to conduct a by-election for extraordinary vacancies that occur on or after 1 April 2028.

For the avoidance of doubt:

- Extraordinary vacancies may be filled by countback until the 3-month period before the next general election on 28 October 2028.
- If a countback fails on or after 1 April 2028, there is insufficient time to conduct a by-election.

Extraordinary vacancies for Melbourne City Council are filled in accordance with the *City of Melbourne Act 2001* (Vic) (City of Melbourne Act) and this determination applies only to a countback to fill a vacancy in the office of Councillor.

Audience

The main audiences for this determination include:

- candidates for local government elections
- councillors
- council staff.

Determination

I, Sven Bluemmel, Electoral Commissioner for the State of Victoria, make the following determination in accordance with section 9(3) of the Electoral Act.

1. Summary

1.1 Table 1 summarises the effects of this determination and is read in conjunction with the requirements of the Local Government Act and City of Melbourne Act (where relevant) for extraordinary vacancies occurring on councils.

Table 1. Summary of approach to filling vacancies on councils

Vacancy	Until 31 March 2028	1 April to 27 April 2028	28 April to 27 July 2028	28 July to 28 October 2028
Melbourne City Council				
Lord Mayor	By-election	By-election	Subject to council resolution	No election
Deputy Lord Mayor	By-election	By-election	Subject to council resolution	No election
Councillor	Countback	Countback	Countback	No election
All other councils				
Filled by a by-election	By-election	No election	No election	No election
Filled by a countback	Countback	Countback	Countback	No election

2. By-elections

2.1 If an extraordinary vacancy occurs within the date range provided in Table 2 and a by-election is required, the corresponding election day will be fixed for the by-election.

Table 2. Election dates for by-elections for the 2024–2028 council term.

Date of extraordinary vacancy (range)	Election day	Duration
15 November 2024 to 3 January 2025	29 March 2025	85 to 134 days
4 January 2025 to 7 March 2025	31 May 2025	85 to 147 days
8 March 2025 to 9 May 2025	2 August 2025	85 to 147 days
10 May 2025 to 11 July 2025	4 October 2025	85 to 147 days
12 July 2025 to 12 September 2025	6 December 2025	85 to 147 days

Date of extraordinary vacancy (range)	Election day	Duration
13 September 2025 to 7 November 2025	7 February 2026	92 to 147 days
8 November 2025 to 2 January 2026	28 March 2026	85 to 140 days
3 January 2026 to 6 March 2026	30 May 2026	85 to 147 days
7 March 2026 to 8 May 2026	1 August 2026	85 to 147 days
9 May 2026 to 10 July 2026	3 October 2026	85 to 147 days
11 July 2026 to 11 September 2026	5 December 2026	85 to 147 days
12 September 2026 to 6 November 2026	6 February 2027	92 to 147 days
7 November 2026 to 1 January 2027	3 April 2027	93 to 147 days
2 January 2027 to 5 March 2027	29 May 2027	85 to 147 days
6 March 2027 to 7 May 2027	31 July 2027	85 to 147 days
8 May 2027 to 9 July 2027	2 October 2027	85 to 147 days
10 July 2027 to 10 September 2027	4 December 2027	85 to 147 days
11 September 2027 to 5 November 2027	5 February 2028	92 to 147 days
6 November 2027 to 31 December 2027	25 March 2028	85 to 140 days
1 January to 2028 to 3 March 2028	27 May 2028	85 to 147 days
4 March 2028 to 31 March 2028	24 June 2028	85 to 112 days

2.2 There is insufficient time to conduct a by-election to fill an extraordinary vacancy that occurs on or after 1 April 2028.

2.3 Section 259(1) of the Local Government Act applies to prohibit the filling of any extraordinary vacancy, including through a by-election, within the period beginning 3 months before a general election.

2.4 Despite 2.1 and 2.2 of this determination, the VEC may vary Table 2 and fix a different election day for a by-election.

2.5 This determination does not prevent the VEC from fixing a different date for the close of the roll and/or nomination day for a by-election in accordance with the Local Government Act.

3. Countbacks

3.1 Section 259(1) of the Local Government Act applies to prohibit the filling of any extraordinary vacancy, including through a countback, within the period beginning 3 months before a general election.

3.2 If a countback fails or the extraordinary vacancy is unable to be filled by a countback, section 283 of the Local Government Act and 2.1 to 2.5 of this determination apply.

3.3 For the purpose of 2.1 to 2.5 of this determination, the date the countback fails or the election manager determines that the extraordinary vacancy cannot be filled by a countback, is the date the extraordinary vacancy occurs.

4. Melbourne City Council

4.1 For the purposes this determination, 2.1 to 2.5 does not apply to Melbourne City Council.

4.2 If a vacancy in the office of Lord Mayor or Deputy Lord Mayor occurs more than 6 months before a general election, a by-election to fill the vacancy must be held pursuant to section 24 of the City of Melbourne Act.

4.3 If a vacancy in the office of Lord Mayor or Deputy Lord Mayor occurs within the period starting 6 months and ending 3 months before a general election, it is a decision of the council if an election will be held to fill the vacancy, otherwise:

4.3.1 If the office of Lord Mayor is vacant, the council may resolve for the Deputy Lord Mayor to become the Lord Mayor.

4.3.2 If the office of Deputy Lord Mayor is vacant, the council may appoint a councillor of the council to fill the vacancy.

4.4 For the purposes this determination, 3.1 to 3.3 applies to any countback needed to fill the vacancy in the office of Councillor.

Revocation of previous instrument

Determination 001/2025 (‘Filling extraordinary vacancies on local councils’) made by the Electoral Commissioner on 2 May 2025 is revoked and replaced by this determination.

Commencement of this determination

This determination commences on 25 May 2026 and remains in effect until its expiry on 28 July 2028, or until such time it is amended, revoked, superseded or otherwise replaced.

Sven Bluemmel
Electoral Commissioner
Victorian Electoral Commission

25 May 2026

Document details

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— Version 3.0	009/2026	25 May 2026	001/2025	Not applicable

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