

**156D. Filling vacancy by re-count — proceedings at close of nominations**

- (1) At 12 noon on the tenth day after the day on which notice of a vacancy was published under section 156C(1)(a) the Electoral Commissioner shall declare the names of each person who has made a nomination in accordance with section 156C (in this section referred to as a “**consenting candidate**”).
- (2) If there is no consenting candidate for the vacancy the Electoral Commissioner shall, by written notice, inform the Governor accordingly.
- (3) If there is only one consenting candidate for the vacancy the Electoral Commissioner shall —
  - (a) declare that consenting candidate to be elected as a member of the Council to fill the vacancy; and
  - (b) by written notice, inform the Governor of the election of that consenting candidate.
- (4) If there are 2 or more consenting candidates for the vacancy the Electoral Commissioner, using the method prescribed in Schedule 1, shall re-count the votes on the ballot papers used in the counting of votes at the original election.
- (5) On the re-count under subsection (4) a preference indicated on a ballot paper for a previously elected member whose seat has become vacant shall be disregarded and the ballot paper shall be treated as if the numeral indicating any subsequent preference had been altered accordingly.
- (6) If on the re-count under subsection (4) a non-participating candidate is elected that election has no effect and the Electoral Commissioner shall terminate that re-count and repeat the procedure of re-counting the votes on the ballot papers until a consenting candidate is elected.
- (7) On a re-count under subsection (6) a preference indicated on a ballot paper for —
  - (a) a previously elected member whose seat has become vacant; or
  - (b) a non-participating candidate who has been elected on the re-count under subsection (4) or on a previous re-count under subsection (6),shall be disregarded and the ballot paper shall be treated as if the numeral indicating any subsequent preference had been altered accordingly.
- (8) When on a re-count under this section a consenting candidate is elected the Electoral Commissioner shall —
  - (a) in the prescribed manner, declare that consenting candidate to be elected as a member of the Council to fill the vacancy; and
  - (b) by written notice, inform the Governor of the election of that consenting candidate.
- (9) A re-count under this section does not affect the election of a previously elected member and where a previously elected member is elected or excluded during a re-count that election or exclusion has effect for the purposes of the continuation of the re-count and for those purposes only.
- (10) The Electoral Commissioner shall make such arrangements for a re-count under this section as are prescribed.

- (11) A consenting candidate may appoint one scrutineer to represent the candidate at a re-count under this section.
- (12) When a member has been elected under this section the Electoral Commissioner shall retain papers and documents relating to the election of the member until the election can be no longer questioned.
- (13) If no re-count under subsection (4) or (6) results in the election of a consenting candidate the Electoral Commissioner shall, by written notice, inform the Governor that the vacancy has not been filled under this section.

(14) In this section —

**“non-participating candidate”** means a person who was a candidate at the original election and is neither a consenting candidate nor a previously elected member;

**“previously elected member”** means a person who —

- (a) was elected as a member of the Council at the original election; or
- (b) was declared elected as a member of the Council under this section after the original election.

*[Section 156D inserted by No. 66 of 1990 s.3; amended by No. 36 of 2000 s.55(2).]*