



DETERMINATION

Scrutineering at an election

Electoral Act 2002, section 9(3)

Determination 002/2022

Keywords

Appointment form, devices, expected conduct, observing, quotas, scrutineer, sign in, signatures, venue.

Preamble

Candidates may appoint scrutineers to represent their interests at State elections in accordance with section 76 of the *Electoral Act 2002* (Electoral Act) and local government elections in accordance with regulation 31(1) of the *Local Government (Electoral) Regulations 2020* (LG Regulations). Scrutineers represent candidates during the issuing, counting and scrutiny of ballot papers.

Properly appointed scrutineers have certain entitlements, obligations and prohibitions under relevant legislation and conditions of entry. The Victorian Electoral Commission (VEC), election managers and election officials have certain powers in relation to regulating scrutineer conduct. This includes the power to cause a scrutineer to be removed if they do not comply with their obligations.

This Determination clarifies the VEC's regulation of the entitlements and obligations that scrutineers have at State and local government elections.

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 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. *Scrutineers observing and challenging*

- 1.1. The VEC may allow scrutineers to observe activities or processes in addition to those prescribed in the Electoral Act and *Local Government Act 2020* (LG Act), and their associated regulations.
- 1.2. Additional activities or processes must involve used or unused ballot papers or the issuing, receipt or processing of voter declarations.
- 1.3. The VEC will notify candidates of activities or processes available to be observed by properly appointed scrutineers, and if scrutineers can make challenges.
- 1.4. A challenge must be directed to the relevant election official supervising the activity or process, such as an election manager or team leader.
- 1.5. Once a challenge has been made and the election official supervising the activity or process has ruled on the challenge, it cannot be challenged again except by virtue of a legislative requirement, such as during a recount held under the Electoral Act.

2. *Processes relating to the appointment and allocation of scrutineers*

Signatures of candidates and scrutineers

- 2.1. Candidates must sign an appointment of a scrutineer form. The candidate may sign the form by hand or apply their signature digitally, such as inserting an image of the signature or signing using a finger or stylus on a digital version of the relevant form.
- 2.2. Scrutineers must sign the declaration by hand in the presence of an election official. Scrutineers are not able to apply a digital signature to the declaration.

Appointment form

- 2.3. A separate appointment form is required for each scrutineer for each venue.
 - 2.3.1. If a scrutineer has been appointed by more than one candidate at a single venue, the scrutineer must have appointment forms showing the appointment by each candidate.
 - 2.3.2. If a scrutineer has been appointed by a candidate for more than one venue, the scrutineer must have an appointment form showing the appointment by the candidate for each venue.
- 2.4. At the VEC's discretion, some activities or processes may be considered as a single venue for the purpose of the appointment of scrutineers. This includes if activities or processes occur across more than one building on the same site or at adjacent sites.

- 2.5. An appointment form must be produced for inspection on request by an election manager, election official or other authorised person. The hardcopy form must be produced and may be a photocopy where the original of that appointment form was previously surrendered to an election official.

Sign in processes

- 2.6. A scrutineer must sign into a venue and present their appointment form before they can be admitted to that venue. A scrutineer must also sign out when leaving the venue.
- 2.7. A scrutineer must identify which candidate they are representing at any activity or process. This is necessary to manage the scrutineer quota.
- 2.8. The VEC may establish further requirements relating to the signing in of scrutineers. Any further requirements will be communicated to candidates.

Scrutineer quota

- 2.9. For the purpose of scrutineer quotas prescribed at section 76(3) of the Electoral Act or regulation 31(7) of the LG Regulations, an election manager or election official is “engaged in the activity” when they are participating, overseeing, monitoring, or otherwise involved in an activity or process.
- 2.10. An election manager or election official remains “engaged in the activity” when the election manager or election official is temporarily absent.
- 2.11. Except when prescribed by law, the VEC or an election manager or election official shall determine the scrutineer quota. The scrutineer quota will be determined based on relevant considerations, including the size of the venue and available staffing, and will be communicated to candidates.
- 2.12. From time-to-time, the VEC or an election manager or election official may vary a scrutineer quota or place reasonable limits on the number of scrutineers able to represent any one candidate for an activity or process in order to maintain fair access for scrutineers, to meet health and safety requirements, or other lawful obligations. Any such variations will be communicated to candidates.

3. *Expected conduct*

- 3.1. A scrutineer who fails to meet the conditions of the scrutineer declaration or who does not comply with a lawful direction of an election manager, election official or other authorised person may be requested to leave the venue. A person who fails to leave when requested may be removed with the assistance of police.
- 3.2. A scrutineer who offends against the entitlements, obligations or prohibitions governing their conduct under the relevant legislation may be prosecuted.

Restriction on devices

- 3.3. Scrutineers are directed to refrain from using any device to record or photograph a ballot paper, declaration or form, or any agent, appointee, contractor or employee of the VEC (including election managers and election officials) while performing their role as a properly appointed scrutineer.
- 3.4. This requirement is a direction by the VEC which forms part of the scrutineer declaration.
- 3.5. For the purpose of this Determination, a 'device' includes an item capable or potentially capable of capturing, recording, saving or transmitting images, videos or other information.

4. *Meaning of 'venue'*

- 4.1. For the purpose of this Determination, a venue includes a voting centre, counting centre or any other place where a scrutineer has an entitlement to attend to observe an activity or process related to an election.

5. *Candidates as scrutineers*

- 5.1. A candidate in an election conducted under the Electoral Act cannot be appointed as a scrutineer for any district or region at the election, except for the purpose of scrutineering a recount which does not involve the district or region for which the candidate has nominated.
- 5.2. The VEC requires scrutineers to identify if they are a candidate in the election.
- 5.3. A candidate in an election conducted under the LG Act or the *City of Melbourne Act 2001* may be a scrutineer if permitted by the LG Regulations.

Revocation of previous instrument

Not applicable.

Commencement of this Determination

This Determination is applicable from 16 September 2022 and remains in effect until it is amended, revoked, superseded or otherwise replaced.

Warwick Gately AM
Electoral Commissioner
Victorian Electoral Commission

9 September 2022

Document details

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