

Local Government Elections Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 8 April 1987

(Brought in by Mr Simmonds and Mr Fordham)

A BILL

to provide for triennial elections and proportional representation for the Shire of Morwell, to enable other municipal councils to apply to hold triennial elections with proportional representation and for other related purposes.

Local Government Elections Act 1987

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purposes of Act.

1. The purpose of this Act is—

- 5 (a) to enable the Shire of Morwell at the Council's request to hold a triennial election in 1987 as an unsubdivided Council for the return of 12 Councillors elected by proportional representation; and
- 10 (b) to enable other municipal councils to apply to hold triennial elections with proportional representation.

Commencement.

2. This Act comes into operation on a day to be proclaimed.

3—[63]—1500/9.4.1987—2373/85—(Revision No. 4) (921)

Definitions.

3. In this Act—

“Declared municipal council” means—

(a) the Shire of Morwell; and

(b) any other municipal council declared under section 5.

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Construction of Act.

4. This Act is to be construed together with the *Local Government Act 1958* and that Act prevails to the extent of any inconsistency with this Act.

Application of Act.

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5. (1) This Act applies to declared municipal councils.

(2) A municipal council may by resolution passed by an absolute majority of the whole number of members of the council resolve that elections for that council are to be held in accordance with this Act.

(3) Where a municipal council makes a resolution under sub-section (2) the council must not later than 1 July in any year apply for an Order in Council to be made under this section.

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(4) The Governor in Council may by Order in Council published in the *Government Gazette* declare that a municipal council which has applied under sub-section (3) is a declared municipal council.

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PART 2—TRIENNIAL ELECTIONS**Triennial elections.**

6. The *Local Government Act 1958* applies to a declared municipal council as if that Act was amended as specified in Schedule 1.

PART 3—PROPORTIONAL REPRESENTATION

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Proportional representation.

7. The *Local Government Act 1958* applies to a declared municipal council as if the provisions of Schedule 2 were substituted for sections 144 (2), 144 (3), 144 (4) and 144 (9) of that Act.

PART 4—GENERAL PROVISIONS

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Morwell Shire Council general election.

8. (1) The municipal district of the Morwell Shire Council is not to be subdivided into ridings.

(2) The Morwell Shire Council is to consist of 12 councillors.

(3) The Governor in Council may by Order in Council—

(a) fix a day being a Saturday in 1987 on which the first general election for the Morwell Shire Council is to be held; and

5 (b) provide for any matter relating to the holding of the general election or consequential on the continuing in office of existing Councillors until the general election is held.

Electronic equipment.

10 9. Notwithstanding anything in the *Local Government Act 1958*, with the approval of the Minister a declared municipal council may use electronic equipment for elections and the counting of votes subject to any conditions imposed by the Minister.

SCHEDULE 1

Section 6

Triennial Elections

Modifications to *Local Government Act 1958*

1. For section 57 substitute:

“57. (1) Subject to this Act, the office of a councillor—

(a) commences at six o'clock in the evening on the day of the election at which the councillor was elected; and

(b) becomes vacant at six o'clock in the morning on the day appointed for the next general election.

(2) A councillor who holds office before the day of the first general election for a council goes out of office at six o'clock in the morning of the day appointed for that general election.”.

2. For sections 66 (2) and 66 (2A) substitute:

“(2) Subject to sub-section (2A), every council must hold a meeting—

(a) in the case of a year in which a general election is held—on a day (being a day after the day on which the returning officer declares the candidates at the general election to be duly elected and before the first day of September) and at a time fixed by the council of the municipality prior to the general election; and

(b) in the case of a year in which a general election is not held—on a day (being a day after the first Saturday in August and before the first day in September) and at a time fixed by the council of the municipality—

at which the council must elect a chairman for the municipality.

(2A) If—

(a) in the case of a year in which a general election is to be held, the council has not fixed a time for a meeting under section 66 (2) (a); or

(b) in the case of a year in which a general election is not to be held, the council has not at the expiration of 7 days after the first Saturday in August fixed a time for a meeting under section 66 (2) (b)—

the clerk of the municipality must fix a day (being a day before the first day of September) for the holding of that meeting.”.

3. For section 69 substitute:

When chairman vacates office.

“69. (1) The chairman of every municipality must vacate the office of chairman—

- (a) at the hour of six o'clock in the morning of the day on which the meeting of the council is held pursuant to section 66;
- (b) on ceasing to be a councillor;
- (c) on resigning the office of chairman; or
- (d) on being declared ousted of the office by the Supreme Court—

whichever first occurs.

(2) Where a councillor vacates the office of chairman on the day specified in sub-section (1) (a) or (1) (c) and continues to be a councillor, that councillor is eligible for re-election as chairman.”.

4. For section 113 substitute:

General election.

“113. (1) A general election for the return of councillors must be held on the first Saturday in August in the year in which a Council becomes a declared municipal council.

(2) After the general election held pursuant to sub-section (1) a general election for the return of councillors is to be held on the first Saturday in August in every third year after that general election.”.

5. For section 115 substitute:

Return of councillors.

“115. At any general election the whole number of councillors assigned to the municipality is to be returned and in the case of a subdivided municipal district are to be returned in equal numbers for every subdivision.”;

6. In section 116—

- (a) after “116.” insert “(1)”; and
- (b) at the end of the section insert:

“(2) Where more than one extraordinary vacancy occurs—

- (a) in the case of a subdivided municipal district—in respect of the same ward or riding; or
- (b) in the case of an unsubdivided municipal district—in respect of the municipal district—

and an election is required by this Act to be held to fill the vacancies on the same day, this Act is to be construed as requiring one election to be held to fill all vacancies at the same poll.”.

7. For section 118 substitute:

Extraordinary vacancy six months before general election.

“118. (1) Notwithstanding sections 116 and 117 in case any extraordinary vacancy occurs in the office of any councillor within six months before any general election a council may subject to this section by resolution passed by an absolute majority of the whole number of members of the council resolve that the extraordinary vacancy is not to be filled up.

(2) The council must cause to be recorded in the minutes of the council meeting at which the resolution is passed the council's reasons for any resolution passed under sub-section (1).

(3) The council must within 7 days of passing a resolution under sub-section (1) give public notice in some newspaper generally circulating in the municipal district of the passing of the resolution and the public notice must contain a summary of the council's reasons for passing that resolution.

(4) Notwithstanding sub-section (1), the Minister may direct the council to hold an election to fill the vacancy in accordance with section 117.

(5) Notwithstanding section 117 (1), where the Minister directs the council to hold an election under sub-section (4) the election must be held on a day being a Saturday as the Minister directs.”.

8. After section 149 insert:

Directions of Governor in Council in relation to elections.

“149A. The Governor in Council may by Order in Council—

- (a) give any directions or provide for any matters or things as may appear to the Governor in Council to be necessary or expedient with respect to the conduct of any election held under this Division;
- (b) give directions in connection with any election held under this Division to any government department, municipal council or public authority or any officer thereof; and
- (c) appoint an officer of any government department, municipal council or public authority to carry out any directions referred to in paragraph (b).”.

9. For section 153 (1) substitute:

“(1) The prescribed deposit paid under section 126 by, for or on behalf of a candidate must—

- (a) if the candidate is declared elected; or
- (b) if the total number of votes polled in the candidate’s favour as first preferences is at least 4 per cent of the total number of votes polled in favour of the candidates in the election as first preferences—

on the certificate of the returning officer be repaid to the candidate from the municipal fund and in default of repayment may be recovered before a magistrates’ court as a debt due to the candidate.”.

10. Sections 58, 61 and 114 are repealed.

11. Section 113B for “annual” (wherever occurring) substitute “general”.

12. In section 85—

- (a) in sub-section (4) after “nomination day” insert “in any year in which a general election is to be held”; and
- (b) for sub-section (5) substitute:

“(5) In any year when a general election is not to be held, the municipal clerk must not later than a date to be specified by Order in Council—

- (a) cause the voters’ roll or rolls to be printed;
- (b) sign or certify the voters’ roll or rolls; and
- (c) ensure that copies of the voters’ roll or rolls are available for inspection without payment of any fee by any person at the office of the council.”; and
- (c) in sub-section (6) after “sub-section (4) (b)” insert “or (5) (b)”.

13. In section 87 after “section 85 (4) (b)” insert “or 85 (5) (b)”.

14. In section 90 omit “not later than three days before the day appointed for the holding of an annual election under this Act”.

15. In section 113B for “first Saturday in August in each year” substitute “day appointed for a general election under section 113”.

16. In section 317 (2) (a) for “and time of the annual election of councillors first occurring after the expiration of twelve months from” substitute “occurring eighteen months after the date of receipt of the demand, and not earlier than the day occurring twelve months after”;

17. In section 321 (2) for “the day and at the time for the next following annual election of councillors” substitute “a day being a Saturday to be specified in the notice being not later than the day which occurs six months from the date of receipt of the demand”;

18. In section 325 (1) for “of the annual election of councillors occurring next after the expiration of twelve months from” substitute “occurring eighteen months after the date of receipt of the demand and not earlier than the day occurring twelve months after”;

19. In section 325 (2) for “the day of the annual election of councillors next following” substitute “a day being a Saturday to be specified in the notice being not later than the day which occurs six months from the date of”; and

20. In section 325 (9) (a) for “on which the annual election of councillors next” substitute “which occurs six months”.

21. In section 3—

(a) after the definition of “Division” insert:

“Election” includes a general election and an election to fill an extraordinary vacancy.”; and

(b) after the definition of “Ferry” insert:

“General election” means an election for all members of a council.”.

SCHEDULE 2

Section 7

Provisions with respect to the Counting of Votes

PART A—RESULT WHERE ONLY ONE COUNCILLOR IS TO BE ELECTED

Only two candidates.

1. If only 1 Councillor is to be elected and there are only 2 candidates the result is to be determined as follows:

- (a) The candidate who has received the greater amount of first preference votes is to be declared elected by the returning officer;
- (b) If the 2 candidates have received an equal number of votes the returning officer has the casting vote.

More than two candidates.

2. If only 1 Councillor is to be elected and there are more than 2 candidates the result is to be determined as follows:

- (a) The candidate who has received the greatest number of first preference votes if that number constitutes an absolute majority of votes is to be declared elected by the returning officer;
- (b) “**Absolute majority of votes**” means a number of votes greater than one-half of the total number of ballot-papers (excluding ballot-papers which are rejected) and if necessary includes the casting vote of the returning officer;
- (c) If no candidate has received an absolute majority of votes, the returning officer upon receipt of the several sealed parcels from any authorised person and with the assistance of any authorised persons and in the presence and subject to the inspection of any 1 scrutineer, if present, appointed by each candidate but of no other person, must—
 - (i) open all the sealed parcels containing used ballot-papers; and
 - (ii) arrange such ballot-papers together with the allowed postal ballot-papers, if any, by placing in a separate parcel all those on which a first preference is indicated for the same candidate and preference votes are also duly given for all the remaining candidates, omitting ballot-papers which are rejected; and
 - (iii) declare the candidate who has received the fewest first preference votes a defeated candidate; and
 - (iv) distribute the ballot-papers counted to the defeated candidate amongst the non-defeated candidates next in order of the voters’ preference; and
 - (v) after the distribution again ascertain the total number of votes given to each non-defeated candidate;
- (d) The candidate who has then received the greatest number of votes if that number constitutes an absolute majority of votes is to be declared elected by the returning officer;
- (e) If no candidate then has an absolute majority of votes the process of declaring the candidate who has the fewest votes a defeated candidate and distributing the ballot-papers counted to the defeated candidate amongst the non-defeated

candidates next in order of the voters' preference is to be repeated until 1 candidate has received an absolute majority of votes and is declared elected by the returning officer;

- (f) If on any count 2 or more candidates have an equal number of votes and 1 of them has to be declared a defeated candidate the returning officer must decide which is to be declared a defeated candidate;
- (g) If on the final count 2 candidates have received an equal number of votes the returning officer has the casting vote.

PART B—RESULT WHERE TWO OR MORE COUNCILLORS ARE TO BE ELECTED BY PROPORTIONAL REPRESENTATION

Two or more councillors to be elected.

3. (1) If 2 or more Councillors are to be elected by proportional representation the result is to be determined as follows.

(2) In this Part—

“**Continuing candidate**” means a candidate not already elected or excluded from the count.

“**Quota**” means the number determined by dividing the number of first preference votes by 1 more than the number of candidates required to be elected and by increasing the quotient so obtained (disregarding any remainder) by 1.

“**Surplus votes**” means the number, if any, of votes in excess of the quota of each elected candidate.

(3) A reference to votes of or obtained or received by a candidate includes votes obtained or received by the candidate on any transfer.

(4) The returning officer upon receipt of the several sealed papers from any authorised person and with the assistance of any authorised persons and in the presence and subject to the inspection of any 1 scrutineer, if present, appointed by each candidate but of no other person must—

- (a) open all the sealed parcels containing used ballot-papers; and
- (b) arrange the ballot-papers together with the allowed postal ballot-papers, if any, by placing in a separate parcel all those on which a first preference is indicated for the same candidate and preference votes are also duly given for all the remaining candidates, omitting ballot-papers which are rejected; and
- (c) ascertain—
 - (i) the number of first preference votes given for each candidate; and
 - (ii) the total number of first preference votes.

(5) A quota is to be determined.

(6) Any candidate who has received a number of first preference votes equal to or greater than the quota is to be declared duly elected by the returning officer.

(7) Unless all the vacancies have been filled, the surplus votes of each elected candidate are to be transferred to the continuing candidates as follows:

- (a) The number of surplus votes of the elected candidates are to be divided by the number of first preference votes received by the elected candidate and the resulting fraction is the transfer value;
- (b) The total number of ballot-papers of the elected candidate that express the first preference vote for the elected candidate and the next available preference for a particular continuing candidate is to be multiplied by the transfer value;
- (c) The number obtained under paragraph (b) (disregarding any fraction) is to be added to the number of first preference votes of the continuing candidate and all those ballot-papers are to be transferred to the continuing candidate.

(8) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of any transfer under sub-clause (7) is to be declared duly elected by the returning officer.

(9) Unless all the vacancies have been filled, the surplus votes, if any, of any candidate elected under sub-clause (8) or elected subsequently under this sub-clause are to be transferred to the continuing candidates in accordance with sub-clause (7) and any continuing candidate who has received a number of votes equal to or greater than the

quota on the completion of the transfer is to be declared duly elected by the returning officer.

(10) Where a continuing candidate has received a number of votes equal to or greater than the quota on the completion of a transfer of the surplus votes of a particular elected candidate under sub-clause (7) or (9) no votes of any other candidate are to be transferred to the continuing candidate.

(11) For the purposes of the application of sub-clause (7) in relation to a transfer of the surplus votes of an elected candidate under sub-clause (9) or (14), each ballot-paper of the elected candidate obtained by the elected candidate on a transfer is to be dealt with as if—

- (a) any vote it expressed for the elected candidate were a first preference vote; and
- (b) the name of any other candidate previously elected or excluded had not been on the ballot-paper; and
- (c) the numbers indicating subsequent preferences had been altered accordingly.

(12) Where, after the counting of first preference votes or the transfer of any surplus votes of elected candidates, no candidate has, or less than the number of candidates required to be elected have, received a number of votes equal to the quota, the candidate who has the fewest votes is to be excluded and all that candidate's votes are to be transferred to the continuing candidates as follows:

- (a) The total number of ballot-papers of the excluded candidate that express the first preference vote for the excluded candidate and the next available preference for a particular continuing candidate are to be transferred at a transfer value of 1 for each ballot-paper and added to the number of votes of the continuing candidate and all those ballot-papers are to be transferred to the continuing candidate;
- (b) The total number, if any, of other votes obtained by the excluded candidate on transfers are to be transferred from the excluded candidate in the order of the transfers in which the excluded candidate obtained them, the votes obtained on the earliest transfer being transferred first, as follows:
 - (i) The total number of ballot-papers transferred to the excluded candidate from a particular candidate and expressing the next available preference for a particular continuing candidate is to be multiplied by the transfer value at which the votes were so transferred to the excluded candidate;
 - (ii) The number so obtained (disregarding any fraction) is to be added to the number of votes of the continuing candidate; and
 - (iii) All those ballot-papers are to be transferred to the continuing candidate.

(13) Any continuing candidate who has received a number of votes equal to or greater than the quota on the completion of a transfer of votes of an excluded candidate under sub-clause (12) or (16) is to be declared duly elected by the returning officer.

(14) Subject to sub-clause (15), unless all the vacancies have been filled the surplus votes, if any, of a candidate elected under sub-clause (13) are to be transferred in accordance with sub-clause (7).

(15) Where a candidate elected under sub-clause (13) is elected before all the votes of the excluded candidate have been transferred, the surplus votes, if any, of the elected candidate are not to be transferred until the remaining votes of the excluded candidate have been transferred in accordance to sub-clause (12) to continuing candidates.

(16) Subject to sub-clause (18), where after the transfer of all the votes of an excluded candidate no continuing candidate has received a number of votes greater than the quota—

- (a) the continuing candidate who has the fewest votes must be excluded; and
- (b) candidate's votes must be transferred in accordance with sub-clause (12).

(17) Where a candidate is elected as a result of a transfer of—

- (a) the first preference votes of an excluded candidate; or
- (b) all the votes of an excluded candidate that were transferred to the excluded candidate from a particular candidate—

no other votes of the excluded candidate are to be transferred to the candidate so elected.

(18) In respect of the last vacancy for which 2 continuing candidates remain, the continuing candidate who has the larger number of votes is to be elected notwithstanding

that that number is below the quota and if those candidates have an equal number of votes the returning officer must have a casting vote.

(19) Notwithstanding any other provision of this clause, where the number of continuing candidates is equal to the number of remaining unfilled vacancies those candidates are to be declared duly elected by the returning officer.

(20) Subject to sub-clauses (21) and (23), where after any count or transfer, 2 or more candidates have surplus votes the order of any transfers of the surplus votes of those candidates is to be in accordance with the relative size of the surpluses, the largest surplus being transferred first.

(21) Subject to sub-clause (23), where after any count or transfer, 2 or more candidates have equal surpluses, the order of any transfers of the surplus votes of those candidates is to be in accordance with the relative numbers of votes of those candidates at the last count or transfer at which each of those candidates had a different number of votes, the surplus of the candidate with the largest number of votes at that count or transfer being transferred first.

(22) For the purposes of sub-clause (21), if there has been no count or transfer the returning officer must determine the order in which the surpluses are to be dealt with.

(23) If after any count or transfer, a candidate obtains surplus votes, those surplus votes are not to be transferred before the transfer of any surplus votes obtained by any other candidate on an earlier count or transfer.

(24) Where the candidate who has the fewest votes is required to be excluded and 2 or more candidates each have the fewest votes, whichever of those candidates had the fewest votes at the last count or transfer at which each of those candidates had a different number of votes is to be excluded.

(25) For the purposes of sub-clause (24), if there has been no count or transfer the returning officer must determine which candidate is to be excluded.

(26) Where a candidate is elected by reason that—

- (a) the number of first preference votes received by the candidate; or
- (b) the aggregate of first preference votes received by the candidate and all other votes obtained by the candidate on transfers—

is equal to the quota, all the ballot-papers expressing those votes are to be set aside as finally dealt with.

(27) A ballot-paper must be set aside as exhausted where on a transfer it is found that the ballot-paper expresses no preference for any continuing candidate.

(28) For the purposes of this clause each of the following constitutes a separate transfer:

- (a) A transfer under sub-clause (7),(9) or (14) of all the surplus votes of an elected candidate;
- (b) A transfer in accordance with sub-clause (12) (a) of all first preference votes of an excluded candidate;
- (c) A transfer in accordance with sub-clause (12) (b) of all the votes of an excluded candidate that were transferred to that candidate from a particular candidate.

