

Victorian Electoral Commission
Level 11, 530 Collins Street
Melbourne Vic 3000
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vec.vic.gov.au

Our ref: D16/51886

11 November 2016

Principal Registrar
Melbourne Magistrates' Court
GPO Box 882
Melbourne Vic 3001

(For the attention of Peter Wenden, Registrar)

Dear Principal Registrar

Application to the Municipal Electoral Tribunal for an Inquiry into the Melbourne City Council Election of Councillors, pursuant to s 45 of the *Local Government Act 1989*

I write to apply for an Inquiry by the Municipal Electoral Tribunal (**Tribunal**) into the validity of the Melbourne City Council Election of Councillors held on 22 October 2016 (conducted by postal voting concluding at 6.00 pm on 21 October 2016) (**Election**). The Election was conducted in accordance with the *Local Government Act 1989* (**LG Act**) and the *City of Melbourne Act 2001* (**Melbourne Act**).

The election of the Melbourne City Council Leadership Team, consisting of the Lord Mayor and Deputy Lord Mayor, is conducted separately to the Election of Councillors. I am not seeking an inquiry into the Leadership Team election.

As the Electoral Commissioner, I am a returning officer for the Election, as defined in s 3 of the LG Act. This application is made pursuant to s 45(1)(c) of the LG Act, and in accordance with s 45(1A) of the LG Act and reg 123 of the Local Government (Electoral) Regulations 2016.

I provide the following details in support of the application:

Name of the Council and Ward (reg 123(a))

Melbourne City Council (Election of Councillors only)

The Melbourne City Council consists of one unsubdivided ward involving two elections, including the Leadership Team of the Lord Mayor and Deputy Lord Mayor and the election of nine councillors at-large.

This application is specific to the Election of Councillors.

Full name, address and business telephone number as the returning officer (reg 123(d))

Warwick Gately AM
Electoral Commissioner
Victorian Electoral Commission
Level 11, 530 Collins Street
Melbourne Vic 3000
Ph: (03) 8620 1100

Grounds for Application for Inquiry into the Election (reg 123(f))

I make this application on the following ground:

1. A candidate was declared elected to the Melbourne City Council and this candidate was not qualified to nominate as a candidate as she did not hold a valid entitlement to be included on the voters' roll for the Melbourne City Council.

Summary of Facts

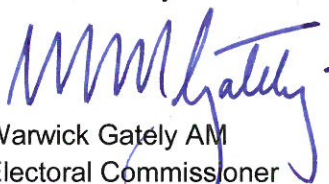
1. On 22 October 2016, a General Election for the Melbourne City Council was held (by postal voting concluding at 6.00 pm on 21 October 2016).
2. On 26 August 2016, Ms Brooke Wandin, submitted an Enrolment Application by Property Occupier with the Registrar for the Melbourne City Council voters' roll.
3. On 20 September 2016, Ms Wandin completed and signed a Nomination Form, nominating as a candidate for the Election.
4. At that time, the deputy returning officer, Ms Jill Esplan, appointed by me on 25 August 2016 for the period of the Election, confirmed that Ms Wandin was enrolled on the Melbourne City Council voters' roll and accepted her nomination as a candidate for the Election.
5. Ms Wandin ran as a candidate in the Election.
6. On 31 October 2016, Ms Wandin was declared as the sixth elected councillor for the Melbourne City Council.
7. Ms Wandin did not take the oath of office and on 8 November 2016 submitted her resignation to the Acting Chief Executive Officer of Melbourne City Council.
8. On 10 November 2016, I received confirmation that Ms Wandin did not hold a valid entitlement to be enrolled on the Melbourne City Council's voters' roll at the time of the entitlement date at 4.00 pm on 26 August 2016.
9. Ms Wandin was therefore not qualified to nominate as a candidate in the Election.
10. If I had received confirmation that Ms Wandin was not qualified to be a candidate prior to the declaration of results I could have retired Ms Wandin from the Election, in accordance with Clause 9A of Schedule 2 of the LG Act.

11. As I have become aware of this anomaly within the time period for applying to the Tribunal, I now seek orders to recalculate the Election result, in accordance with the process that I would have undertaken had I received confirmation that Ms Wandin was not qualified to be a candidate for the Election, prior to the declaration of results.
12. The process to recalculate an election once a candidate has retired or has been retired, prior to the declaration of results, is outlined at clause 8 of Schedule 2 of the LG Act.

Orders Sought from the Tribunal

1. A declaration by the Tribunal that Ms Wandin, having been declared elected, was not duly elected, pursuant to s 46(1)(a) of the LG Act; and
2. A declaration by the Tribunal that the successful candidate as a result of the recalculation is duly elected, pursuant to s 46(b) of the LG Act.

Yours sincerely


Warwick Gately AM
Electoral Commissioner

Application dated: 11 November 2016



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File Note

Keegan Bartlett, Local Government Program Manager

Date: 5 December 2016

D16/59071

Leave to amend the orders sought by the VEC at the Municipal Electoral Tribunal

This file note must be included with the Electoral Commissioner's application to the Municipal Electoral Tribunal for an inquiry into the Melbourne City Council election of councillors, pursuant to section 45 of the *Local Government Act 1989*, which was dated and lodged 11 November 2016.

It is recorded that leave was granted by the Municipal Electoral Tribunal when hearing *Victorian Electoral Commissioner v City of Melbourne* on 5 December 2016 to amend the orders that were sought by the applicant and had been detailed the Electoral Commissioner's application.

The orders sought by the application now read as follows:

1. Each candidate who would have been elected on the special count, but was not in fact declared elected, was duly elected; and
2. Each candidate who was declared elected, but who would not have been elected on the special count (including Ms Wandin), was not duly elected.

Keegan Bartlett
Local Government Program Manager
Victorian Electoral Commission