



Government of **Western Australia**  
Department of **Local Government**

# Frequently asked questions about your local government elections



# Local Government Elections

## FREQUENTLY ASKED QUESTIONS ABOUT LOCAL GOVERNMENT ELECTIONS

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# 01. Introduction

## 1.1 What is the purpose of this guide?

The Department of Local Government has recognised the need for an easy-to-read guide in plain English which addresses commonly asked questions about election procedures and the law.

The guide is not intended to be a comprehensive outline of all statutory requirements, procedures, policies and local practices that apply in the conduct of Western Australian local government elections. It aims to provide advice and assistance to local government, members of the public, public agencies, education institutions and the media.

## 1.2 Where can further information be found?

The Department of Local Government and the Western Australian Electoral Commission (WAEC) have published specialist manuals and guides in CD and hard copy to assist candidates, electoral staff, scrutineers and campaign helpers.

These are:

- Standing for Council - Information for Candidates
- Returning Officer Manual for Voting in Person Elections
- A Guide for Scrutineers for Voting in Person Elections - Appendix to Returning Officer Manual
- A Guide for Candidates - Local Government Postal Elections
- A Guide for Scrutineers - Local Government Postal Elections

In addition, the following websites provide information:

[www.dlg.wa.gov.au](http://www.dlg.wa.gov.au)  
[www.waec.wa.gov.au](http://www.waec.wa.gov.au)

## 1.3 What legislation applies to local government elections?

Statutory provisions regarding the conduct of local government elections are contained in the:

- *Local Government Act 1995* (LGA)
- *Local Government (Elections) Regulations 1997* (reg)
- *Local Government (Constitution) Regulations 1998* (c.reg)

## 1.4 Local procedures and policies for local government elections

In addition to the statutory requirements for the conduct of local government elections there are also a number of other issues and situations which are determined by local laws and policies made by councils. These may differ from local government to local government.

Some of these matters will be able to be clarified by the Chief Executive Officer of the local government and others by the Returning Officer for the election.

Among the matters which may be addressed by local laws and policies and clarified by the Chief Executive Officer are:

- 7.6 Use of council property and facilities;
- 7.8 Use of public address systems;
- 7.9 Signs on public/private property; and
- 11.4 Declaration of office by new councillors.

The Returning Officer for the election should be contacted for information on:

- 7.1 Information given to candidates;
- 9.8 Re-use of how to vote cards;
- 9.12 Early checking of early, absent and postal votes; for voting in person elections;
- 10.3 Counting room arrangements; and
- 10.4 Attending the count.

## 02. Local Government Elections

### GENERAL INFORMATION

#### 2.1 When are local government elections held?

Local government elections are held every two years on the third Saturday in October. If this date coincides with a State or Commonwealth Government election or voting for a referendum in any part of a local government district, the election cannot proceed unless the Governor or Governor-General respectively approves under s 4.1 LGA or s143 and 394 of the Commonwealth Electoral Act 1918.

In certain other circumstances, the WA Electoral Commissioner can postpone the elections if it is not in the public interest to hold them on the due date. In such a case, the postponed elections must be held on a later Saturday in October, or on the first, second or third Saturday in November.

(s 4.7 LGA)

#### 2.2 What are the laws about local government elections?

The principal laws about local government elections are the *Local Government Act 1995*; the *Local Government (Elections) Regulations 1997*; and *Local Government (Constitutions) Regulations 1998*.

#### 2.3 What are the types of elections?

There are two types of local government elections - "voting in person" and "postal" elections.

At a voting in person election, electors may vote early or by post but most choose to vote in person on election day at a polling place within the district.

At a postal election, electors are sent an election package which includes the ballot papers and may then vote at home and post the completed papers.

#### 2.4 Who pays for elections?

The local government pays all the costs of the election.

(s 4.28 LGA, reg 9)

#### 2.5 Is there a Code of Conduct for elections?

The Returning Officer is to have an Electoral Code of Conduct for elections and this document is available from the relevant local government for voting in person elections, or WAEC for postal elections. The Code applies to all electoral officers.

(s4.27(1)(d)  
(reg 8)

#### 2.6 Are elections held at other times of the year?

Elections may be held at other times of the year, for example when an elected member dies or resigns. In such an event, an extraordinary election will be held not later than four months after the vacancy occurs. In certain circumstances, it may be deferred until the next ordinary election.

(s 4.16, 4.17, 4.18 LGA)

#### 2.7 Why are there local government elections every two years?

Councillors are elected for four years with half retiring every two years. This ensures continuity within the council.

#### 2.8 Is it compulsory to vote in local government elections?

No.

(s 4.65(1) LGA)

## 2.9 Is voting secret?

Yes. Local government voting is conducted in secret with very severe penalties for breaches of the strict provisions of the Local Government Act and Regulations.

[s 4.93 LGA, reg 49, 65, 66]

## 2.10 How are votes counted?

Until 2007, the results of local government elections were determined by the “first past the post” system, in which electors indicated the candidate, or candidates, of their choice by placing a tick in the box opposite the names of the chosen persons, up to the number of vacancies to be filled, and candidates were elected in order of the number of votes they received.

In 2007, this was replaced by the “preferential proportional representation” system, in which electors indicate their preferred candidate, or candidates, by numbering them in order of preference. Candidates are elected when they receive 50% of the vote in a single vacancy election, or a specified proportion of the vote in the case of multiple vacancy elections.

While the “preferential proportional representation” system is currently in operation, there is a bill before Parliament which could result in the system reverting to “first past the post” voting for the 2009 elections.

Further details, and regular updates, on the system of voting to be used for the local government elections on 17 October 2009 will be available from the Department’s website.

[s4.74, Sch 4.1]

## 2.11 Who runs local government elections?

Councils can choose whether their elections are run by their staff or the WA Electoral Commissioner. Where the Electoral Commissioner runs the election, he or she will appoint a Returning Officer. The election may be a voting in person or a postal election.

If the local government runs the election, it is conducted as a voting in person election. In order to conduct a postal election, the local government must appoint the Electoral Commissioner to conduct the election. Regardless of which organisation runs the election, a Returning Officer is appointed to be responsible for the conduct of the election.

[s 4.20 LGA]

## 2.12 Who is the Returning Officer and what is their role?

The Chief Executive Officer of the local government is the Returning Officer for elections run by the local government but another person can be appointed to be the Returning Officer with the approval of the Electoral Commissioner. Where the Electoral Commissioner has been appointed to run the elections, a Returning Officer is appointed by the Commissioner. The role of the Returning Officer is to ensure that the election is conducted in accordance with the law.

[s 4.20, 4.23 LGA].

## 2.13 Can a local government choose to have postal or voting in person elections?

Yes. However when a council chooses to have its elections undertaken by postal vote then the WA Electoral Commissioner conducts them.

[s 4.20, 4.61 LGA]

## 2.14 Why do some local governments have a Mayor and others a President?

Local governments designated a City or a Town call their chief elected official a Mayor. Where the local government is designated a Shire, the chief elected official is called a President. Both positions have the same duties and responsibilities.

[s 2.4, 2.6, 2.8 LGA]

## 02. Local Government Elections

### GENERAL INFORMATION

#### 2.15 How are Mayors and Presidents elected?

Councils are able to choose the method of election for the Mayor/President. A Mayor or President can be elected by the electors of the district or by the councillors.

(s 2.11 LGA)

#### 2.16 Why do some local governments have wards?

Councils are able to divide their district into wards with councillors being elected on that basis. Councils use wards to establish smaller areas which have interests and other features in common. Where councillors are elected by the ward, they must still represent everyone in the district.

(s 2.2 LGA, reg Sch 2.2 cl 8)



## 03. Enrolling to Vote and Electoral Rolls

### 3.1 Who can vote in local government elections?

To be able to vote, a person must be enrolled on the State electoral roll for a residence in that local government district or own/occupy rateable property within the local government district and be on the State or Australian Government electoral roll outside the local government district.

(s 4.29, 4.30 LGA)

### 3.2 Do electors have to be Australian citizens?

In general, yes. In certain circumstances, a person who was on the electoral roll prior to the commencement of the *Local Government Act 1995* but who is not an Australian citizen, may be able to remain on the roll and vote at council elections but not nominate for council.

(s 4.29, 4.30 and s2.19(2)(b) LGA Sch 9.3 cl12)

### 3.3 What is the owners/occupiers roll?

Owners of land or nominees of corporate bodies who own or occupy rateable property but are not enrolled on the State electoral roll for that ward or district may apply to be on the owners'/occupiers' roll, providing they are on the State or Commonwealth Government electoral roll for a residential address outside that ward or district.

(s 4.30, 4.31, 4.32, 4.41 LGA)

### 3.4 What is the residents' roll?

Those residents who live in a district and are enrolled on the State electoral roll are automatically enrolled on the residents' roll for local government elections.

(s 4.29, 4.40 LGA)

### 3.5 What is the consolidated roll?

The roll for the local government elections is usually consolidated from the residents' roll and the owners' and occupiers' roll.

(s 4.38, 4.44 LGA, reg 18 and 20)

### 3.6 What is a non-resident owner?

A non-resident owner is a person who owns rateable land within the district but is not a resident. To be eligible to be on the roll, a non-resident owner must be enrolled on the State or Commonwealth Government electoral roll for the area where they live.

(s 4.30 LGA)

### 3.7 What is a non-resident occupier?

A non-resident occupier is a person, living outside the local government district or ward where the election is being held, who leases or occupies rateable property within the district.

To be eligible to vote the person must be enrolled on the State or Commonwealth Government electoral roll where they live, and have a right of continuous occupation under a lease, tenancy agreement or other legal instrument of the property within the district where they seek a vote. The right of continuous occupation must extend for a period of at least 3 months at the time the person claims enrolment.

(s 4.31 LGA and s4.32 LGA, reg Sch 1 Form 2)

### 3.8 Are people who do not live in the district able to vote?

Yes. Electors of a local government consist of eligible non-resident property owners and occupiers and residents of the district. Local government provides services to both people and property and the rates levied are paid not only by residents but also non resident business owners and other people who own or occupy property. Where people personally own or occupy property, but are not residents of the district, they are able to enrol to vote and nominate for council at the elections.

(s 4.30, 4.31 (1) (2) LGA)

## 03. Enrolling to Vote and Electoral Rolls

### 3.9 How many votes can a person cast at an election?

Each elector is entitled to one vote only in each election at which they are eligible to vote. This may mean that an elector has a vote for a councillor (or councillors) in their local ward and a vote for the Mayor/President (if relevant). If a person is entitled to vote in more than one ward they can do so for the councillor positions but can still only vote once for the position of Mayor or President.

(s 4.66 LGA)

### 3.10 How many votes does a corporate body have?

Where a company or body corporate owns or occupies rateable land, up to 2 people can be enrolled to vote on its behalf. If more than one property in a ward is owned by the same company or body corporate, the body is still entitled to only 2 votes. If the company or body corporate is entitled to exercise votes at other elections (wards) for the same local government, the same two people must be nominated to vote for the other elections. These people must be enrolled on the State or Commonwealth Government roll for a residence outside the district.

(s 4.31 LGA)

### 3.11 Can I appeal if my application to enrol to vote is rejected by the CEO?

Yes. The CEO of the local government must provide reasons for a decision to reject a claim for enrolment. Any person dissatisfied with the decision may appeal to the Electoral Commissioner who may confirm or reverse the decision.

(s 4.32, 4.35 LGA, reg 15)

### 3.12 What happens where there are multiple non-resident owners/occupiers?

Where a property is owned or occupied by 2 non-residents, both are entitled to be on the roll. Where there are more than 2 owners/occupiers they must nominate the 2 owners/occupiers who have the right to vote. The nominees must be on the State or Commonwealth Government electoral roll.

(s 4.30, 4.31 LGA and reg 11)

### 3.13 How does a non-resident owner/occupier apply to be on the roll?

The local government has the relevant Enrolment Eligibility Claim Form to apply to be on the roll or to nominate the people to vote on behalf of a body corporate.

(s 4.30, 4.32, 4.39 LGA, reg Sch 1 Form 2 , reg 10-12)

### 3.14 Can I check that I am on the roll?

The residents' roll for elections, which is based on enrolments for Australian/State elections, can be checked at the local government, the WA Electoral Commission ([www.waec.wa.gov.au](http://www.waec.wa.gov.au)) or the Australian Electoral Commission. The owners'/occupiers' roll can be checked at the local government offices.

(s 4.39, 4.44 LGA)

## 04. Nominating for Council

### 4.1 Who can nominate?

Any person may nominate for council who is on the local government electoral roll. Or any person who has had their claim for enrolment as an elector on the local government, State and Commonwealth Government rolls, accepted prior to nominating unless he or she is a nominee of a body corporate owner or occupier or is otherwise disqualified.

(s 2.19, 4.48 LGA)

### 4.2 Who cannot nominate?

A person cannot nominate if:

- they are an elected member of another council
- they are a candidate for another vacancy of councillor on the council (except for that of Mayor/President)
- they are a Member of Parliament
- they are an insolvent
- they are currently an elected member for the local government whose term does not expire on election day except if nominating for Mayor or President
- they have been convicted of a crime and are in prison for that crime
- they have been convicted in the previous 5 years of a "serious local government offence"
- they are a nominee of a body corporate owner or occupier
- they have been found personally liable of misapplying local government funds or property in the previous five years.

(s 2.19, 2.20-2.24, 4.48, 8.43 LGA)

### 4.3 Must a person nominate for the ward where they live or own property?

No.

(s 2.19 (3) LGA)

### 4.4 When do nominations open and close?

Nominations open on the 44th day before election day and close at 4.00pm on the 37th day before election day.

(s 4.49 LGA)

### 4.5 Can local government staff nominate for the council where they work?

Yes, but if they are elected their employment ceases. They can nominate for another council where they are eligible without affecting their employment.

(s 2.26 LGA)

### 4.6 Do public servants need permission to nominate?

An elector employed by a public sector agency is not required to have the written permission of their employer to accept or continue to hold office of any local government.

(s 102(2) *Public Sector Management Act 1994*)

### 4.7 How does a person nominate for election?

The Returning Officer will have the nomination form as well as other relevant information for candidates. In order to nominate a person must:

- complete the nomination form
- complete a Candidate's Profile
- pay the deposit fee of \$80 by any means where the Returning Officer is able to ensure that the amount is credited to the Council before nominations close; and
- ensure that the nomination has been properly authorised by the candidate where it has been lodged by an agent on behalf of the candidate.

The documentation can be lodged by hand, post, fax or electronic means so long as it is printed in hard copy by the Returning Officer prior to the close of nominations and the deposit fee is received as cleared funds by that time.

(s 4.49 LGA reg 23-26, Sch 1 Form 8 and 9)

## 04. Nominating for Council

### 4.8 Can a nomination be made by facsimile or other electronic means?

Yes, see 4.7 above.  
(reg 5)

### 4.9 Can the Returning Officer refuse a nomination?

Yes. If the nomination is not printed out in its entirety, is not completed and signed properly, the deposit fee is not received by the Returning Officer by the close of nominations, if the person is otherwise disqualified, the person is the nominee of a body corporate owner or occupier or the candidate is not an elector of the district at the close of nominations.

(s 2.19, 4.48, 4.51 LGA, reg Sch 1 Form 8)

### 4.10 What is the candidate profile?

It is a short (150 word maximum) summary of the candidate's personal information, contact details and policies and beliefs. It may also include a photograph taken within the last 6 months.

(s 4.49 LGA, reg 24, Sch 1 Form 8)

### 4.11 Are nominations confidential?

No. Main nomination details (but not the nomination form) are displayed on the local government notice boards along with the candidate profiles.

(s 4.52 LGA)

### 4.12 Can a nomination be withdrawn?

Yes, as long as the withdrawal is made in writing before 4.00pm on the last day of nominations.

(s 4.53 LGA, reg 25, Sch 1 Form 8 (notes) and Form 9 (notes))

### 4.13 Is the deposit fee refunded in the event of a withdrawal?

Yes, but only if it is withdrawn by 4.00pm on the 38th day before election day, i.e. the day before the close of nominations.

(reg 27)

### 4.14 When is the deposit refunded?

As soon as practicable after the election, successful candidates will be refunded their \$80 deposit, usually after 28 days following notice of the election result (and only if there has been no invalidity complaint).

Nomination deposits are also to be returned to any candidate who receives a specified proportion of votes in the count. Further details on this will be available from the Department's website when a final decision is made on the voting system to be used for the October 2009 elections.

In addition, deposits are returned if a candidate withdraws before 4.00pm on the 38th day before Election Day, or if a candidate in both an election for councillor and an election for mayor or president is elected as mayor or president.

(s 4.50, 4.81 LGA, reg 28, 29)

### 4.15 What happens if a candidate dies?

If a candidate dies before the close of nominations, the nomination is deemed withdrawn. If a candidate dies after nominations close the election is void and an extraordinary election is to be held.

(s 4.56, 4.58 LGA)

## 05. After the Close of Nominations

### 5.1 What happens following the close of nominations?

As soon as possible, at the nomination place, the Returning Officer will publicly read aloud the names of all candidates and the office for which they have nominated. Drawing of lots for positions on the ballot paper will also take place at this time. Public advertising in newspapers and on local government notice boards will also describe the nominations and offices sought.

(s 4.64, LGA reg 30 and 31)

### 5.2 What if there are no nominations for a vacancy?

If there are no nominations for a vacancy at any election (including an extraordinary), an extraordinary election is to be held and the process for conducting an election recommenced. Then, if at the close of nominations for that extraordinary election, there are no nominations, the council may appoint to any unfilled office a person who would be eligible to be a candidate for election to the office and who is willing to accept the appointment.

s 4.57(1 and 3) LGA

### 5.3 What if there are as many nominations as there are vacancies?

In this situation the candidates are declared elected unopposed.

If the vacancies are for various terms the Returning Officer will draw lots to determine the terms of office with the first name drawn being allocated the longest term of office.

(s 4.55 and s4.78 LGA, Schedule 4.2 clause 7)

### 5.4 How are positions on the ballot paper determined?

If there are more nominations than vacancies there will be an election. After the close of nominations the Returning Officer will undertake a draw for positions on the ballot paper. Candidates' names will be placed in separate opaque spheres and then be drawn from a container and listed on the ballot paper in the order drawn.

(s 4.56 LGA, reg 30)

### 5.5 Does the name on the ballot paper have to be the same as that on the electoral roll?

No. The name to be printed on the ballot paper must be your surname and one or more of your given names (or an initial or a commonly accepted variation). This recognises that some people are better known by their second name or a commonly accepted variation of their given names or a name by which they are now known.

The Returning Officer has the discretion to allow the use of initials or a commonly accepted variation of given names or a common-use name.

(reg Schedule 1, Form 8)

## 06. Voting Prior to Election Day (VOTING IN PERSON ELECTIONS)

### 6.1 Can votes be cast prior to election day?

Yes. As soon as the ballot papers have been printed, usually within a few days of the close of nominations, electors for local governments holding voting in person elections can cast an early vote or vote by post. In the case of postal elections, a package is sent by the WAEC to all electors over a period of several days. Electors can vote at any time after they have received their packages.

[s4.67, 4.68 LGA]

### 6.2 What is an early vote at a voting in person election?

An early vote allows an elector to vote in person before election day at the local government offices or any other place set aside for the conduct of early voting. Early voting is available at the places and between the hours set out in the election notice from the Returning Officer. An early vote can be cast up until 4.00pm on the day before election day.

[s 4.67, 4.68 LGA, reg 59]

### 6.3 What is a postal vote at a voting in person election?

Electors do not have to vote in person on election day but can cast their vote by post. An elector can apply for a postal vote by completing a form - Application for Postal Voting Paper. This form is available from the Returning Officer or the Department's website. The Returning Officer will then send you the voting papers including a postage pre-paid addressed envelope for completion. The completed vote must be received by the Returning Officer no later than 6.00pm on election day.

This procedure does not apply to a postal election.

[s 4.68 LGA, Reg 37-40, 42-44 Sch Form 12]

### 6.4 What if an elector is interstate or overseas and unable to vote early?

An elector can apply to the Returning Officer for a postal vote. The same procedure applies as detailed in 6.3.

The completed vote must be received by the Returning Officer no later than 6.00pm on election day.

[s 4.68 LGA, regs 37-40 and 42-44]

### 6.5 What if an elector is away from home but still in WA?

Electors in a voting in person election may apply for a postal vote (see 6.3) or cast an absent vote (see 6.6) at another local government office within WA.

Electors voting in a postal election should make arrangements for redirection of mail to their temporary address or, if the new address is to be permanent, advise the WAEC. A replacement postal voting package may also be sought by contacting the WAEC or by downloading an application for postal voting papers - Form 15 from the Department or WAEC websites (see 1.2).

### 6.6 What is an absent vote?

An absent vote is one cast at a local government in WA for an election at another local government.

It is the responsibility of the elector to ascertain the names of the candidates for the election at which they propose to vote. Although the local government where the elector intends to vote may be able to assist with the names of the candidates for the election, it is not under an obligation to do so.

An elector will be given a blank ballot paper to fill out. After completing the relevant form and returning it, together with the completed ballot paper, the documentation will be posted to the Returning Officer at the elector's local government. An absent vote must be cast by 4.00pm on the fourth day before election day.

[s 4.67, s4.68 LGA, reg 54-58]

## 07. The Election Campaign

### 7.1 What information is provided to candidates?

The information made available to candidates may differ from local government to local government. It will always include an electoral roll but may include any or all of the following:

- map of ward(s) or district
  - information about polling places and where the count is to take place
  - information about early, absent and postal voting
  - copies of relevant Forms
  - copy of the Electoral Code of Conduct
  - information for scrutineers
- [s4.42 LGA, reg 22]

### 7.2 Can candidates accept election donations?

Yes. Any donations that exceed \$200 in value and which were given or promised within 6 months prior to election day must be disclosed by the candidate. New Regulations to be introduced shortly will further require that donations be disclosed also by the donor. In addition, any gift received by an unidentified donor must be disclosed and provided to the CEO of the relevant local government for disposal. Disclosures must be made on a form available from the Chief Executive Officer or the Department's website (see 1.2) and completed within 3 days of the candidate's nomination. Any gifts made after nomination will also need to be disclosed within 3 days of being made.

A "gift" includes a gift of money, a gift which is non monetary but of value, a gift in kind or where there is inadequate financial consideration such as the application of a discount, a financial or other contribution to travel and a firm promise or agreement to give a gift at some future time. A gift does not include a gift by will; a gift by a relative; a gift that does not relate to the candidate's candidature; or the provision of volunteer labour.

[reg 30A - 30F]

### 7.3 Is there any public funding of candidates' campaigns?

No.

### 7.4 Can candidates claim a tax deduction for election expenses?

Yes, but limits are imposed under the Income Tax Assessment Act.

### 7.5 What are the rules about election advertising?

All electoral material must bear the name and address (but not a post box number) of the person authorising it, at the end of the material. Where it has been printed or published (other than in a newspaper) it must also have the name and business address of the printer. This provision also applies to photocopying of electoral material. Although there are no specific requirements regarding electronic advertising, it would be prudent for candidates to comply with the general requirements.

[s 4.87 LGA, reg 78]

### 7.6 Can local government facilities be hired for election purposes?

Local governments may have policies and local laws regarding whether local government property and facilities can be hired or used for campaigning. Candidates should check with the Chief Executive Officer of the local government.

### 7.7 Do small election promotion items require authorisation?

No. The rules regarding authorisation and printer details do not apply to car stickers, clothing, badges, pencils, pens, balloons and other promotional material. It also does not apply to a newspaper advertisement announcing the holding of a meeting.

[s 4.87 LGA, reg 78]

### 7.8 What are the rules regarding the use of public address systems?

Local governments may have local laws controlling the use of public address systems in streets, public places and on land managed by the local government. Candidates should check with the Chief Executive Officer of the local government on these matters.

### 7.9 What are the rules applying to election signs?

The same rules of authorisation applying to any election advertisement apply to signs.

[s 4.87 LGA]

### 7.10 Where can elections signs be erected?

This depends on each local government. Local governments may have different local laws regarding elections signs. The Chief Executive Officer will be able to clarify the local rules which apply in the district. Also, no canvassing is permitted in a polling place or within 6 metres from the entrance to a polling place on polling day.

[s 4.87 and s 4.89 LGA]

## 08. Scrutineers

### 8.1 What is a scrutineer?

A scrutineer is someone appointed by a candidate to observe the conduct of an election at a polling place. They must complete a form of appointment that is available from the Returning Officer or the Department's website. They have legal rights and obligations and are not the same as other campaign helpers who have not been so appointed.

(reg 69, 70 Sch Form 18 )

### 8.2 Who can act as a scrutineer?

A person over the age of 18 may be appointed as a scrutineer. They do not have to be an elector or an Australian citizen.

(reg 69)

### 8.3 Can a candidate be their own scrutineer or act for another candidate?

No. The Local Government Act specifically prevents a candidate from being a scrutineer, either on their own behalf or for another person at the election.

(reg 69)

### 8.4 What are the rights and responsibilities of scrutineers?

A scrutineer is able to:

- attend any polling place mentioned in their notice of appointment
- observe checking of absent and postal votes
- be present when postal ballot papers are being prepared for counting but only at a distance sufficient to ensure that the actual ballot paper markings are not able to be seen
- be present when ballot boxes are opened, when preferences indicated on ballot papers are recorded electronically and votes counted.

A scrutineer must:

- wear identification as a scrutineer
- have a copy of their appointment form with them at all times and produce it if requested by a presiding officer at a polling place
- comply with all directions given by the Returning Officer and all reasonable requests by an electoral officer.

(reg 69, 71, 72)

A scrutineer must not:

- enter a polling place if another scrutineer appointed by the same candidate is already there (unless one of you is in the polling place just to cast your vote);
- take part in the conduct of the election;
- while in or within 6 metres of a polling place:
  - canvass for votes;
  - solicit the vote of an elector;
  - induce an elector to vote for a particular candidate;
  - induce an elector not to vote at the election; and
  - record the name of a person who attends a polling place to vote or record any information given by a person to an electoral officer in order to receive a ballot paper.

[reg 72, reg Sch Form 18 (Notes)]

### 8.5 How is a scrutineer appointed?

Candidates should complete the form available from the Returning Officer and state the polling place the scrutineer will act at. Scrutineers can be appointed at any time, including election day.

(reg Sch Form 18)

### 8.6 Is there a limit on the number of scrutineers per candidate?

No, but only one person per candidate can act as a scrutineer in the polling place at any time. However, the Returning Officer may allow more scrutineers to be present depending on the number of counting tables in use. Others can be in the "audience" during a count.

(reg 69, 72, reg Schedule 1 Form 18 (notes))



## 09. Election Day Procedures

### 9.1 What are the polling hours on election day?

Polling places are open from 8.00am until 6.00pm on election day.

(s 4.62, 4.68 LGA)

### 9.2 Where can votes be cast?

For a voting in person election, at the polling places provided for the election within the district. Generally, for every election that takes place in a ward or district, there must be at least one polling place.

For a postal vote election, electors may also deliver their postal voting package to the polling place before 6.00pm on election day.

(s 4.62 LGA)

### 9.3 Are the polling places for a district advertised?

Yes. Details are published in newspapers and displayed on local government notice boards. The information is also available from the local government offices for that district.

### 9.4 Can an elector vote if they are inside the polling place at 6.00pm?

Yes.

### 9.5 Are scrutineers permitted in the polling place?

One scrutineer per candidate is permitted to be within the polling place.

(reg 72)

### 9.6 What are the rules about canvassing for votes at a polling place?

No canvassing for votes or electioneering is to take place within 6 metres of the entrance to the polling place. Usually the presiding officer will mark or indicate a line for this purpose. The presiding officer can reduce the exclusion zone in certain circumstances.

(s 4.89 LGA)

### 9.7 Can campaign material be taken into the polling place?

Electors can take 'how to vote' cards into the polling place to assist them but clothing or badges promoting candidates cannot be worn in the polling place.

### 9.8 Can "how to vote" cards be recycled?

The presiding officer will usually permit a scrutineer or another person to recycle "how to vote" cards from within the polling place but permission to do so should be sought from the presiding officer.

### 9.9 What if an elector's name is not on the roll?

For voting in person elections, the elector should approach the presiding officer who may, in certain circumstances issue a provisional vote to the elector if their name is not on the roll.

For postal elections, the elector may apply to the Returning Officer after the mail out of postal vote packages, until 6.00pm on election day for a provisional vote.

(reg 62)

### 9.10 Can an elector be assisted to vote?

There may be a number of reasons why an elector is unable to cast their vote personally and in secret. Assistance can be given by the presiding officer, an electoral officer authorised by the presiding officer or another person nominated by the elector.

A candidate, scrutineer or anyone authorised to act on behalf of the candidate is not able to assist an elector to cast a vote.

(reg 67)

## 09. Election Day Procedures

- 9.11 **Where a scrutineer is in the polling place can the name and address of an elector be recorded when it is provided to a poll official?**

No, the legislation specifically prevents a scrutineer from recording the name or any other information about a person in a polling place who wishes to vote.

(reg 72, Schedule 1 Form 18, notes)

- 9.12 **Are absent or postal votes checked early?**

For voting in person elections, only the declaration or certification on each returned envelope of voting papers received before polling day is checked. The ballot paper itself is not removed from the sealed envelope.

For postal elections, ballot papers which are checked early are removed uninspected from the envelope and placed in a sealed ballot box.

Scrutineers are entitled to be present and observe when checking of absent and postal votes occurs and should check with the Returning Officer for details of times.

(reg 51, 52, 52A and 58)

## 10. Counting the Votes and Terms of Office

### 10.1 Where will the votes be counted?

The votes will be counted in a room selected by the Returning Officer. This is usually in the local government administration building and may be in a hall or the Council Chamber itself.

Most vote counts are likely to be conducted using computers. Marked ballot papers are keyed into the computer system and this count is calculated once all ballot papers have been entered and verified.

Where the Returning Officer has been appointed by the WA Electoral Commission, a central location may be used for the conduct of the counts or partial conduct of the counts by arrangement with the local government. This may be in conjunction with other local government election counts.

### 10.2 Who can attend the counting room?

Any person can attend the counting room to observe the count but there are restrictions on who can be in the area where the count is to take place.

### 10.3 How will the counting room be set up?

This varies from local government to local government. The Returning Officer makes these decisions depending on the size of the local government, the available venue and the level of interest.

### 10.4 Who is permitted to enter the count area?

Only electoral staff and official scrutineers are permitted in the counting area. The number of scrutineers in the count area at any one time is determined by the Returning Officer. Usually only one scrutineer per candidate can be present at the count but the Returning Officer may permit one scrutineer per candidate for each counting table.

(reg. 71)

### 10.5 Can scrutineers touch the ballot papers?

No. Only electoral staff may handle the ballot papers. A scrutineer is not to take any part in the conduct of the election.

(reg 72 (b))

### 10.6 What is a formal vote?

In the "first past the post" system, a formal vote is one on which the elector has placed a tick in the box next to the name of the candidate or candidates (where there is more than one vacancy to be filled) to be elected.

If the elector ticks more boxes than vacancies the vote will be invalid. However, if an elector ticks fewer boxes than vacancies the vote will be valid. The Returning Officer has the power to accept such votes, and votes in which marks other than a tick have been used, if the voter's intention is clear.

In the "preferential proportional representation" system, a formal vote is one where the elector has marked the ballot paper according to the instructions on the ballot paper, and is generally valid where the boxes against the names of each candidate have been numbered to indicate the order of the elector's preferences for them. There are certain circumstances in which the Returning Officer can accept votes in which not all boxes have been numbered, provided the voter's intention is clear.

More details on this will be available from the Department's website when a decision is made on the voting system to be used for the October 2009 elections.

[s 4.69, 4.75, regs 34-35]

## 10. Counting the Votes and Terms of Office

### 10.7 How are the terms of office determined?

In an ordinary election, if there is more than one vacancy in a ward or in the case of local governments that do not have wards, the candidate(s) declared elected first by the returning officer will receive the longest term(s) and so on until terms of office have been determined for all persons elected.

If there is an extraordinary vacancy being filled in the same election with a shorter term of office (two years instead of four, for example) then the candidate who is declared elected first by the returning officer will fill the four year term and the candidate who is declared elected second will fill the shorter term.

If it is necessary to determine the order of retirement between councillors representing different wards, and 2 or more councillors have an equal percentage of the primary votes cast, the returning officer will draw lots to determine the order of retirement.

[s.4.78, Sch 4.2]

### 10.8 What happens if there is a tie during the counting process?

The legislation describes the steps to be taken should a tie occur during the count. Generally, the Returning Officer will be required to draw lots to fill the vacancy or determine the terms of office.

[s4.74, 4.78, Schedule 4.1, 4.2 and Regs 77A and 80A]

### 10.9 Will the result be declared on the night?

In general, yes. In some isolated areas it may not be possible to get all the ballot papers to the counting room on the night.

The Returning Officer will declare the successful candidates and their terms of office as soon as possible after the count is completed. In some cases, particularly where the count is very close, the Returning Officer may determine that the electoral staff need to recount and that this should commence the next day. In this case, the count is adjourned and the Returning Officer will advise the scrutineers and candidates when it will recommence.

### 10.10 Can computers be used to assist in the count?

Yes.

### 10.11 Can the count be deferred if computers malfunction?

Yes. If necessary, the Returning Officer or presiding officer would announce an adjournment to the scrutineers and officers and would similarly announce arrangements for the continuation of the count. He or she would also be required, in the presence of the scrutineers and officers, to ensure and demonstrate that the voting papers and all records of the count were kept secure during the adjournment.

[s 4.71(1), regs 73-75]

# 11. After the Election

## 11.1 Can the election result be disputed?

Yes. Any person can make a complaint of invalidity to a Court of Disputed Returns. This needs to be made in writing within 28 days of the election result being declared. A magistrate who will make a determination hears the complaint. There is no appeal from a decision made by a Court of Disputed Returns.

(s 4.80 - 4.82 LGA, reg 84 - 87)

## 11.2 Can a small error or omission jeopardise the results of the election?

Not necessarily. An election is not invalidated because of a minor omission or error that does not impact on the election result.

(s 4.83 LGA)

## 11.3 Are election papers available for public inspection?

No. At the completion of the election, all material related to the election such as ballot papers, declarations, and marked electoral rolls are parceled, signed and sealed by the Returning Officer and kept by the local government for at least 4 years. If the election result is disputed either in court or if there is an official inquiry into the election, then the papers may be examined by the court or the inquiry agency.

(reg 82, 83)

## 11.4 When is a successful candidate officially able to act as an elected member?

Not until the declaration of office has been formally made. The timing of this varies from local government to local government. Often, this occurs at a special council meeting held shortly after the election day. The Chief Executive Officer will be in the best position to advise on this.

(s 2.29 LGA)

## 11.5 When is the declaration of office made?

This will vary from local government to local government. The Chief Executive Officer will be in the best position to advise on this.

## 11.6 Is there a time limit for making the declaration of office?

Yes. An elected member's office becomes vacant if the member does not make a declaration of office within 2 months of being declared elected.

(s 2.32 LGA)

## 12. Postal Elections

### 12.1 How do electors vote in a postal election?

In a postal election electors complete their ballot papers whenever convenient after they receive an election package and return their vote before election day.

### 12.2 What is contained in a postal election package?

The package contains:

- An information booklet with postal voting instructions
- profiles of candidates
- information that the electoral gifts register is available for inspection by any voter prior to the election at the relevant local government offices
- ballot paper(s)
- ballot paper envelope with elector's certificate attached and
- postage pre paid envelope to return ballot paper(s).

(reg 43, 48, Sch Forms 10, 13(a), 13(b), 14)

### 12.3 If the postal ballot papers do not arrive can another set be requested?

Yes. If an elector claims that the election package was not received, that the package received did not contain a voting paper or that the voting paper received had been subsequently lost, spoilt or destroyed, replacement voting papers can be issued. Form 15, to claim replacement postal voting papers, is available from the Returning Officer or the WAEC. Significant penalties apply to fraudulent claims.

(reg 45, Sch Form 15)

### 12.4 Can a candidate or scrutineer assist an elector to mark their voting paper?

No. It is unlawful for a candidate, or a person authorised to act on a candidate's behalf, to communicate with, assist or interfere with, an elector while the elector is marking a ballot paper.

(s 4.85, 4.91, 4.92 LGA, reg 49,50)

### 12.5 Are the completed postal voting papers checked before the count?

Yes. The checking of the electors' certificates, but not the ballot papers, may commence before the count. Scrutineers may observe the conduct of these procedures.

(reg 51, 52 and 71)

### 12.6 Is the security and privacy of the postal vote assured?

Each ballot paper envelope has a tear-off attachment – the elector certificate, which has a bar code, which identifies the elector. This is scanned to record the fact that the elector has voted, and then separated from the voting papers so that absolute security and privacy is guaranteed.

(reg 52A )

### 12.7 Can a candidate or person assisting a candidate take possession of an envelope with completed postal voting papers?

No. A candidate and persons assisting a candidate should ensure that they do not take possession of a postal voting envelope with postal votes as it is an offence with a penalty of \$5000 or imprisonment of a year.

(reg 52A s 4.92)

### 12.8 Can computers be used to assist in the count?

Yes.

## 13. Electoral Offences

### 13.1 What is an electoral offence?

The *Local Government Act 1995* prescribes a number of electoral offences, varying in seriousness and penalty. A summary is shown at the end of this section.

(s 4.85–.94 LGA)

### 13.2 Who can make a complaint about a possible electoral offence or electoral misconduct?

Any person can make a complaint about a possible electoral offence. Complaints should be directed to the Returning Officer or the Electoral Commissioner. The Electoral Commissioner may also institute an inquiry into a possible election offence. Depending on the outcome of that investigation a prosecution may be commenced.

(s 4.96 LGA)

### 13.4 Summary of Electoral Offences

| Offence  | Penalty  | Ref.                   |
|--|--|------------------------|
| Bribery and undue influence  | \$10,000 or imprisonment for two years               | s4.85                  |
| Breach or neglect by officers  | \$10,000 or imprisonment for two years               | s4.86                  |
| Offences relating to nomination papers, ballot papers and ballot boxes   | From \$2,000 to \$10,000 or imprisonment for 2 years | s4.91                  |
| Misleading, false or defamatory statements   | \$5,000 or imprisonment for one year                 | s4.88                  |
| Offences relating to postal votes  | \$5,000 or imprisonment for one year                 | s4.92                  |
| Interference with electors   | \$5,000 or imprisonment for one year                 | s4.93                  |
| False statement on official documentation  | \$5,000 or imprisonment for one year                 | s4.90                  |
| Printing and publication of unauthorised election material   | \$2,000  | s4.87                  |
| Canvassing in or near polling places   | \$2,000  | s4.89                  |
| Various electoral offences such as refusing to take instruction from an Electoral Officer, betting on a result, defacing documents | \$2,000  | s4.94                  |
| Failure of candidate or donor to declare a gift  | \$5,000  | s4.59<br>reg 30B, 30CA |
| Failure to dispose of gift from unidentified donor   | \$5,000  | s4.59<br>reg 30BA      |
| Publish unfair or inaccurate information from an electoral gift register   | \$5,000  | s4.59 reg 30I          |

### 13.3 What are the consequences of an electoral offence?

Some electoral offences are serious local government offences under the *Local Government Act 1995* and a convicted person may be disqualified from holding office (in the case of a sitting elected member) or from seeking office.

If you would like to stand as a candidate for your local government please contact us and we can help you.

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