

Local Government Electoral Review

STAGE 1 REPORT

Authorised by the State Government of Victoria
Department of Transport, Planning and
Local Infrastructure
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Foreword

Local government elections are a major event in Victorian civic life. Every four years, over four million enrolled voters consider the strengths of around 2000 candidates to fill over 600 councillor positions across our state. Securing the conditions for elections that provide the best opportunity for a fair contest of ideas is a vital challenge for our democracy, and will ultimately contribute to the good governance of the third tier of government in Victoria.

This report on the review of the local government electoral system in Victoria has provided the opportunity to re-examine the impact of many decades of incremental reform and recommend further improvements to the conduct of local government elections in Victoria.

In examining the apparatus of local democracy in Victoria, the Local Government Electoral Review Panel (Panel) has been enormously assisted by the commitment, insight and openness of those with an investment in its wellbeing.

The Panel's deliberations have been informed by extensive participation from councils, councillors, senior executive council staff, the local government peak bodies, the Victorian Electoral Commission (VEC), sector stakeholders and members of the public. The Panel received information and suggestions from over 100 speakers at 13 public hearings, 164 written submissions and a survey of community expectations of local government representatives and attitudes on the electoral system. This input has contributed immensely to the Panel's understanding of the issues and in developing recommendations to improve the system.

These recommendations cover extensive territory. Questions the Panel tackled included:

- Who should be entitled to vote?
- How accurate and complete are the voters' rolls?
- How rigorous is the candidate nomination process?
- How much information does the voting public want about candidates standing for election?
- Should the influence of dummy candidates be minimised?
- What are the means of ensuring donations do not compromise elected councillors?
- What polling method should be adopted?
- Who should conduct elections?
- How well is the complaints handling process operating?

The Panel received a diversity of answers to these and many other questions. In attempting to reconcile the answers, the Panel had regard at all times to two overarching challenges: how to raise meaningful civic participation in local government democracy, and how to strengthen the integrity with which elections are conducted. The Panel's recommendations should be read in this context.

In arriving at its recommendations, the Panel considered the existing system of local government democracy in Victoria, its evolution, its strengths and its limitations. But the Panel also considered the current approach and practice at other levels of government and systems operating in other local government jurisdictions in Australia, with a view to exploring whether adopting any of these frameworks of legislative or regulatory practice would have anything to offer Victoria. In arriving at the recommendations, consideration was also given to Victoria's democratic heritage and traditions.

An electoral system should be easily navigable and transparent and so should the arguments in proposing its reform. Accordingly, the Panel has sought to provide a clear basis for identifying the elements of the electoral system that are in need of improvement, levels of support for the proposed reforms, and the evidence and considerations that underpin the conclusions and recommendations. Where appropriate, the recommendations include proposals on the means of operationalising improvements.

In all, the Panel has made 41 recommendations to strengthen integrity, lift participation and improve how elections are conducted and managed. There are recommendations for practice reforms and for legislative reforms to improve the regulatory framework.

The Panel will be addressing representation issues, such as ward structures and ballot counting systems, in a second report later in 2014.

The Panel thanks all organisations and individuals who made submissions to this review and appeared at public hearings.

Finally, I would like to thank my Panel colleagues, Sally Davis and Anne Murphy OAM, the Head of the Panel Secretariat, Kendrea Pope and other Secretariat members (Chris Phoon, Tim Presnell, Peter Jones and Carly Moorfield) for their work.

I commend the report to the Minister for Local Government.

Petro Georgiou AO

Chair

Local Government Electoral Review Panel

Local Government Electoral Review Panel



Panel Chair

Petro Georgiou AO (centre)

Panel members

Sally Davis (right)

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Terms of reference

The Panel was charged with the responsibility of conducting a review and providing advice to the Minister for Local Government on the following subjects.

1. Electoral process

Whether improvements can be made to ensure the integrity of the electoral process, including addressing matters raised in the course of the 2012 election including, but not limited to, the following:

- a) candidate integrity, including issues regarding ‘dummy’ candidates, information disclosure, existing candidacy requirements, campaign funding and disclosure
- b) the role of the Victorian Electoral Commission in electoral administration and cost implications of this for councils, complaint handling and timeliness in responding.

2. Participation

Whether improvements can be made to ensure the highest level of participation in local government elections, including:

- a) improving public understanding and awareness of elections and candidates
- b) consistency and promoting greater understanding of voter eligibility rules
- c) use of postal and attendance voting and impact on informal voting
- d) franchise and eligibility provisions.

3. Integrity

Whether any other changes can be made that will enhance the integrity of local government elections, candidate conduct and governance.

4. Electoral representation

Whether the current system of electoral representation is appropriate to ensure fairness and consistency of representation within municipalities and between municipalities including:

- a) distribution of wards
- b) different ballot counting systems (proportional and preferential) across municipalities.

Terms of reference addressed by Stage 1 report

The Stage 1 report addresses the first three terms of reference: the electoral process, participation, and integrity. The fourth term of reference – electoral representation – will be addressed in a second report, to be released later in 2014.

The Stage 1 report is structured in the order of what happens when a local government election is held. Hence it begins with the franchise, or who is entitled to vote, moves on to the process for nominating as a candidate, through to the caretaker period, and ends with the election and what occurs afterwards.

Figure 1 shows the structure of the Stage 1 report, as it relates to the terms of reference.

STAGE 1 REPORT				
Terms of Reference 1–3 Electoral process Participation Integrity				
Voters	Candidates	Caretaker period	Elections	After the elections
Voter franchise Roll integrity	Candidacy requirements and nomination process Information to assist meaningful participation by voters Campaign donations Dummy candidates, candidate participation and candidate capability	Legislative provisions Council policies	Polling method Election services provision Complaint handling and candidate investigation and prosecution	Non-voting enforcement Election validity

Figure 1: Structure of the Stage 1 report

Glossary and abbreviations

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AEC	Australian Electoral Commission
ASIC	Australian Securities and Investments Commission
CaLD	Culturally and Linguistically Diverse
CEO	Chief Executive Officer
CEO's list	The list of all voters on a council's voters' roll (other than those supplied from the state roll), which is prepared by the council CEO under section 22 of the <i>Local Government Act 1989</i>
Charter	<i>Charter of Human Rights and Responsibilities Act 2006</i>
DTPLI	Department of Transport, Planning and Local Infrastructure
ESC	Essential Services Commission
Inspectorate	Local Government Investigations and Compliance Inspectorate
LGPro	Local Government Professionals
LGV	Local Government Victoria
MAV	Municipal Association of Victoria
MET	Municipal Electoral Tribunal
NSW	New South Wales
NT	Northern Territory
Panel	Local Government Electoral Review Panel
The regulations	<i>Local Government (Electoral) Regulations 2005</i>
SA	South Australia
State	State of Victoria
VCAT	Victorian Civil and Administrative Tribunal
VEC	Victorian Electoral Commission
VLGA	Victorian Local Governance Association
WA	Western Australia

Executive summary

Background and context

Local government is a vital element of Australia's federation. The complexity of local government's responsibilities continues to grow, matching the expansion of communities' needs and expectations. Not only are communities dependent on local government to meet traditional roles – in areas such as waste and environmental management, planning and building control, and infrastructure – its responsibilities have extended to aspects of transport, business and economic development, and health and human services, including aged, youth and disability services. It also faces challenges in negotiating its responsibilities in areas that interact with those of federal and state governments.

The range of local government's responsibilities means that the way communities exercise their choice in electing those who will make decisions on key civic functions is more important than ever. Local government elections held every four years in Victoria are the vehicle for exercising this choice.

The basis for the conduct of local government elections is set out in the Victorian *Local Government Act 1989* and the *Local Government (Electoral) Regulations 2005* (the regulations).

The 2012 local government elections were the subject of a significantly higher number of complaints than the 2008 elections that preceded them. Participation rates were also the lowest they had been since the amalgamations of the 1990s.

In recent times, a number of weaknesses in the current system have been identified. In particular, the review presented an opportunity to investigate the following issues:

- eligibility rules within the voter franchise
- divergent conditions for compulsory voting
- arrangements associated with automatic enrolment
- the privacy of voters and means of optimising their opportunities to participate
- enforcement of nomination eligibility
- the information available to voters when considering the merits of candidates
- conflicts of interest arising from political donations
- participation of genuine candidates and minimising the influence of dummy candidates
- clarity and consistency in the application of caretaker provisions
- transparency and uniformity of the polling method in the conduct of elections
- voter turnout and formal participation by voters
- confidence in the electoral process, complaint handling and enforcement of compliance
- timely resolution of disputed elections.

Given these issues, a review of local government democracy is timely.

Scope and conduct of the inquiry

On 14 August 2013, the Minister for Local Government, the Hon. Jeanette Powell MP, appointed the Panel, asking it to inquire into and report on the operation of local government democracy in Victoria.

From August 2013 to January 2014, the Panel worked to prepare a Stage 1 report, addressing its first three terms of reference for the State Government's consideration. Actions taken to consult with the community in preparing the report are described below.

17–21 SEPTEMBER 2013

Public consultation announced:

- public hearings: interested parties could register online, by email, over the telephone or via post. Members of the public were welcome to attend
- written submissions: interested parties could make a submission online, by email or by post
- dates of 13 public hearings, the process for written submissions and where public hearings would be held were advertised in major metropolitan newspapers, and regional newspapers where public hearings would be held
- candidates at the 2012 council elections, business groups and residents groups were emailed and encouraged to participate
- forms to register for a public hearing or make a written submission were translated into the seven most spoken languages in Victoria apart from English (Chinese – traditional and simplified –, Italian, Greek, Vietnamese, Arabic and Hindi). Translated forms were made available on the Department of Transport, Planning and Local Infrastructure (DTPLI) website and advertised.

24 SEPTEMBER 2013

Panel released the *Local Government Electoral Review Discussion Paper*.

3–21 OCTOBER 2013

Public hearings were held in 13 locations across Victoria:

Melbourne CBD	Thursday 3 October 2013
Geelong	Monday 7 October 2013
Horsham	Tuesday 8 October 2013
Ballarat	Wednesday 9 October 2013
Bendigo	Thursday 10 October 2013
Sunshine	Friday 11 October 2013
Melbourne CBD	Monday 14 October 2013
Wantirna South	Tuesday 15 October 2013
South Morang	Wednesday 16 October 2013
Mildura	Thursday 17 October 2013
Shepparton	Thursday 17 October 2013
Wodonga	Friday 18 October 2013
Traralgon	Monday 21 October 2013

29 OCTOBER 2013

Transcripts of public hearings were made available on the DTPLI website at:
www.dtpli.vic.gov.au/electoral-review

31 OCTOBER 2013

Email survey was sent to all council Chief Executive Officers (CEOs).

5 NOVEMBER 2013

Written submissions closed: 164 submissions received. See Appendix 2 (page 129) for the names of people and organisations (that were prepared to have their names published) who made a submission.

12 NOVEMBER – 12 DECEMBER 2013

Telephone survey of 1000 members of the public conducted. Survey canvassed people's opinions on voter eligibility and enrolment, candidate requirements, information on candidates and polling methods.

Structure of the report

This report comprises five chapters:

- Chapter 1 addresses the franchise and voters' roll
- Chapter 2 explores issues associated with candidature
- Chapter 3 looks at caretaker arrangements
- Chapter 4 examines the conduct of elections
- Chapter 5 applies to matters in dispute following an election.

CHAPTER 1 – VOTERS: OVERVIEW

This chapter deals with two critical aspects of the franchise: the question of who is entitled to vote, and the process for ensuring the accuracy of the roll that confers a voting entitlement. The franchise for local government in Victoria is complex and confusing for some voters, many of whom struggle to understand whether they have an entitlement and whether they are required to vote. The franchise excludes some individuals who the *Local Government Act 1989* defines as included in the 'local community'. The franchise proposed by the Panel would be more equitable, inclusive and transparent, and include:

- Australian citizens and permanent residents who live in the municipality
- people who own or lease property in the municipality
- people who pay rates in the municipality.

Enrolment processes are different for different classes of voters. The process for compilation of the voters' roll is onerous and inefficient and results in a voters' roll that lacks accuracy and completeness. To ensure an accurate, complete and valid voters' roll, the Panel proposes that all voter enrolments for local government elections should result from an application to the VEC. State roll voters would continue to be enrolled via application to the VEC and Australian Electoral Commission (AEC), and their details supplied for inclusion on the council roll. All other eligible voters (including non-resident owners) would be enrolled through a process of application.

Rather than providing a public exhibition roll, many submitters argued that the most effective means for voters to check their enrolment would be to contact the VEC, either through its online enrolment checking service or by phone. The new arrangement for the compilation of the voters' roll supports this, and the Panel makes a recommendation to this effect.

Finally, the Panel recommends that, to better protect voter privacy and safety, an information campaign be conducted to advise individuals that they can request to be a silent voter.

RECOMMENDATIONS

The Panel recommends that:

1. The voter franchise for Victorian local government elections be broadened to bring it into closer alignment with the 'local community' as defined in the *Local Government Act 1989*.
2. To give effect to the revised statewide franchise, the following eligibility criteria be implemented through a revision to the *Local Government Act 1989*:
 - a) aged 18 and above and either
 - b) citizens or permanent residents living in the municipality
 - c) owners of property in the municipality
 - d) lessees of non-residential property in the municipality
 - e) those who pay rates on a property within the municipality.
3. A person may be enrolled only once in a municipality, regardless of how many entitlements he or she may have.
4. A corporation may nominate only one representative, who may be enrolled only once in a municipality.
5. The *Local Government Act 1989* and electoral regulations be amended to make voting compulsory for all those enrolled to vote.
6. The application of compulsory voting be extended to persons aged 70 and over, bringing local government arrangements in Victoria into line with other jurisdictions.
7. Other than those already enrolled on the state roll, automatic enrolment for some voters cease and that those voters not on the state roll be required to enrol on an applications-only basis.
8. The process of constructing the voters' roll be streamlined and centralised by removing the requirement on CEOs to maintain the voters' roll and transferring this responsibility to the VEC, including the receipt and administration of enrolment applications.
9. To support transition to a broadened franchise, both the VEC and local governments conduct a comprehensive, statewide campaign backed up by strong community engagement at the local level to encourage enrolment of voters in every municipality. This should be consistent with the role played by the VEC for state elections, including its outreach efforts to the CaLD community.
10. As an extension to the awareness campaign, under the new provisions, transitional arrangements be put in place to support re-enrolment of current enrollees on voters' rolls in Victoria.
11. The provisions for inspection of the voters' roll be brought into line with those pertaining to the state roll, which provide for inspection of the state roll by any person with the VEC at any point in the election cycle.
12. The *Local Government Act 1989* be amended to remove the requirement for the preparation of an exhibition roll.
13. The VEC's enrolment campaign contain the appropriate privacy information by reminding voters that their personal details are available to candidates for campaigning purposes. This campaign should advise individuals that they can request to be silent voters if there are personal safety grounds on which to base an application to protect their private information.
14. All candidates be required to return to the VEC at the conclusion of the election all copies of the voters' roll supplied to them.

CHAPTER 2 – CANDIDATES: OVERVIEW

This chapter addresses candidacy requirements and the nomination process. The Panel proposes a significant strengthening of requirements for candidates to demonstrate that they meet eligibility conditions. The Panel then recommends a number of actions to improve the objective information available to voters on candidates.

The Panel outlines a process to cap campaign donations, aligning the donations cap with the conflict of interest threshold for sitting councillors. This will obviate the risk of councillors being elected with a pre-existing conflict between their public duties and their private interests.

The chapter finishes with a number of proposals, which, if adopted, will mitigate the influence of dummy candidates. It also contains a discussion of how best to support candidate participation and performance.

RECOMMENDATIONS

The Panel recommends that:

15. The *Local Government Act 1989* be amended to include an additional disqualification for individuals who have been banned under the Australian Securities and Investments Commission (ASIC) regime from managing a corporation.
16. The eligibility criteria to stand for election to local government be broadened to align with the right to vote in local government elections.
17. The *Local Government Act 1989* and regulations be amended to require that:
 - candidates nominate in person on a no exceptions basis through removal of schedule 2 clause 5 of the *Local Government Act 1989*, which provides for nominations to be submitted via a third party
 - candidates demonstrate a minimal level of endorsement of their candidature (from six of their peers enrolled in the municipality)
 - candidates complete a revised candidate nomination form, which requires them to note and respond to all disqualification conditions, unambiguously confirming that none of the disqualification conditions apply to them (see proposed revised nomination form with extended declaration at Appendix 4 (page 132))
 - councils be required to arrange police checks and insolvency and ASIC rulings for when candidates are elected councillors.
18. The *Local Government Act 1989* be amended to include 'not being on the voters' roll' as a condition under which a returning officer at an election can reject the nomination application of any proposed candidate.
19. To address the insufficiency of comparable information about candidates, each candidate be asked a standard set of questions as part of the nomination process.
20. The answers to these questions be made available to voters in the form of a candidate information template in the postal ballot packs provided by the VEC and this information made available on the VEC website.
21. While candidates would have the right to withhold answers to some or all of the prescribed questions, all their answers (including 'no response') would be made available to voters.

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22. The standard questions on the nomination form ask candidates to provide information on:
 - their contact details, including a phone number and a recent photograph
 - whether they live in the municipality that is being contested and, if not, their entitlement to be on the voters' roll for the municipality
 - work and professional experience
 - voluntary experience, council and community leadership experience and/or relevant committee and board memberships
 - any training and/or information sessions they have attended to prepare themselves to discharge the responsibilities of a councillor
 - whether they are a member of a registered political party
 - whether they are endorsed by a registered political party to stand in the local government election they wish to contest
 - a 200-word candidate statement (300 words for Melbourne City Council teams and groups).
23. The State Government legislate to limit the amount that each candidate may receive as a campaign donation from any individual or organisation to \$1000, and that the threshold that triggers a conflict of interest for a sitting councillor because of a campaign donation be varied to above \$1000.
24. Noting the specific election arrangements in the City of Melbourne, the limit for campaign donations to joint teams and groups at its elections be the number of candidates running in the relevant team or group multiplied by the donation threshold.
25. Any donation made directly to an individual in a joint team/group counts as a donation to that team/group and is subject to the cap.
26. Candidates' how-to-vote recommendations not be contained in the postal packs circulated by the VEC.

CHAPTER 3 – CARETAKER PERIOD: OVERVIEW

Caretaker provisions exist to resolve the tension between the need for councils to continue carrying out core functions during the election period while avoiding decisions likely to bind the incoming council. Two problems persist under current arrangements:

- caretaker provisions in the *Local Government Act 1989* are interpreted differently by councils, increasing the risk that their implementation may be inconsistent, unpredictable and confusing for councillors, CEOs and the community
- the requirement for CEOs to certify all publications during the caretaker period continues to cause confusion and create a burden for some councils.

In this chapter, the Panel recommends that caretaker arrangements be codified to improve certainty, consistency and practicality in their application.

RECOMMENDATIONS

The Panel recommends that:

27. The State Government amend the *Local Government Act 1989* to codify good practices identified by the Local Government Investigations and Compliance Inspectorate (Inspectorate) to ensure clear and uniform boundaries for council decision making and activities during the caretaker period.
28. The caretaker provisions be expanded to suspend the issuing of non-essential council publications during the caretaker period.
29. The State Government remove the publication certification requirement placed on council CEOs during the caretaker period.
30. In order to ensure that councils are not adversely impacted by the new caretaker arrangements, the State Government look to amend legislation prescribing statutory planning timelines for local government to harmonise them with the restrictions on decision making during the caretaker period.

CHAPTER 4 – ELECTIONS: OVERVIEW

Chapter 4 deals with:

- the polling method for elections
- how the many services required to execute an election are best delivered
- how complaints may be handled more effectively and expeditiously.

The case is made for the introduction of a uniform postal polling method to strengthen consistency, reduce confusion and engender greater confidence from voters in the polling method. Uniform postal voting is expected to raise participation and formality rates and reduce costs.

The Panel explored whether there may be merit in making the VEC the statutory election service provider. Arguments are made for legislating the VEC's role as the statutory provider, underpinned by protections for councils against unreasonable escalation of election service costs.

Recommendations are also made to establish a better integrated and more transparent complaints system as part of the VEC's statutory role.

RECOMMENDATIONS

The Panel recommends that:

31. The State Government adopt a uniform postal voting polling method for local government elections for 2016.
32. The timeline for receiving a vote by post be broadly aligned with that which applies for Victorian state elections; that is, votes may be posted on or before the last Friday of voting and received by the VEC within five working days after the close of voting.
33. The State Government establish a statutory role for the VEC to conduct all local government elections under the *Local Government Act 1989*.

Continued over page

34. The State Government establish a pricing and service provision oversight role, potentially assigned to the Essential Services Commission (ESC), to ensure that prices and service standards are kept to a reasonable level.
35. The State Government include complaint handling, investigation and prosecution functions in establishing a statutory role for the VEC to conduct local government elections.
36. The VEC, as part of the in-person nomination process, reinforce to candidates their obligation to familiarise themselves and comply with the offences framework as defined by the *Local Government Act 1989* and, in particular, to avoid actions that are likely to lead to breaches of sections 55A and 55.
37. The VEC, as part of its regime of briefings for candidates, encourage all candidates to undertake briefing sessions with peak bodies, designed to assist them to avoid behaviour that may undermine the standard of candidate conduct at the election or place them at risk of prosecution for breaches of electoral offences.
38. The VEC, as part of its statutory role, establish an advisory line for complainants, providing information to assist them in determining whether to proceed with a formal complaint.

CHAPTER 5 – AFTER THE ELECTIONS: OVERVIEW

This chapter deals with the soundness of the functions for resolving matters in dispute following an election, including enforcement of compulsory voting and the validity of an election.

The Panel considered the reinforcement of compulsory voting an important objective of this review. To this end, the Panel believes that the role of prosecution officer should move from the council CEO to be vested in the VEC, formalising the VEC's role in non-voting enforcement in the legislation.

The Panel considered it to be an anomaly that the VEC or its returning officer is not able, within current arrangements, to make an application to the Municipal Electoral Tribunal (MET) to initiate an inquiry into the validity of an election. Accordingly, the Panel recommends that the *Local Government Act 1989* be amended to allow the returning officer (or the election service provider) to be able to make an application to the MET for an inquiry as required.

RECOMMENDATIONS

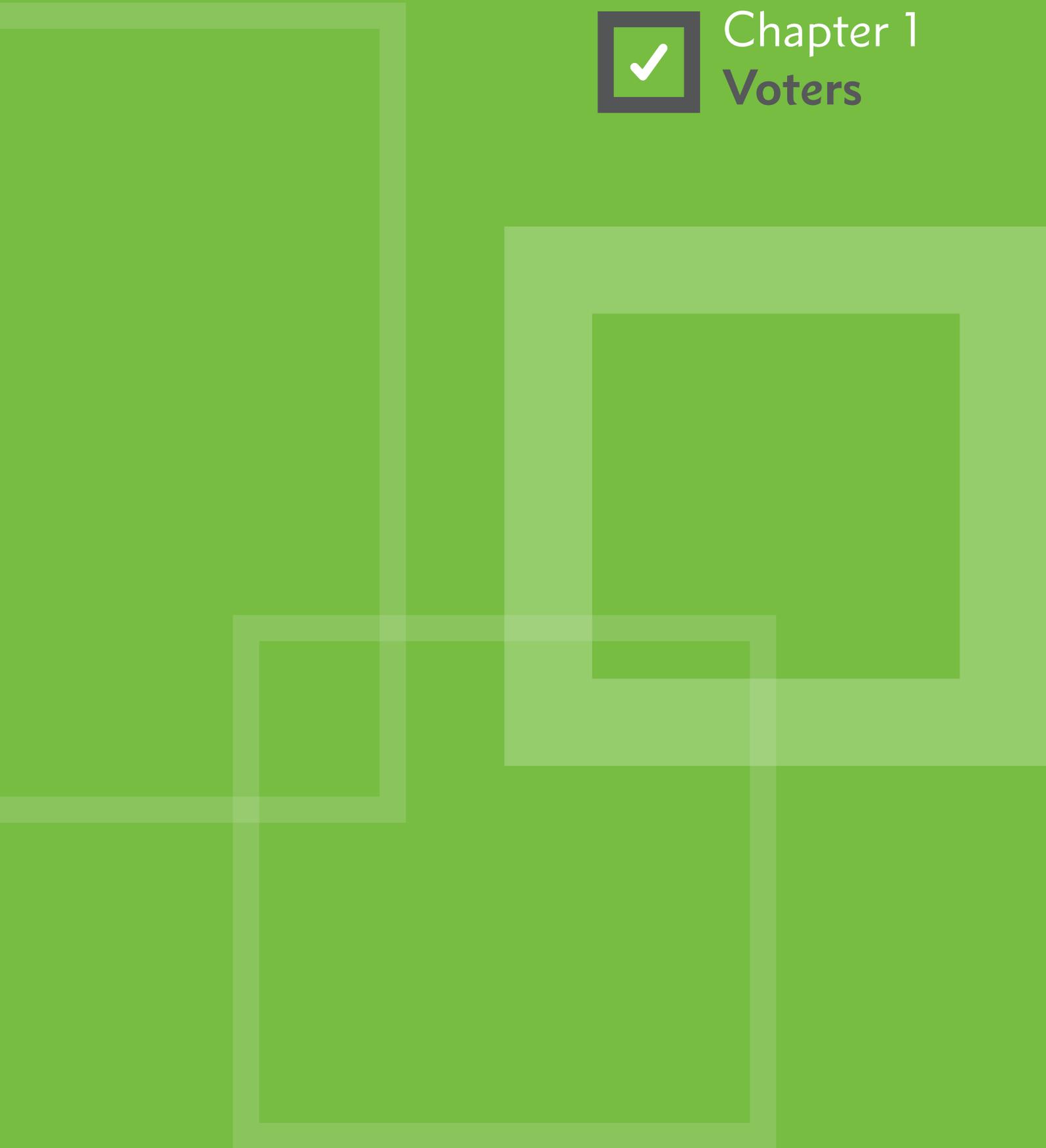
The Panel recommends that:

39. The role of the VEC as prosecutions authority be formalised as part of its statutory role and that the VEC assume this responsibility for all aspects of the prosecution process, including prosecution for failure to pay fines for failing to vote.
40. The VEC adopt a policy for prosecuting failures to vote for local government elections consistent with the application of this function for Victorian state elections under section 173 of the *Victorian Electoral Act 2002*.
41. The State Government introduce a provision into the *Local Government Act 1989* to empower the returning officer (or the election service provider) to make an application to the MET to initiate an inquiry into the validity of a council election, if necessary.



Chapter 1

Voters



Introduction

The franchise and the roll

- 1.1 The issue of voter entitlement is a key part of the Panel's terms of reference – the integrity of the electoral process and participation of the electorate in forming local governments.
- 1.2 This chapter deals with the franchise: the question of who is entitled to vote and the integrity of the roll that records the voting entitlement.
- 1.3 The franchise is fundamental to local government, the foundation on which the electoral system is built. A sound franchise gives voice to a defined civic society and should enable and facilitate accountability to that community. In order for this to occur, the voters' roll that underpins the franchise must have a high degree of integrity.
- 1.4 Franchises change over time to reflect contemporary community standards, expectations and attitudes. The Panel has applied the following principles in assessing the local government franchise:
 - **transparency** – voting entitlements that are clear and known to the public
 - **equity** – voting entitlements that do not raise questions about why one person is entitled to vote and another is not
 - **inclusiveness** – that the people defined as constituting the local community do have the entitlement to vote.
- 1.5 The Panel's conclusion was that the current patchwork of accumulated voting entitlements for local government does not meet these criteria as well as they should.
- 1.6 The franchise for local government in Victoria is characterised by a degree of arbitrariness and complexity, which makes it difficult for some voters to understand whether or not they have an entitlement and are required to vote. The franchise excludes some individuals who the *Local Government Act 1989* defines as included in the local community. Enrolment processes are different for different classes of voters. Voting is compulsory for some and not others, and voter numbers are limited for some properties and not others.
- 1.7 The complexity of voting entitlements and the process of constructing the CEO's list has led the Panel to conclude that this important part of the voters' roll needs to be strengthened. The risks to integrity include voters with an entitlement not understanding their entitlement and so not enrolling, enrolled voters not knowing that they are enrolled and failing to vote by default, legitimate voters being removed or left off the roll, and the theoretical possibility of voters receiving multiple votes.

Structure of this chapter

- 1.8 The chapter discusses the franchise and the voters' roll.
- 1.9 With regard to the franchise, this chapter looks at:
- who currently has the right to vote in local government elections
 - the shortcomings of the current franchise
 - recommendations for strengthening the voter franchise.
- 1.10 With regard to the voters' roll, the chapter examines:
- the two components of the voters' roll: the state roll and the CEO's list
 - the integrity of the existing voters' roll
 - recommendations for improving the integrity of the voters' roll
 - instituting a simpler means for voters to check their enrolment
 - steps to improve voter access to the voters' roll.



Voter franchise

Who is entitled to vote?

- 1.11 The voter franchise for local government has been altered over time. It began in the 19th century as a property franchise, in which only property holders were entitled to vote. Since then, it has been expanded and contracted, sometimes in significant ways. For instance, from the early 1980s, resident occupiers were able to vote, even if they were not ratepayers. In 2004 this right, for no clear policy reason, was removed in a substantial contraction of the franchise.
- 1.12 Appendix 3 (page 131) describes some of the extensions and contractions of the franchise over the history of Victoria's local government. It is not an exhaustive list of changes that have occurred.
- 1.13 Today, the right and responsibility to vote at Victorian council elections is broader, more complex and more contingent than at federal and state levels. In those other jurisdictions, the situation is relatively straightforward. All Australian citizens (and British subjects enrolled prior to January 1984) who are 18 or over are entitled to vote, required to enrol and required to vote.
- 1.14 All Victorians enrolled to vote for state elections are also enrolled to vote and required to vote in local government elections and are subject to a fine if they do not do so. This is the state roll maintained by the VEC. In addition to the state roll, there is the CEO's list maintained by each local council. This list enrolls ratepayers, property owners and directors or secretaries of corporations. Some are automatically enrolled, others have to apply to enrol; some are required to vote, others are not.
- 1.15 Table 1 provides an overview of the array of voting entitlements and requirements for Victoria's local governments¹ (other than the City of Melbourne).

		How enrolled	Is voting compulsory?
Voters who live in the municipality who are on the state roll for that municipality			
Voters on the register of electors for the Victorian Legislative Assembly (state roll) for an address within the municipality ² and	aged 18–69	Automatically	Yes
	aged 70 and over	Automatically	No
People who own or pay rates on a property within the municipality but who are not on the state roll for that municipality			
Up to two owners of rateable property not resident in the municipality, eg the first two named non-resident owners listed on council's rate records or		Automatically	No
Up to two resident owners of rateable property other than the above who are not on the state roll (non-Australian citizens) or		On application	No
Up to two occupiers who are ratepayers for a property (eg shop tenants) ³ and		On application – enrolled in place of the owner	No
One representative (director or secretary) of a corporation owning or occupying a rateable property.		On application – if occupier, enrolled in place of the owner	No

Table 1: The types of voters who make up council voters' rolls (Source: Local Government Act 1989)

- 1.16 The differences between the City of Melbourne franchise and the other Victorian councils compound the complexity of the franchise⁴.
- 1.17 The differences in the City of Melbourne are summarised as follows:
- companies may appoint up to two voting representatives (compared to a single representative in other councils)
 - the City of Melbourne automatically enrolls company office bearers when a company does not appoint its own representatives (this is not done by other councils)
 - up to two owners **and** two occupiers in the City of Melbourne precinct may be enrolled per property (whereas in other municipalities the maximum is either two owners or two occupiers)
 - the City of Melbourne resident occupiers who are not on the state roll may apply to be enrolled (in other municipalities, only resident occupiers on the state roll can be enrolled)
 - occupiers within the City of Melbourne who do not pay rates may be enrolled (at other councils, only occupiers who pay rates can be enrolled)
 - occupiers who do not reside in the municipality, such as shop tenants, are automatically enrolled (at other councils, they are only enrolled if they lodge an application)
 - voting is compulsory for all franchise voters in the City of Melbourne, but is voluntary in other councils.

1 *Local Government Act 1989*, Sections 11–16 (Vic).

2 To be enrolled on the state roll, a person must be 18 years or older, an Australian citizen (or a British subject enrolled in the three months immediately before 26 January 1984) and have lived at their current address for at least one month.

3 i) If an occupier is liable to pay rates to the owner but is not listed on the council's rate records as the ratepayer, they require consent from the owner to apply.

ii) If the occupier is listed on the rate records as receiving the rate notice, they do not require the owner's consent to apply and have the place of the owner on the CEO's list.

4 *City of Melbourne Act 2001*, Sections 9A–9D (Vic).

Issues with the current franchise

- 1.18 In assessing the appropriateness of the local government franchise, the Panel considered the following principles:
- **Transparency** – are voting entitlements and obligations clear and known to the public?
 - **Equity** – do entitlements raise questions about why one person is entitled to vote and another is not?
 - **Inclusiveness** – do the people defined as constituting the local community have the entitlement to vote?

TRANSPARENCY

Are voting entitlements clear and known to the public?

- 1.19 As Table 1 illustrates, there is a complex set of conditions applying to the franchise, including being on the state roll, being a non-resident owner and, in some circumstances, a ratepayer not listed on the council's rate records. Citizenship is a qualifying condition for some, but not others. Some of these categories of voters are enrolled automatically; others must claim their voting entitlement. Commercial tenants who are not listed on the council rate records, but pay rates to the owner, require the owner's consent in order for them to have the right to vote.
- 1.20 Many who are entitled to enrol are unaware of the entitlement and so fail to apply. As Cr Jamie Hyams from Glen Eira City Council noted in a panel hearing, the franchise “creates a bit of confusion that people... don't know if they're entitled to vote or not, especially if they are [a] non-citizen landowner”.
- 1.21 Melton City Council commented that “for many voters, there was some confusion as to why people received ballot papers when they didn't live in that particular area (eg non-resident owners) and that voting was not compulsory for them”. Banyule City Council noted the similar confusion among its non-resident owners about their “need to vote”.
- 1.22 It is apparent that the public's knowledge of who is entitled to vote in local government elections is limited and often erroneous. A survey⁵ undertaken by DTPLI, for instance, indicated that:
- 71 per cent of respondents thought that citizenship was a prerequisite for being entitled to vote. This is not the case.
 - Only 1 per cent of respondents recognised that being a lessee of a commercial property could give an entitlement under the current franchise⁶.
 - 9 per cent of respondents thought that residents of a municipality were entitled to vote. In fact, being a resident does not in itself confer a voting entitlement.
 - Only 17 per cent of respondents thought that ratepayers had an entitlement to vote. In fact, all people who pay rates to the council have an entitlement.

⁵ DTPLI, 2013, unpublished survey, “Community Opinion Survey on the Local Government Electoral System”.

⁶ In fact, up to two occupiers who are ratepayers for a property are entitled to vote.

- 1.23 The local government franchise even causes confusion among those who have a clear-cut entitlement because they are on the state roll. In its 2012 report, the VEC observed that some "...tenants listed on the state roll do not believe they are residents because they are not home owners... This can create confusion and uncertainty for some groups of voters..."⁷.
- 1.24 The Panel believes that the complexity of the franchise, along with limited understanding and communication, contributes to the low enrolment by some voter categories. The likelihood that there is significant under-enrolment from these categories is underscored by an examination of resident owners not on the state roll. There are at least 447,000 non-Australian citizens living in Victoria⁸. They cannot be on the state roll, but they can be enrolled on the CEO's list if they are resident owners in the municipality. In 2012, there were only 720 such non-citizen enrolees⁹ (less than 1 per cent of the potential pool).
- 1.25 There are, outside the City of Melbourne precinct, over 180,000 commercial and industrial properties in the state¹⁰. It is estimated that a large number are leased out under a tenancy agreement. Many of these tenants would have an entitlement to enrol as occupier ratepayers. Only 178 such businesses (or less than 1 per cent) were enrolled in 2012¹¹.
- 1.26 This issue was highlighted by the Greater Frankston Business Chamber in its submission:

"Although firm figures aren't available... according to the business community the overwhelming majority of businesses are tenants and not landlords. And, as I've described, business tenants are normally signed up on the standard form REIV and Law Institute leases on their commercial/industrial leases. So business tenants are the ones who are paying the taxes, yet overwhelmingly not able to vote. They can only claim a right to vote through a very tortuous route. If they're signed up under their contract to pay the landlord's rate on a property that they occupy they can claim a vote provided that they seek and obtain the landlord's consent in writing, in Frankston through a special form.

"For the purposes of assessing rates, Frankston City Council listed a total of 4,484 properties as commercial and industrial in its budget for 2012/13, 3,585 of which were located outside the central activities area. ...But, may I say, only two registered to vote."

Christine Richards, Greater Frankston Business Chamber, Wantirna South public hearing

EQUITY

- 1.27 Equity turns on questions of fairness and consistency of treatment between voters. By this measure, there are anomalies.
- 1.28 The right to vote can be transferred from one party to another. Under section 15 of the *Local Government Act 1989*, other than those commercial tenants who are on the council's rate records, if a commercial tenant wants to apply to vote as a ratepayer, they need the landlord's consent. The landlord can then choose whether or not to transfer their vote to a tenant. This is inequitable and anachronistic.
- 1.29 Non-resident owners who live outside the municipality and are not on the state roll are automatically enrolled to vote. By contrast, owners living in their municipality and not on the state roll must apply to be enrolled to vote.

⁷ VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. 8.

⁸ Australian Bureau of Statistics, *2011 Census*, <www.abs.gov.au/census>.

⁹ VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. 87.

¹⁰ Data provided by Valuer-General Victoria.

¹¹ VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. 87.

- 1.30 Residents who are not on the state roll in the municipality cannot vote at all because they are not listed as ratepayers, despite paying rent and contributing indirectly to the payment of rates. This is inequitable. The Victorian Local Governance Association (VLGA) raised this exclusion in its submission:

“The VLGA believes it is important for all residents and ratepayers to have a say on who represents their interests and concerns in their municipalities. Therefore, we believe all residents and ratepayers over the age of 18 at the time of enrolment should be entitled to be enrolled to vote, not just Australian citizens.”

Victorian Local Governance Association submission

- 1.31 The Panel believes that this inequity particularly affects permanent residents.

INCLUSIVENESS

- 1.32 In addition to the clear anomalies in the existing franchise, there are issues of principle. Current arrangements do not reflect the statutory notion of **inclusiveness**. Victorian councils under Section 1A(4) of the *Local Government Act 1989* are responsible for their local community defined as “people who live in the municipal district, people and bodies who are ratepayers and people and bodies who conduct activities in the district”.

- 1.33 An equitable and inclusive franchise should strive to reflect the local community that the elected councillors represent. Submitters generally supported this view.

“I said earlier, local government is the most important tier of government and I don’t think we should be excluding voters.”

Cr Jackie Fristacky, Mayor, Yarra City Council, Melbourne public hearing

“..you could cut it... in lots of different ways and say these people are in, these people are out, you know, so you’re a lessee and you pay rates or you’re a lessee and you don’t. My view would be, be inclusive, include them all whether they pay rates or not.”

Rt Hon. Robert Doyle, Lord Mayor, Melbourne City Council, Melbourne public hearing

- 1.34 The current franchise seems at odds with the concept of local governance and community as defined by the relevant legislation. Businesses have low levels of enrolments; local residents who are not on the state roll are disenfranchised.

- 1.35 The case for businesses was highlighted by the following submission:

“All ratepayers should be entitled to a vote. The majority of businesses paying rates are tenants, not landowners. Without a vote, Councillors and Councils have less incentive to work with and for local business needs and aspirations. This can be rectified by giving commercial and industrial tenants a clearer entitlement to vote through the Victorian Local Government Act 1989.”

Christine Richards, Greater Frankston Business Chamber, submission

Considerations and conclusions

WHO SHOULD BE ENTITLED TO VOTE?

- 1.36 The Panel's view was that the local government franchise should be simpler, more equitable and inclusive.
- 1.37 This franchise would include all:
- Australian citizens and permanent residents who **live** in the municipality
 - people or corporations who **own property** in the municipality
 - people or corporations who **lease property** in the municipality
 - people or corporations who are **ratepayers** in the municipality.
- 1.38 The implications of these proposals are discussed in turn.
- 1.39 In respect of residents, all permanent residents¹² would be entitled to enrol if they have lived at the relevant address for at least one month – the length of residency enrolment requirement that applies for federal and state elections. The franchise would not be extended to tourists and temporary residents¹³.
- 1.40 In respect of property ownership entitlements, all people owning property in the municipality would be able to vote. Where, for instance, there are more than two owners of a property, all would receive a voting entitlement. This would apply to all properties in the municipality, not just rateable properties (with the only exception being where land is owned by any level of government).
- 1.41 All businesses and commercial tenants who have a lease for a property in the municipality would have an entitlement to vote. This would remove the requirement for the business to be a formal ratepayer or for the business tenant to seek the permission of the landowner to vote in their stead.
- 1.42 All people who pay rates in the municipality would be entitled to vote.
- 1.43 The entitlements of corporations would be brought in line with how the franchise is applied to other 'persons'. Just as individuals are given only one vote in each municipality, corporations would have the ability to nominate one representative in a municipality to exercise their entitlement. This would apply to the City of Melbourne, where currently companies are able to appoint two voting representatives, despite the vote being derived from one legal entity.
- 1.44 The Panel does not support any return to 'plural voting', where a voter is allowed more than one vote at an individual council election. Multiple voting is not permitted in other government jurisdictions – each voter has one vote to elect the make-up of a parliament. Each council is akin to a separate parliament, and while it is appropriate for someone who has an entitlement across different municipalities to have a vote in each one, no one should be given more voting clout in a single council election than any other person.
- 1.45 Figures 2 and 3 compare the clarity and simplicity of the current and proposed franchises.

12 A permanent resident has a permanent visa within the meaning of the *Migration Act 1958* (Cwlth), allowing him or her to remain in Australia indefinitely.

13 The residency status of the 29 resident occupiers who enrolled at the City of Melbourne in 2012 is not known. If some of them were students on temporary resident visas, they would no longer be able to apply for enrolment in future elections.

Are you eligible to vote in the local government elections?

CURRENT FRANCHISE

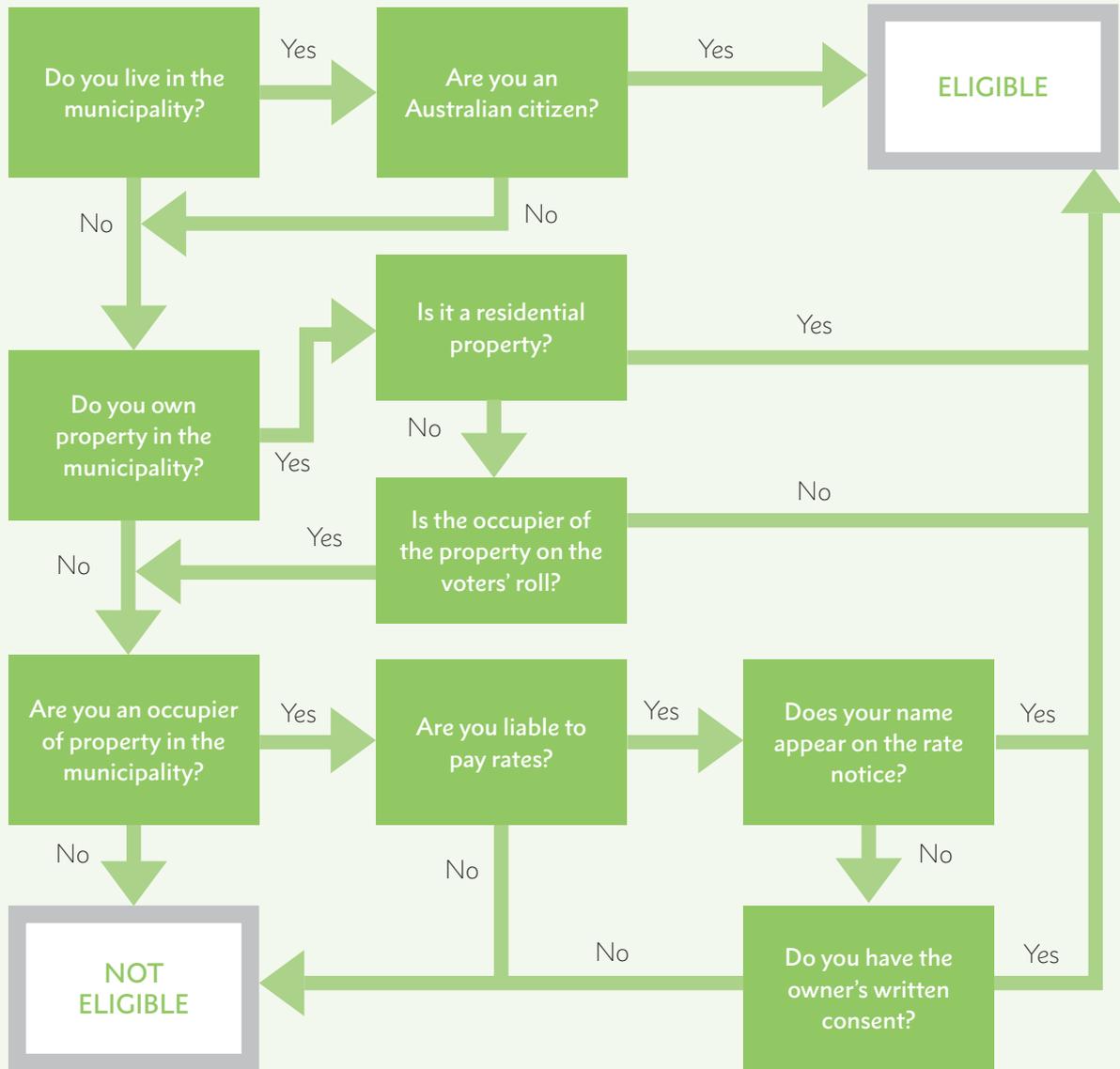


Figure 2: Current franchise for Victorian local government elections
 (Source: Local Government Electoral Review Secretariat)

Are you eligible to vote in the local government elections?

PROPOSED FRANCHISE

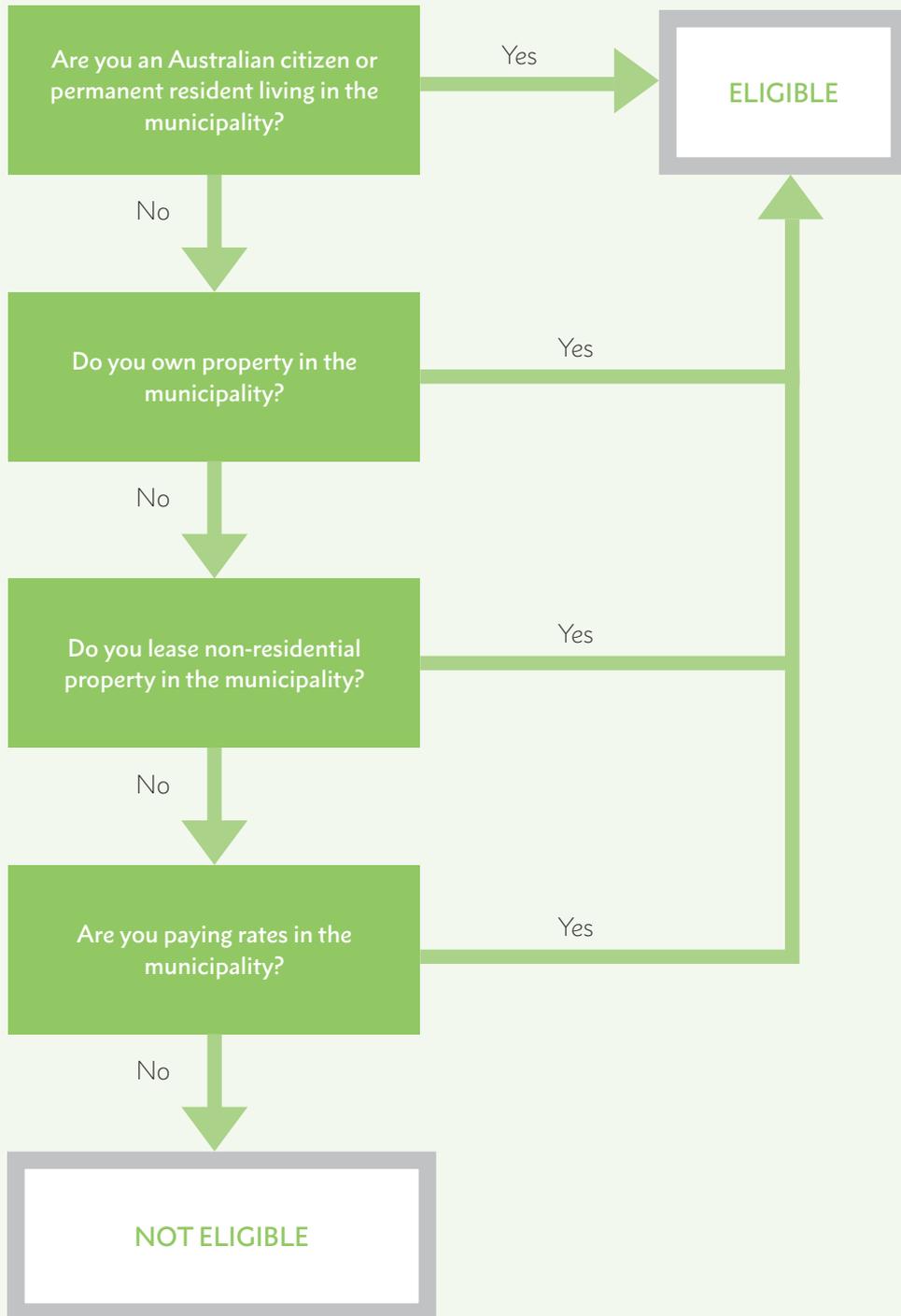


Figure 3: Proposed franchise for Victorian local government elections
(Source: Local Government Electoral Review Secretariat)

Recommendations

The Panel recommends that:

1. The voter franchise for Victorian local government elections be broadened to bring it into closer alignment with the 'local community' as defined in the *Local Government Act 1989*.
2. To give effect to the revised statewide franchise, the following eligibility criteria be implemented through a revision to the *Local Government Act 1989*:
 - a) aged 18 and above and either
 - b) citizens or permanent residents living in the municipality
 - c) owners of property in the municipality
 - d) lessees of non-residential property in the municipality
 - e) those who pay rates on a property within the municipality.
3. A person may be enrolled only once in a municipality, regardless of how many entitlements they may have.
4. A corporation may nominate only one representative, who may be enrolled only once in a municipality.

Roll integrity

- 1.46 A person's entitlement to vote is registered in the voters' roll. While a person may have an entitlement to vote, they must be on the voters' roll in order to exercise that right.
- 1.47 This requires a roll that has a high level of integrity in terms of:
- **accuracy** – the information on the roll is correct and current
 - **completeness** – voters with an entitlement are included
 - **validity** – voters who do not have an entitlement are excluded.
- 1.48 The Panel concluded that confidence in the integrity of the CEO's component of the voters' roll was qualified by the complexity of the franchise and exacerbated by the processes and practices in local government.

Accuracy

THE ROLL CONTAINING CORRECT AND UP-TO-DATE INFORMATION

- 1.49 The process of constructing local government voters' rolls involves a large number of entities. There are 79 councils in Victoria; the VEC works individually with each council to create 79 voters' rolls. The sheer number of entities with responsibility for roll creation and the resultant variation in policy and practice around the management of each roll is itself cause for concern.
- 1.50 The existing voters' roll for local government comprises:
- the state roll (currently this is 87 per cent of enrolled voters)¹⁴
 - the CEO's list made up of non-resident owners, occupier ratepayers, resident owners not on the state roll for the municipality, and corporation representatives (13 per cent of enrolled voters). Overwhelmingly the list is constituted by non-resident owners.
- 1.51 The VEC is responsible for maintaining the state roll for state government elections and exchanges records with each council for construction of their voters' roll. The VEC implements a range of measures to ensure that the state roll has high levels of integrity – that it is accurate, complete and valid. These are detailed in the Panel's discussion paper.¹⁵ This VEC cleansing process is supported by legislation, which requires voters on the state roll to enrol and keep their enrolment current, with penalties for failing to do so.
- 1.52 Each council CEO has a statutory responsibility for maintaining the voters' roll for the municipality. Section 22(1) of the *Local Government Act 1989* states that "the Chief Executive Officer is responsible for the preparation of the voters' list of ratepayers prepared under this section and the maintenance of any records which may be required to facilitate the preparation of an accurate and complete voters' list." One of the key problems in fulfilling this statutory function is created by an element of voters' roll construction that is unique to Victoria. Unlike nearly every other local government system in Australia¹⁶,

¹⁴ Data provided by the VEC.

¹⁵ Local Government Electoral Review Panel, 2013, *Local Government Electoral Review Discussion Paper*, Melbourne, p. 19.

¹⁶ The exception is the City of Adelaide.

which requires non-resident owners to enrol to vote, Victorian councils automatically put non-resident owners from their rate database onto the voters' roll. These databases, while suitable for the management of ratepaying obligations, do not provide adequate information to properly serve the electoral function. Databases often do not include dates of birth, signatures and current residential addresses.

- 1.53 Ratepayer databases include the owner's name, the ratepayer's name if different to the owner, property details and the mailing address for sending the rate notice. The council assumes owners who have a mailing address outside the municipality are non-resident owners and owners with a mailing address within the municipality are resident within the municipality. Both these assumptions can be in error and councils do not have the necessary information on which to make a more accurate recording. The outcome is a voters' roll whose accuracy can be questioned.

- 1.54 As two council CEOs commented in an anonymous CEO survey conducted by DTPLI¹⁷:

"There are inherent challenges in using the ratepayer database for purposes that are ancillary to, but fundamentally unconnected with the purpose that the data exists. For example, ... from a practical perspective the levying of property rates does not require council to distinguish non-resident ratepayers who live in (the municipality) from those who live outside."

"Whilst it is possible to modify the data in Council's ratepayer database to align more closely with electoral entitlements, there is no practical benefit to this change for Council's core business. The ongoing administration costs of more complex ratepayer data outweigh the benefit to the conduct of Council elections once every four years."

DTPLI survey of council CEOs

- 1.55 A small number of councils actively follow up with individual owners to establish their voting eligibility (for example, owners who have provided a post office box as their contact address are asked to also indicate their residential address). However, DTPLI's survey of council CEOs¹⁸ indicated that the vast majority of councils do not take steps to proactively determine individuals' residency status and do not see this as fundamental to the maintenance of the rate records for which the information is being kept. CEOs variously commented that:

"We have no method of identifying resident owners of rateable properties not on the state roll."

"Council did not conduct an exercise to identify resident owners of rateable property as it would be an unreasonable impost upon ratepayers given the time and difficulty of this. Council relied upon the media coverage in relation to the election to target such people."

"The VEC provides annual maintenance to the state roll. Outside the election process, there is limited, if any, roll maintenance undertaken for the purpose of updating Council records."

DTPLI survey of council CEOs

- 1.56 A cleansing process is undertaken, which is aimed at identifying duplicates and errors on the CEO's list. The VEC provides extensive assistance to councils in cleansing their lists of non-resident owners by supplying dates of birth from state roll records for the purpose of removing duplicates that appear on both lists. The VEC advises that this process commences up to 18 months prior to an election. It has data matching software and uses historical state enrolment movements to identify matches and possible matches. Possible matches are referred to the council to determine if the owner on the council records is different from the name on the state roll.

- 1.57 The VEC, however, is **only** able to match records and advise on the residency of CEO's list voters who are on the state roll.

¹⁷ DTPLI, 2013, unpublished survey, "CEO Survey on the Local Government Electoral System".

¹⁸ *ibid.*

- 1.58 The VEC's data matching excludes non-Australian citizens on the CEO's list because non-citizens cannot be enrolled to vote in state and federal elections and are consequentially not on the state roll. There are at least 447,000 non-Australian citizens aged 18 years and over in Victoria¹⁹. A proportion of these individuals would own property and many may appear on a CEO's list. However, their voting eligibility cannot be verified through the VEC checking process and all the inherent errors and mistakes that can occur ordinarily in the management of the voters' roll will not be able to be uncovered.
- 1.59 The VEC notes that with increasing numbers of rate records having dates of birth enabling better matching (78.7 per cent in 2012), voters' rolls are becoming more accurate²⁰. The VEC reported in 2012 that the error was 7.2 per cent²¹. However, this only relates to that proportion of the voters' roll covered by state enrollees.
- 1.60 Moreover, verifying names by matching two sets of data compiled from different sources for different purposes is difficult and cannot be completely accurate. Although dates of birth on each data set are increasingly available and historical information may result in many duplicates being correctly identified and removed, there will always be a level of uncertainty about whether a name appearing on both lists is the same person. In this context, the Panel noted different understandings of who is responsible for dealing with possible duplicates.
- 1.61 The Panel heard different accounts of the processes followed when possible duplicates are found. The VEC's procedures involve referring duplicates to the council for further investigation and a decision. Some councils erroneously believe, however, that the VEC makes the decision on duplicates.
- 1.62 The actual and resultant extent of the inaccuracy of the voters' roll is impossible to quantify. The level of overall accuracy is impacted by the following discussion on completeness and validity.

Completeness

INCLUSION OF VOTERS WITH AN ENTITLEMENT

- 1.63 Completeness of the voters' roll is measured by the extent to which entitled voters are enrolled. The indications are that the completeness of the voters' roll can be questioned.
- 1.64 The problem is twofold. The first aspect of the problem is that the Panel has heard, and the participation evidence suggests, that many eligible voters are not aware of their entitlement. In some instances, an entitlement is conditional on the landlord agreeing to pass on their right to the tenant. However, leaving aside the franchise barriers, it is also clear that many businesses are simply unaware of the nature of the franchise and are therefore not in a position to seek enrolment. No single factor can be isolated as a cause for low participation; however, it is likely that lack of clarity, some inequities in the voting rights and lack of communication to eligible voters, such as businesses, all contribute.
- 1.65 The second aspect of this problem is that the voters' roll may not include eligible voters because of insufficient data in respect of individuals' residency details. The process of roll construction may miss including on the voters' roll individuals who are eligible. This stems from the fact that councils have no regular, verifiable way of establishing where property owners live in order to determine whether they should be included on the voters' roll.
- 1.66 Councils typically identify people as resident or non-resident depending on their mailing address and whether it is inside or outside the municipality. This is, however, not a reliable indication of residency – an owner's mailing address for rate notices may not be where they live or it may be care of a real estate agent.

¹⁹ Australian Bureau of Statistics, *2011 Census*, <www.abs.gov.au/census>.

²⁰ VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. 10.

²¹ *ibid.*

- 1.67 Moreover, the VEC notes that an owner's residency status may change over time and there is no legislative requirement for a person to notify council of entitlement changes (as is mandated for federal and state enrolment)²². Owners usually only notify councils of changes to their contact details for rate notices, not for voter enrolment. This means that, while council records accurately list ratepayer contact details, they do not necessarily accurately list eligible voters. An example of how this may play out is illustrated below.

EXAMPLE A

Mr and Mrs B co-own and live at a property in the City of Z. The council rate notices are sent to their home address. Later on Mr B moves out of the home to an address in New South Wales. It was decided that Mrs B would still receive the rate notices and the council was not advised that he was now a non-resident.

Mr B was not placed on the CEO's list as a non-resident so he was **excluded** from the final voters' roll, even though he was entitled to vote.

- 1.68 The effort by the VEC and councils to correct records of non-resident owners, while commendable, cannot overcome the flawed process of automatically enrolling voters based on unreliable data and then having no mechanism or requirement for these voters to keep their entitlement details up-to-date.
- 1.69 This results in instances in which entitled voters are left off the voters' roll. Inaccurate records on owner residency have the potential to disenfranchise other owners. As Example A illustrates, a person is listed on the council records as an owner-occupier but has moved out. They still own the property but have not had the rate notice redirected. They are non-residents but they will not be enrolled.

"There's a significant amount of time each election to prepare the CEO's list and there's a certain amount of maintenance and ongoing upkeep of our records between elections. But essentially, most of the work is done leading up to the election and the to-ing and fro-ing with the Victorian Electoral Commission. I know that from our end there's a lot of checking and maintenance of data, but I think even the VEC, I don't know how they handle 79 councils and 79 CEO lists and get an accurate result. And in the end, we're talking about probably less than 10 per cent of voters."

Rod Leith, Financial Operations Manager, Ballarat City Council, Ballarat public hearing

²² VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. 10.

Validity

EXCLUSION OF VOTERS WITHOUT AN ENTITLEMENT

- 1.70 A valid voters' roll would exclude people who had no entitlement to vote. However, many of the conditions that lead to the exclusion of valid votes can, conversely, result in inclusion of votes from people without an entitlement.
- 1.71 There is a risk that one person will be listed on the voters' roll more than once if they use different names. This person, therefore, would receive more than one ballot pack, creating the possibility of multiple voting. This situation can occur when records exist for a person under different names at the same address; for example, when a person uses an Anglicised version of their name in certain situations. The situation outlined in Example B did occur (information provided by the VEC; details have been amended).

EXAMPLE B

RECORD 1 –

Name: Van Der Graph, Nicholas Joseph Herman

Entitlement address: 27 Snapper Drive, Swan Hill

RECORD 2 –

Name: Van Der Graph, Hans

Entitlement address: 27 Snapper Drive, Swan Hill

RECORD 3 –

Name: Van Der Graph, Herman Joseph

Entitlement address: 4 Genoa Road, Swan Hill

Record 1 is from the electoral commissioner's list (the state roll). Records 2 and 3 come from the CEO's list, but with no data on the voter's date of birth. Hans could easily be a father or son not living at the address, although owning a share of it. Herman appears to be different to the others but, in fact, all are the same person. With the date of birth on all records, there may have been a chance of getting it right, although Hans may not have been selected by the VEC's software as a possible match.

Different records, same person and three ballot packs received.

The voter notified the returning officer.

- 1.72 There is also a risk of multiple voting when a person changes their surname because of marriage or divorce, but does not update their council rate record, as Example C illustrates.

EXAMPLE C

Ms X has been the sole owner of a property in the City of Y for the last 15 years. At the time of purchase, she asked that her rate notices be sent to an address in the neighbouring municipality (her son's home). At the time the City of Y wasn't advised that she remained an owner/occupier and didn't have any other details about her, such as her date of birth. In the absence of any other information, Ms X was considered to be a non-resident and was (incorrectly) placed on the CEO's list as an eligible voter.

The VEC's data matching system subsequently discloses Ms X as being on the state roll for the City of Y property but under her maiden name (the name she now uses). It has historical records, which indicate her former married name matches the (out of date) council record.

- 1.73 As shown in Example C, although the two names are the same person, the council is not in a position to definitively confirm this and must determine subjectively whether to remove her name from the CEO's list in the final roll.
- 1.74 The consequence of these matching flaws is that under current arrangements, the risk of multiple voting for the same municipality persists.

Who should be required to enrol?

- 1.75 To ensure an accurate, complete and valid voters' roll, it is proposed that all voter enrolments for local government elections should result from an application to the VEC or the AEC.
- 1.76 Currently, all Australian citizens aged 18 and over are compelled to enrol for federal and state elections (and on that basis, entitled to vote in council elections). In addition, all people considered to be non-resident owners of property in a municipality are automatically enrolled to vote in all council elections. With the current mix of state enrollees and the automatic enrolment of non-resident owners, in effect, the current system delivers compulsory or automatic enrolment of 99.9 per cent of the total local government voters' roll.
- 1.77 The extension of the franchise, which the Panel recommends, raises the issue of who should be required to enrol and when.
- 1.78 The Panel strongly supported the existing enrolment requirement for Australian citizens aged 18 and over. Under the proposed arrangements, state roll voters would continue to be enrolled via application to the VEC and AEC and their details supplied for inclusion on the council's voters' roll.
- 1.79 The Panel believes that the current system of non-resident owners and the other property franchise voters being automatically enrolled by councils should be replaced by the individual with the entitlement being required to compulsorily enrol themselves by application to the VEC. The expanded role of the VEC is discussed at length in chapter 4.

"The requirement to make an application improves the accuracy of the CEO's list and therefore the voters' roll."

Moorabool Shire Council submission

"We recommend the Victorian Government alters the automatic enrolment provision in legislation to require application for every election. This would ensure that non-residential rolls are as up-to-date and accurate as possible."

Victorian Local Governance Association submission

- 1.80 The Panel does not believe that this compulsory enrolment should immediately be required of the extended franchise, which includes non-ratepaying lessees, permanent residents and other ratepayers not otherwise eligible to vote. Knowledge of entitlements, public information campaigns and the other mechanisms necessary to prompt enrolments take time to bed down. It would therefore be inappropriate to make enrolment immediately compulsory for those newly enfranchised.
- 1.81 The issue of voter engagement with government at all levels is a complex one. Many factors contribute to enrolments and voting that are outside the scope of the regulatory system. Commitment by both the state and local government will be needed to communicate the broader rights and obligations to voters. More effort will be needed to engage with this broader constituency to translate the intended franchise into actual enrolments.
- 1.82 In communicating the broader franchise, the specific needs of people from culturally and linguistically diverse communities would need to be considered.

"..culturally diverse communities... often face challenges when attempting to vote or stand as candidates. Some of the challenges are – lack of necessary familiarity and knowledge on electoral procedures, language barriers, and lack of awareness of the role and responsibilities of local government."

Ethnic Communities' Council of Victoria submission

- 1.83 The VEC will also need to undertake significant systems development to capture and manage the broader voter base. There will also be resource implications for the VEC in managing the applications processes and confirming eligibility of voters.
- 1.84 Accordingly, voluntary enrolment for the newly enfranchised should continue until the 2016 local government elections. Subsequently, the timing for all entitled voters to enrol compulsorily should be determined in light of the effectiveness of public information campaigns and the ability of the VEC to organisationally cope with the new enrolment regime.

Who should be compelled to vote?

- 1.85 For federal and state elections, the obligation to vote is clear-cut, with voting being compulsory for all who are enrolled²³. The local government franchise, by contrast, is a complex mix of compulsory and optional voting conditions.
- Voting is compulsory for people on the state roll under 70 years of age.
 - Voting is optional in all council elections for people aged 70 years and over.
 - Voting is optional in all council elections for non-resident owners, occupier ratepayers, resident owners not on the state roll for the municipality and corporation representatives (except for the City of Melbourne, where voting is compulsory for these voters).
- 1.86 Given the inconsistency of these provisions with those for federal and state elections, it is unsurprising that some voters fail to understand whether or not they are required to vote in a local government election.

23 It should be noted that, while it is compulsory for electors aged 70 years and over to vote in Victorian state elections, the VEC makes a policy decision relating to the issuing of non-voter notices to these electors on election day. Historically, the VEC has not issued notices to these electors.

- 1.87 The prevailing view from submissions was that those who are compelled to vote at federal and state elections, particularly people aged 70 and over, should also be compelled to vote at local government elections.

“Voting should only be compulsory for those who are required to vote in state and federal elections – the obligation should be uniform across the three tiers of government. We also believe that voting should be compulsory for people 70 years of age and older, as it is in state and federal elections. The current practice that applies for state and federal elections in Victoria, where voters over the age of 70 are excused from being fined if they fail to vote, should continue to be followed in Victorian local government elections.”

Municipal Association of Victoria submission

“We suggest that, in the context of Victoria’s multiplicity of voting entitlements, a voluntary vote is suitable for the categories of voters who are not currently compelled to vote. This aligns local government elections with those at State and Federal levels and creates a congruence of expectations on the part of voters.”

Victorian Local Governance Association submission

“Council further supports the view that for consistency, the same voting rules for the aged population should apply between Federal, State and Local Government elections.”

Greater Dandenong City Council submission

“...it is considered appropriate that the State voters’ roll be the main basis for determining voter eligibility and that voting be compulsory for those on the State roll including persons aged 70 and over which is consistent with State and Federal elections.”

Bayside City Council submission

“Voting should be compulsory for those who are required to vote in State and Federal elections, including persons aged 70.”

Corangamite Shire Council submission

- 1.88 Boroondara City Council made the following summation of the arguments for and against compulsory voting:

“There is merit in the current system of making voting mandatory for residents of a municipality, and making voting optional for those who are not residents within a municipality.

“Compulsory voting is, however, a feature of the Australian political landscape. There is equal merit therefore in the argument that consistency between levels of government is beneficial, reflecting the value that is placed upon participatory democracy in Australia. Credence is added when considering the prevalence of postal voting, which reduces the barriers to participation for those who reside outside the municipality.”

Boroondara City Council submission

- 1.89 The Panel strongly endorsed the view that the differential treatment of voters aged 70 and over in local government elections, which is unique to Victoria, should be brought to an end, and voters aged 70 and over should come under the same regime that applies to all other voters.

- 1.90 The Panel also proposed that voters enrolled on the CEO’s list (voters other than state enrolments) be treated under the same rules of compulsion that apply to all other voters.

- 1.91 The Panel believes that voting’s symbolic function as a signal of civic duty is important and, to this end, the Panel recommended that voting be compulsory for all enrolled constituents for future elections.

- 1.92 Universal compulsory voting by enrolled voters for local government elections would improve consistency, reduce voter confusion and reinforce the importance of this level of government. Compulsory voting would also simplify, unify and intensify voter information campaign messages for local government elections.
- 1.93 Administration of non-voting enforcement would be streamlined, with a uniform approach being applied across the state.

Recommendations

The Panel recommends that:

5. The *Local Government Act 1989* and electoral regulations be amended to make voting compulsory for all those enrolled to vote.
6. The application of compulsory voting be extended to persons aged 70 and over, bringing local government arrangements in Victoria into line with other jurisdictions.
7. Other than those already enrolled on the state roll, automatic enrolment for some voters cease and that those voters not on the state roll be required to enrol on an applications-only basis.
8. The process of constructing the voters' roll be streamlined and centralised by removing the requirement of CEOs to maintain the voters' roll and transferring this responsibility to the VEC, including the receipt and administration of enrolment applications.
9. To support transition to a broadened franchise, both the VEC and local governments conduct a comprehensive statewide campaign backed up by strong community engagement at the local level to encourage enrolment of voters in every municipality. This should be consistent with the role played by the VEC for state elections, including its outreach efforts to the CaLD community.
10. As an extension to the awareness campaign, under the new provisions, transitional arrangements be put in place to support re-enrolment of current enrollees on voters' rolls in Victoria.

Confirming enrolment

- 1.94 Currently, people are able to check their enrolment for local government elections by inspecting the consolidated voters' roll, which combines the state roll and the CEO's list.
- 1.95 This voters' roll (the exhibition roll) must be made available for public inspection 62 days before a local government election, for a period of five working days ending on the date for the close of the voters' roll (the entitlement date).
- 1.96 A number of problems have emerged with respect to this arrangement. Firstly, there is a lack of consistency in the way councils make the exhibition roll available, which can reduce accessibility. Secondly, security of the exhibition roll may be compromised, particularly in rural areas, by being displayed in venues outside of a council's direct control. For example, one council made hard copies of its exhibition roll available at 17 post offices throughout the municipality. Thirdly, this lack of control over the exhibition roll presents a risk of misuse. The VEC reported that at the 2012 elections, there were three instances where copies of the exhibition roll had been inexplicably removed from the display location before the authorised person was able to collect them²⁴.

²⁴ VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. 12.

- 1.97 In addition, exhibition rolls are rarely used by potential voters to check their enrolment, indicating that the inspection process does little to improve the integrity of the voters' roll. In this regard, the inspection process requires considerable staff resourcing, for little return.

"The production of the voters' roll is a complicated process. The steps between the preparation of the roll of 100 days prior to the election and the requirement for the exhibition roll to be on public display for inspection purposes 62 days before the election, is a resource intensive process."

Wyndham City Council submission

- 1.98 For federal and state elections, voters can confirm their enrolment at any time – the rolls are 'live'. Voters in local government elections would benefit from this arrangement. The requirement for all voters to enrol through application would enable the VEC to capture a consolidated roll to facilitate this. Allowing voters more time to check their enrolment would further strengthen the accuracy of the voters' rolls and deal with the problems identified above.
- 1.99 Many submitters agreed that the most effective means for voters to check their enrolment would be to contact the VEC, either through its online enrolment checking service or by phone.
- 1.100 This simplified process would deliver the following benefits:
- voters would be able to conveniently check their details on an ongoing basis
 - the privacy of voters' details would be better protected than is currently the case
 - the inefficiencies and delays inherent in preparing an exhibition roll would no longer be necessary
 - the problem of hard copy exhibition rolls being misused would also be removed (as reported by the VEC at the 2012 elections)²⁵.

Recommendations

The Panel recommends that:

11. The provisions for inspection of the voters' roll be brought into line with those pertaining to the state roll, which provide for inspection of the state roll by any person with the VEC at any point in the election cycle.
12. The *Local Government Act 1989* be amended to remove the requirement for the preparation of an exhibition roll.

²⁵ VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. 12.

Candidate access to the voters' roll

- 1.101 Candidates are able to access the voters' roll for the purposes of campaigning. The penalty for using the voters' roll other than for the purpose it was provided for, or failing to destroy or return the voters' roll, is 120 penalty units (currently \$17,323) for a person and 600 penalty units (currently \$86,616) for a body corporate²⁶.
- 1.102 There was general support from stakeholders through their submissions for candidates to continue to receive copies of the voters' roll for the ward they are contesting for campaigning purposes. Many observed that voters' rolls are provided for candidates at state and federal elections and are a valuable tool for candidates to direct a targeted campaign.
- 1.103 These views contrast with those expressed by candidates who responded to a survey from the Inspectorate. In that report, the Inspectorate stated that "candidates considered it unwarranted to be provided with a voters' roll upon nomination, which lists the names and addresses of all registered voters in their ward or municipality"²⁷.
- 1.104 The Panel, however, noted advice from the VEC that the *Commonwealth Electoral Act 1918* allows political parties to have access to Commonwealth enrolment information for use at the local government elections at any time.
- 1.105 Although no breach of the *Local Government Act 1989* for misuse of voters' rolls has been reported in recent times, the Panel acknowledged the validity of concerns about the potential for voters' rolls to be misused. It would be especially difficult to trace the source of misuse when information is received electronically. The potential for unlawful use remains a risk that demands continual monitoring.
- 1.106 The risk can be reduced by strictly enforcing the requirement in the *Local Government Act 1989* that candidates only receive a copy of the voters' roll on request and that all candidates be required to return the copies of the voters' roll, instead of being given the option of destroying them. This would assist, to some extent, in reinforcing the need to use the voters' roll responsibly and in tracing copies of the voters' roll to ensure that they are returned.
- 1.107 A further protection to the privacy of voters would be achieved by more comprehensive advice being provided to voters at enrolment of their right to be a silent voter (and so have their details removed from the voters' roll made available to candidates) on personal safety grounds.²⁸ The introduction of application enrolment for property franchise voters may assist in this process.

Recommendations

The Panel recommends that:

13. The VEC's enrolment campaign contain the appropriate privacy information by reminding voters that their personal details are available to candidates for campaigning purposes. This campaign should advise individuals that they can request to be silent voters if there are personal safety grounds on which to base an application to protect their private information.
14. All candidates be required to return to the VEC at the conclusion of the election all copies of the voters' roll supplied to them.

²⁶ Office of the Chief Parliamentary Counsel, Melbourne, viewed 25 November 2013, <<http://www.ocpc.vic.gov.au/CA2572B3001B894B/pages/faqs-penalty-and-fee-units>>.

²⁷ Local Government Investigations and Compliance Inspectorate, September 2013, *2012 Election Report*, Melbourne, p. 8.

²⁸ Under Section 31 of the *Electoral Act 2002*, any state roll voter may apply to have their principal place of residence removed from the roll, if they: identify a relevant personal safety risk, verify it by making a statutory declaration, and satisfy the VEC that showing their residential address would place them or a family member at risk. A parallel process exists for CEO's list voters under Section 20 of the *Local Government Act 1989*.



Chapter 2 Candidates

Introduction

- 2.1 This chapter addresses candidacy requirements, the nomination process and ways to improve the information available to voters on candidates standing for local government election. It also identifies ways to reduce the risk of conflicts arising from campaign donations and improve the transparency of campaign donation disclosure. The chapter finishes with a discussion on how best to support candidate participation and performance and the challenges presented by dummy candidates.
- 2.2 The capacity and confidence of voters to cast a vote for high quality, eligible candidates can raise participation levels and is a central pillar in the integrity of the electoral process.
- 2.3 The electoral system should allow voters to have meaningful and accurate information, which supports their capacity to make an informed choice in council elections.
- 2.4 A strong electoral system alone cannot guarantee a healthy democracy. A healthy democracy relies on a partnership between the regulatory system and the vibrancy, goodwill and integrity of civic society. This calls in the responsibilities of an interested and engaged electorate, committed and talented candidates and peak organisations and stakeholders with the best interests of local government at heart.

“...many of the issues in local elections have their basis in broader social and cultural issues. The VLGA does not believe governments can simply regulate and legislate their way to good, robust local democracy. To achieve this, we have a shared responsibility to undertake appropriate policy changes, local government capacity building and community development to ensure strong democratic cultures develop within all local governments.”

Cr Samantha Dunn, President, Victorian Local Governance Association, Melbourne public hearing

- 2.5 The Panel recognised that some of the drivers of civic participation are heavily influenced by Australia’s wider political culture. There are limitations to the capacity of the regulatory framework to achieve the kind of democratic participation we recognise as the hallmark of a well-functioning political system. Notwithstanding this qualification, eligibility conditions of candidature, the rigour of the nomination process, candidate information statements and transparency in donation disclosure can support healthy civic participation and reinforce the soundness of our local democracy.
- 2.6 The Panel concluded, on the basis of evidence from hearings, submissions and other analysis, that the eligibility conditions for candidature are largely sound, but that clarity on whether conditions are being met requires strengthening. Section 1 (page 47) explores the means of achieving this.
- 2.7 One of the strongest areas of concern is related to a lack of information about candidates. The Panel heard that many voters believe that the information they receive is insufficient to allow them to make a judgement about the candidates contesting council elections. This has also been supported by two separate quantitative surveys, one conducted by the VEC and one conducted by DTPLI. The concerns about lack of candidate information were also highlighted by the Ombudsman and the Inspectorate. Section 2 (page 57) includes recommendations designed to improve the information available to voters.

- 2.8 Campaign donations were a strong feature of submissions. Section 3 (page 62) examines the challenges posed by campaign donations and proposes measures to address them. The Panel arrived at the conclusion that conflicts of interest arising from campaign donations can be addressed through better alignment with the existing rules and thresholds for managing conflicts of interest.
- 2.9 The Panel heard concerns about dummy candidates in some council elections. There is a general view that they undermine confidence in the electoral process.
- 2.10 A contrary view put to the Panel was that regulators should not underestimate the ability of the electorate to discern between genuine candidates and dummy candidates. Section 4 (page 68) addresses proposals to ameliorate the influence of dummy candidates.
- 2.11 Maintaining healthy levels of candidate participation and councillors' credentials, skills and knowledge to discharge their responsibilities are explored in Section 4 (page 68).
- 2.12 Many of these matters intersect. The structure of this chapter explores in turn:
1. candidacy requirements and the nomination process
 2. information to assist meaningful participation by voters
 3. campaign donations – preventing conflict of interest and strengthening transparency
 4. dummy candidates, candidate participation and councillor capability.

Section 1.

Candidacy requirements and the nomination process

2.13 There are divergent views among candidates and councillors in respect of the requirements for candidates to stand for office and the information that candidates should provide to voters. This range of views on candidate information was reflected in the Municipal Association of Victoria (MAV) submission:

“In relation to candidate information, there are three divergent views among MAV members:

- those that support requiring a range of specific information from candidates, either as part of, or in addition to, a candidate statement*
- those that support setting out fields of information for candidates to voluntarily provide, in addition to a candidate statement*
- those that oppose any template questions being posed to candidates, and support continuation of unstructured 150 word (or greater) statements.”*

Municipal Association of Victoria submission

“...[there is an] opportunity to strengthen [the nomination] process, particularly around the personal and financial probity requirements or the disqualification criteria and the self-certification or the onus on the nominee to acknowledge that they don’t breach that disqualification criteria – we found [that] quite odd. For a person who wishes to usurp that process of course they’re not going to nominate that they’ve breached the criteria.”

David Wolf, Chief Municipal Inspector, Inspectorate, Melbourne public hearing

2.14 Considerable attention was given in the public hearings and submissions to the dummy candidate issue. The meanings attached to this phrase differed. For its purposes, the Panel adopted the use advanced by the Inspectorate²⁹, which described a dummy candidate as one whose aim “...is to direct preferences to another candidate in order to increase that candidate’s chance of winning”.

2.15 A more rigorous nomination process can support the capacity of the system to deliver eligible, quality candidates. With these challenges in mind, the Panel explored opportunities to strengthen the nomination conditions and process in ways that would:

- strengthen the eligibility conditions
- improve the rigour of enforcing nomination conditions to reduce the risk of unqualified candidates contesting an election or the perception that this may occur.

2.16 A number of recommendations are made in pursuing these objectives, which are discussed in turn on the following pages.

²⁹ Local Government Investigations and Compliance Inspectorate, 2013, *2012 Election Report*, Melbourne, p. 14.

Strengthening eligibility and disqualification conditions

- 2.17 Over time, governance requirements of councillors have been strengthened in Victoria to bring standards of conduct into line with community expectations and the standards of conduct for fit and proper persons in other comparable sectors and levels of government.
- 2.18 The prevailing political culture of our democracy means that in determining eligibility to stand for public office, the legislation predominantly outlines what is so undesirable as to warrant disqualification, rather than specifying positive qualities or characteristics that need to be met. Accordingly, the assessment of skills, qualifications and any other qualities considered to be important to the electorate is ultimately made by the electorate at the ballot box.
- 2.19 Under current legislation, only one positive qualification applies – a person must be enrolled as a voter in the municipality they are contesting. They need not reside in that municipality.
- 2.20 The range of disqualifying conditions is much more extensive. Non-citizens are disqualified from standing. Other disqualifications are designed to rule out participation by citizens of poor character (eg a person who has committed a significant criminal offence) or those engaged in a role that may conflict with their duty to the council (eg a member of parliament, electorate officer or councillor of another council).
- 2.21 Table 2 compares the qualifications and disqualifications applying to the office of councillor with those applying to state and federal parliaments.

Council ³⁰	State Parliament ³¹	Commonwealth Parliament ³²
Qualifications		
The person is 18 years or older and on the electoral roll for the municipality they wish to contest.	The person is 18 years or older, on the electoral roll and their principal place of residence is in Victoria ³³ .	The person is 18 years or older, and an Australian citizen, enrolled to vote at an election or qualified to become an elector.
Disqualifications		
<p>The person is:</p> <ul style="list-style-type: none"> • a member of an Australian parliament, a ministerial officer, a parliamentary adviser or an electorate officer of a member of an Australian parliament • an undischarged bankrupt • under conviction for a criminal offence that has a maximum possible penalty of at least five years' imprisonment • a councillor of another council or a member of council staff at the council whose election is being contested • not an Australian citizen • a person of unsound mind • under convictions for electoral breaches • under disqualification for gross misconduct by order of the Victorian Civil and Administrative Tribunal (VCAT). 	<p>The person is:</p> <ul style="list-style-type: none"> • a member of either House of the Parliament of the Commonwealth • an undischarged bankrupt • convicted or found guilty of an indictable offence punishable upon first conviction by imprisonment for life or for a term of five years or more • a judge of a court of Victoria. 	<p>The person:</p> <ul style="list-style-type: none"> • is a state or territory member of parliament • is an undischarged bankrupt • a subject or citizen of a foreign power • is convicted of treason or convicted for any offence that has a term of one year imprisonment • holds any office of profit under the Crown or pension • has a pecuniary interest with the Public Service of the Commonwealth • is a member of the Australian Defence Force.

Table 2: Qualifications and disqualifications to be a candidate for three levels of government in Victoria (Source: state and Commonwealth legislation, refer to footnotes 30, 31 and 32)

2.22 In comparing the other eligibility requirements and disqualifications applying to the office of councillor to those operating in other Australian jurisdictions, the Panel found that these were broadly similar. All are designed to ensure that those who have committed offences or whose duties conflict with the role of councillor are ineligible.

2.23 One difference is noteworthy – the disqualifying conditions for local government in Victoria do not currently exclude individuals who have been banned from managing a corporation. This point was underscored by the submission from Boroondara City Council:

“The current exceptions provided for in the Local Government Act 1989 are considered appropriate to remain. Given the comparable duties and obligations of company directors and councillors, an additional exception, similar to the New South Wales provisions regarding disqualified company directors, should be considered if it is not otherwise captured by existing provisions.”

Boroondara City Council submission

2.24 In considering the nature of other disqualifying conditions, the Panel found that it would be appropriate to incorporate this prohibition on the basis that it is not reasonable that an individual banned from managing a corporation should be allowed to act as a local government office holder with significant responsibility for public assets. **To this end, the Panel recommends that:**

15. The Local Government Act 1989 be amended to include an additional disqualification for individuals who have been banned under the ASIC regime from managing a corporation.

2.25 In addition, the Panel considered the requirement that a person cannot stand for council if he or she is not an Australian citizen.

2.26 At federal and state level, the primary qualification for standing for election is current enrolment on the relevant voters’ roll. Federally, this requires Australian citizenship. British subjects who were enrolled to vote prior to 1984 have maintained their right to vote, but are caught by the disqualification provisions of section 44 of the Constitution³⁴. In Victoria, by contrast, Australian citizens and British subjects enrolled to vote in Australia are entitled to stand for parliament.

2.27 The Panel believes that the principles applying to stand for state parliament should now be extended to Victorian local government. An entitlement to vote should also be an entitlement to stand.

2.28 It is worth noting that this would not be inconsistent with the oath of office required of a councillor. Whereas a state parliament member swears an oath of allegiance to the Queen, this is not the case in local government. Councillors instead swear to undertake the duties of councillor “in the best interests of the people” of the relevant municipal district³⁵.

2.29 **The Panel recommends that:**

16. The eligibility criteria to stand for election to local government be broadened to align with the right to vote in local government elections.

³⁰ *Local Government Act 1989*, Sections 28, 28A and 29 (Vic).

³¹ *Constitution Act 1975*, Section 44 (Vic).

³² *Commonwealth Electoral Act 1918*, Sections 163–164 (Cwlth) and *Commonwealth of Australia Constitution Act*, Section 44 (Cwlth).

³³ Section 48 of the *Commonwealth of Australia Constitution Act* (Cwlth) allows both Australian citizens and British subjects enrolled before 1984 to enrol and therefore stand, subject to any disqualification.

³⁴ *Commonwealth of Australia Constitution Act* (Cwlth).

³⁵ *Local Government Act 1989*, Section 63(1) (Vic).

Strengthening enforcement of eligibility criteria

- 2.30 The second broad area of reform relates to the need to strengthen the practical application of the standards that apply to prospective candidates.
- 2.31 False nominations can have significant consequences. An election can be declared invalid either because the disqualified candidate is elected or because their preferences help determine the outcome. More generally, the failure to exclude an ineligible candidate can create a perception of a failure of integrity, which may undermine confidence in the local government electoral process.
- 2.32 Nonetheless, there have been only two instances in recent times where candidates have been convicted of providing false information to the VEC when submitting a nomination to stand for local council. Neither resulted in an election being declared invalid. The Inspectorate conducted an audit of nominations as part of the 2012 elections. This did not uncover any illegal nominations. The Chief Municipal Inspector informed the Panel that “as part of our candidate audit, we looked at the probity of 56 candidates and whilst there were some issues that were detected, they didn’t meet the threshold for disqualification”³⁶.
- 2.33 There were different views about the need to make the nomination process more rigorous and how this could be achieved. These ranged from the view that current arrangements were adequate and no change was required, through to a view that all candidates should provide evidence that none of the disqualification conditions apply to them and be subject to police checks, ASIC checks and insolvency checks.

“We view as problematic and possibly unworkable any suggestion that greater checks need to be built into the nomination process. The introduction of checks, such as police or bankruptcy checks, would add considerable time to the process and would likely impact the election timetable. Also, if a candidate was improperly included or excluded under such a system, the validity of that election would potentially be at risk.”

Municipal Association of Victoria submission

“I don’t agree with any attempts to make it more difficult for a person to nominate as a candidate. I am aware that there has been one instance in Victoria where a person stood for election when they were not eligible. The current law is adequate to deal with this situation. Although this would have been inconvenient for the other candidates involved there is a risk, if eligibility to stand is tightened further or if there are extra ‘hurdles’ that some potential candidates will be discouraged by the extra ‘red tape’.”

Stephen Hart, submission

“Manningham believes that the nomination process can be improved. It is contended that candidates should be subject to a Police and ASIC check as part of the nomination process. One option would be for the candidates to be required to provide these checks at the time of nomination. This may be an unnecessary obstacle to genuine candidates. It may be preferable for the Returning Officer (VEC) to conduct these checks.”

Manningham City Council submission

“Greater powers should be given to returning officers to undertake adequate checks against a candidate’s application – e.g. police checks, bankruptcy/insolvency checks etc. Candidates should supply adequate identification (copy of passport, birth certificate etc) with their application so that these checks can be carried out.”

Moonee Valley City Council submission

36 Local Government Electoral Review public hearing, Melbourne, 3 October 2013.

[How do you think verification and enforcement of nomination eligibility can be improved?]

“Completion of a National Police Certificate as a prerequisite to nomination.”

Greater Shepparton City Council submission

“Suggestions such as a mandatory Police Check may enhance the situation as [it] provides some verification of the candidate’s declaration. It however raises further queries as to when this occurs within the nomination process and by whom – the candidate or the returning officer?”

Peter Tully, submission

“Maybe there is also in that sense a need to give greater powers to returning officers at the point of nomination to look at things like potentially police checks, bankruptcy, insolvency checks and so on like that. And that might sort through this very quickly and candidates would know that in advance that these things were going to be done and think seriously about whether they would pass those sorts of qualifications.”

Cr Jim Cusack, Moonee Valley City Council, Melbourne public hearing

- 2.34 The Panel explored different options to strengthen the enforcement of eligibility criteria. In testing these, it was guided by the need to propose a response that is commensurate with the risk inherent in the current system. It was also acknowledged that better enforcement of eligibility criteria has the additional benefit of addressing related problems in the conduct of local government elections.
- 2.35 The Panel’s proposed reforms seek to strengthen the application of the eligibility criteria while not setting barriers that would prevent people who are entitled to stand from contesting elections. These reforms would require candidates to:
- nominate in person on a **no exceptions** basis
 - demonstrate a minimal level of endorsement of their candidature (from six of their peers enrolled in the municipality)
 - unequivocally attest that no specific disqualification condition in the *Local Government Act 1989* is breached by the nomination
 - test a key aspect of this attestation through a national criminal record check, ASIC check and insolvency check for successful candidates elected to become councillors.
- 2.36 The rationale for each of these proposed reforms is discussed in turn below.
- 2.37 In 2008, a requirement was introduced that candidates nominate in person. The rationale for this reform was that it would discourage dummy candidates from nominating in support of another candidate. However, a gap remains enabling candidates to sign a statutory declaration stating that they are unable to sign the declaration of eligibility and complete the nomination form in the presence of the returning officer. The statutory declaration must include a reason why the candidate could not attend; however, there are no grounds for the nomination to be refused based on the reason given. At Melton City Council in 2012, 72 candidates nominated; 16 candidates (more than 20 per cent) nominated in absentia³⁷. There was a strong perception that the size of the field indicated the presence of dummy candidates at that council’s elections.

37 Data supplied by the VEC.

2.38 The fact that the overwhelming proportion of candidates across the state (more than 98 per cent, excluding the single municipality in question) were able to nominate in person in the presence of a returning officer suggests that this should be possible for all candidates. This view was supported by the VLGA:

“The VLGA believes to ensure candidate legitimacy, it should be made compulsory without exemption that candidates nominate in person with the returning officer.”

Victorian Local Governance Association submission

2.39 The MAV took a different position on this, arguing for online nominations.

2.40 A number of speakers at public hearings voiced their disquiet that candidates for public office as councillors are not required to prove their identity when nominating.

“We also found that the lack of necessity around identification was an issue for us and we’ve compared that to perhaps when you open a bank account where you’re required to provide 100 points of identification, whereas [when] you nominate...for election there [is] no requirement to provide any identification whatsoever and we found that a bit unbalanced.”

David Wolf, Chief Municipal Inspector, Inspectorate, Melbourne public hearing

2.41 The lack of identity requirements has allowed some to perceive that bogus candidates can stand under a fictitious name, either to garner votes for another candidate or for some other purpose. No evidence was provided that this had occurred. It is, however, a simple matter for the perception to be removed, by requiring that all candidates provide some basic proof of identity, their contact details and a recent photograph. The proof of identity should meet a 25-point identification check (a driver’s licence, passport, birth certificate, mortgage, rates notice or utility bill). This requirement is not onerous and would remove any suggestion that a candidate is assuming a false identity for any purpose.

2.42 To stand for a federal seat as an independent, a candidate is required to obtain the written support of 100 voters in the electorate they are contesting. In the Victorian Legislative Assembly the number is six. It was formerly a requirement that candidates for local government also demonstrate they had secured the support of ten electors in their municipality.

2.43 A number of submissions to the review argued strongly for the reinstatement of a similar proof of support. Reinstating a requirement to secure the endorsement of electors in the municipality would demonstrate a candidate’s seriousness in standing as a councillor and may discourage less committed candidates from nominating.

“...candidates [should] be required to be nominated by at least 25 voters from that ward, who cannot nominate any other candidate concurrently.”

Bruce McDonald, Traralgon public hearing

2.44 The Panel believes that securing the written support of a number of electors in the municipality would represent some demonstration that candidates are seriously engaged in the election contest. The number of people who need to endorse is a matter of judgement, but the Panel believes that on the grounds of consistency with the requirements of the Victorian Legislative Assembly, six endorsements would be appropriate.

2.45 The current nomination form on which candidates make their declaration of candidacy makes general reference to disqualifying conditions, but does not set these out. Instead, reference is made to the separate *Candidate Handbook* and legislation, which candidates are assumed to have read. The Panel believes that the form and the nomination process, including the interview with the returning officer, should make it unequivocally clear to candidates that they are attesting to not being disqualified for any of the reasons articulated by legislation. A revised nomination form, which requires candidates to tick a series of boxes declaring specifically that each disqualifying condition does not apply to them, would put beyond doubt the detail of what they are attesting to. This must also be clearly communicated by the returning officer at nomination.

2.46 The Panel has considered whether all candidates should be required to undertake a national criminal record check, a check of the ASIC register of persons prohibited/disqualified under the provisions of the *Corporations Act 2001* (Cwlth), and a check of the Insolvency and Trustee Service Authority National Personal Insolvency Index. This would set the bar higher for nominating for election to local government in Victoria than any other jurisdiction in Australia.

2.47 The Panel was concerned that such a regime could prevent eligible people from standing because their decision to contest was made too late for them to complete the relevant checks. The Panel believes that councillors should undergo such checks once elected. This would underscore the serious nature of the declaration on the nomination form and provide a further deterrent to people nominating if they are disqualified. This approach is supported in part by the MAV:

“All levels of government should include the process of a National Police Certificate for those elected. The knowledge of this requirement should discourage those tempted to hide their past. The certificate is in keeping with modern employment practice, many employers now require a form of security check.”

Municipal Association of Victoria submission

2.48 The Panel received a number of submissions, including one from the MAV, suggesting the nomination fee should be raised from the current \$250 to deter dummy candidates.

“We are very concerned about the past and potential future occurrence of ‘dummy’ nominees who agree to stand for election at the behest of the less scrupulous candidates in order to gather direct maximum number of preference votes to the latter. The Keilor Residents’ and Ratepayers’ Association notes the relatively nominal nomination fee of \$250 being payable and recommends a substantial increase. We suggest a figure of around \$1 250 is one that would deter the less serious candidate.”

Keilor Residents’ and Ratepayers’ Association submission

2.49 Nomination fees for candidates are used across all of Australia’s electoral systems. The Panel, however, was wary of raising the nomination fee to a point where it is a disincentive to serious candidates standing for council. Having surveyed the range of nomination fees across Australia³⁸, the Panel was of the view that the nomination fee should be kept at the current level, which is, with Queensland’s, the highest in the nation.

2.50 To strengthen eligibility criteria, the Panel **recommends that:**

17. The *Local Government Act 1989* and regulations be amended to require that:

- **candidates nominate in person on a no exceptions basis through removal of schedule 2 clause 5 of the *Local Government Act 1989*, which provides for nominations to be submitted via a third party**
- **candidates demonstrate a minimal level of endorsement of their candidature (from six of their peers enrolled in the municipality)**
- **candidates complete a revised candidate nomination form, which requires them to note and respond to all disqualification conditions, unambiguously confirming that none of the disqualification conditions apply to them. (See proposed revised nomination form with extended declaration at Appendix 4 (pages 132–136))**
- **councils be required to arrange police checks and insolvency and ASIC rulings for when candidates are elected councillors.**

³⁸ Local government election nomination deposits/fees in other jurisdictions are: New South Wales – \$125, Queensland – \$250, Western Australia – \$80, and Northern Territory – \$200. South Australia and Tasmania do not have nomination deposits/fees.

Reinforcing the power of returning officers to reject a nomination

- 2.51 The VEC recommends removing any impediments to a returning officer rejecting nominations on the basis of the nominee not being on the voters' roll. In effect, this means removing schedule 2 clause 6(3A) of the *Local Government Act 1989*, which prevents the returning officer rejecting a nomination form from a person who is not enrolled on the voters' roll of the municipality if the nomination form is accompanied by a statutory declaration stating:
- that the person is eligible to be enrolled other than through entitlement on the state roll
 - the grounds on which he or she claims to be entitled
 - what steps he or she has taken to be enrolled.
- 2.52 This clause seeks to provide entitled candidates who are unable to nominate because they are not on the voters' roll with a way for their nominations to be accepted. However, this clause also allows for incorrect nominations to be accepted as long as the candidate is prepared to provide a statutory declaration claiming the entitlement. This could allow disqualified candidates to contest elections and call into question the subsequent election result.
- 2.53 The proposed voter enrolment requirement – that all enrolment be by application only with a defined cut-off date for enrolments – will remove ambiguity on a candidate's entitlement to be on the voters' roll at the time of nomination and would address the concerns around schedule 2 clause 6(3A).
- 2.54 **The Panel recommends that:**
- 18. The *Local Government Act 1989* be amended to include 'not being on the voters' roll' as a condition under which a returning officer at an election can reject the nomination application of any proposed candidate.**

Removal of candidates from the ballot

PROVIDING EXPEDITED ACCESS TO A COURT TO RESOLVE CONTESTED NOMINATIONS

- 2.55 Notwithstanding the proposed improvements to strengthen the nomination process, a candidate's qualification to participate in the election could still be challenged, despite their nomination being accepted by a returning officer.
- 2.56 Evidence may be presented, subsequent to a nomination being accepted, that challenges a candidate's declaration that they are not disqualified, for example, being bankrupt or having a criminal conviction that was not declared.
- 2.57 At a hearing in 2012, the Municipal Electoral Tribunal (MET) heard evidence that candidate David Muscat was ineligible and ordered a recount of votes in the relevant ward, with the candidate's votes excluded. The recount did not change the result and therefore the election was not voided. However, the MET expressed surprise that there was no provision in the *Local Government Act 1989* to forcibly remove the candidate from the ballot paper before the election, given it was well known that he may have been ineligible.

"Given that there is no dispute that the returning officer and the Council indeed, were aware of the situation for some time prior to the election, the obvious question which might be asked by any observer is why was the name of Mr Muscat not simply removed from the ballot paper. The answer it seems lies in the manner in which the Act and Regulations are structured, and more particularly, in respect of the specific powers of the returning officer."

His Honour, Magistrate M Smith, Municipal Electoral Tribunal

- 2.58 This issue, however, cannot easily be resolved. At all levels of government, it is very difficult to remove a candidate from an election after the close of nominations. The Panel has, for instance, been advised by the VEC that for Victorian state elections, there is no express mechanism to remove a candidate from an election after the close of nominations but before election day.
- 2.59 The current process adopted by the VEC is that where the possibility is raised, the returning officer counsels the candidates on the disqualification and consequences of failing to withdraw their nomination.
- 2.60 Where a candidate declines to voluntarily withdraw when their eligibility is questioned, an expedited resolution would be desirable. The short timeline for the election period, combined with the potential to appeal a court decision, makes this difficult to achieve before the election.
- 2.61 In light of this, the Panel believes that the most effective approach is to strengthen barriers to false nomination and to put more checks in place after elections, to prevent elected candidates from taking office in the extremely rare instances where they are ineligible.
- 2.62 The Panel also considered the option of permitting returning officers to remove candidates from the ballot subsequent to the initial acceptance of their nomination on the grounds of ineligibility to stand. The VEC has indicated that it would not support this option; its strong view is that the responsibility for confirming eligibility remains with the candidate. The Panel did not think permitting returning officers to remove candidates, with the likelihood of such decisions being subject to further legal appeals, was an option that can be recommended. A returning officer should not be placed in a position of making a legal determination on a candidate's qualification – in effect determining whether an offence has been committed – in place of a court.

2.63 The Panel is of the view that the requirement that all successful candidates be subject to two checks undertaken by the council, namely:

- a national criminal record check
- a check of the ASIC register of persons prohibited/disqualified under the provisions of the Corporations Act 2001 (Cwlth),

combined with severe penalties for making a false nomination declaration should mean that the risk of nominations by disqualified candidates, which is rare, is further mitigated.

Penalties for false nomination

2.64 Significant penalties exist for individuals who nominate to contest a local government election when they are not eligible to do so. Currently, this is an offence under section 52(2) of the *Local Government Act 1989*, which carries a potential term of imprisonment of up to two years and a fine of 240 penalty units, or \$34,646. In addition, the penalty for knowingly providing a false declaration by a candidate under section 238A of the *Local Government Act 1989* is 120 penalty units, or \$17,323. In the case of Mr Muscat, for example, he was fined \$15,000 and ordered to pay \$9900 to the Inspectorate. The conviction also meant that Mr Muscat was automatically disqualified from becoming a councillor for seven years.

2.65 Rather than increasing penalties, a more efficacious response is to first reinforce barriers to false nomination at the outset and secondly, send an unequivocal message to candidates that their election will be invalidated if they are found to be unqualified (through a universal national police check and ASIC certification process). Most councils recommended the strengthening of the checks relating to eligibility.

“We support the continuation of the status quo where there are stiff criminal penalties for candidates who nominate whilst ineligible. We also support a greater focus being drawn to these consequences by the VEC in future elections...”

Indigo Shire Council submission

Other candidate behaviour

2.66 Other issues related to candidate behaviour are discussed in Chapter 4 (page 102) in the section on complaint handling and candidate investigation and prosecution.

Section 2. Information to assist meaningful participation by voters

What sort of information should the electorate be given?

2.67 A persistent theme of the consultation was the perceived inadequacy of the information available to equip voters to make an informed decision about the merits of competing council candidates.

“...the evidence would suggest that the citizen when they vote [is] not getting anywhere near enough information about the candidates, which says that there needs to be much better disclosure in terms of statements.”

**Rob Spence, Chief Executive Officer,
Municipal Association of Victoria, Melbourne public hearing**

“Nearly two-thirds of respondents to the VLGA’s consultations (65 per cent) were of the view that a lack of information about candidates was a critical concern in 2012.”

Victorian Local Governance Association submission

“Manningham supports the view that there is, in general, insufficient information available to voters to assist them to inform their voting...”

Manningham City Council submission

2.68 The limited information on local government candidates compared to candidates in federal and state elections was often raised with the Panel. The issue is captured by Boroondara City Council:

“At the state and federal level, access to ideas and information is largely facilitated and encouraged by media coverage. At the local level, candidates do not have the same media exposure, nor are they subject to the same level of media scrutiny. As such, appropriate reforms should be sought that provide a suitable and level playing field for candidates to engage with their electorates in a meaningful political discourse.”

Boroondara City Council submission

2.69 Surveying voters in its review of the 2012 local government elections³⁹, the VEC reported that:

“...(voters) stated overwhelmingly that there was not enough information provided about candidates both for postal and attendance voting... There was also a strong call to include political affiliations with the candidate statements.”

2.70 Some members of peak organisations, in consultations with the Panel, indicated support for the provision of a standard template with prescribed questions to be completed by all candidates contesting local government elections. This proposal was widely, though not universally, supported by speakers at the Panel’s hearings. Much of this testimony underlined the importance of the information that the VEC makes available on behalf of candidates being objective, comparable and relevant to the office of councillor.

³⁹ VEC, 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. 63.

2.71 This view was supported by many councils in their submissions.

“So I think anything that moves towards a basis for comparing apples with apples is a really good thing, because I’ve looked at things, you know, the 150 words and even some electoral material from other candidates who have stood against me, and you think, I mean, what they’re saying, is it against bad things in favour good things? I mean, you know, I have no basis for making a judgment...”

Cr Jack Wegman, Mayor, Boroondara City Council, Melbourne public hearing

“Council strongly supports a template structure that all candidates are required to complete. This ensures that there is a level playing field.”

Indigo Shire Council submission

“Council suggests that prescribed standardised templates be introduced for presenting information on candidates. Information on candidates (using these standardised templates) should be centrally accessible online or available at VEC offices.”

Port Phillip City Council submission

2.72 With regard to other questions that could be asked of candidates, one council advanced the following position:

“Many voters would not be familiar with the attributes, attitudes and background of the candidates apart from the brief 150 word candidate statement. A better system that could still be accommodated within the postal vote material would be to have the limit increased to 250 words and to have some mandatory answers to questions for example:

- *current employment/status*
- *education and previous work experience*
- *community service experience*
- *political party membership (if any)*
- *association/club memberships.”*

Murrindindi Shire Council submission

2.73 DTPLI’s community opinion survey⁴⁰ results supported the need for more candidate information to be provided. Almost half the respondents surveyed felt that they did not have enough information to make an informed choice when voting. Large majorities believed that seven types of information should be provided by candidates. The information and the level of support for providing it is as follows:

- information about their policy platform (94 per cent)
- if the candidate lives in the council area they are contesting (92 per cent)
- the candidate’s work and professional experience (83 per cent)
- the candidate’s voluntary and community leadership experience (83 per cent)
- if the candidate is a member of a registered political party (81 per cent)
- if the candidate has attended training to help them prepare to take on the responsibilities of being a councillor (79 per cent)
- the candidate’s current occupation (78 per cent).

40 DTPLI, 2013, unpublished survey, “Community Opinion Survey on the Local Government Electoral System”.

2.74 There was strong support manifest in surveys and submissions on the disclosure of more information on candidates, including their political affiliation.

2.75 Calling on his investigation of councils, the Ombudsman observed with respect to the disclosure of party affiliation:

“The Local Government Act 1989 establishes principles of conduct for councillors. Primarily, councillors are to:

- *act with integrity*
- *impartially exercise their responsibilities in the interest of the local community*
- *not improperly seek to confer an advantage or disadvantage on any person.*

“Two of my recent investigations have identified significant issues that affect such conduct, when prior political affiliations – both within and across political parties – lead to ‘block voting’. This hampers the proper functioning of a council as a decision-making body, with councillors engaging in decision-making which:

- *takes place behind closed doors*
- *causes detriment to the council*
- *sees votes made for personal gain or political motivations*
- *can affect controversial council matters such as planning*
- *sees voting in a ‘block’ to support a faction even when those decisions are not necessarily in the best interests of the community*
- *lacks impartiality when councillors meet in a ‘block’ prior to council meetings to determine their votes without considering the merits of the matter while in council chambers.*

“Given this, I consider the political affiliations of candidates should be disclosed so any existing allegiances are known to the electors. The privacy of candidates should be a secondary consideration to the public interest served by such disclosure.”

George Brouwer, Victorian Ombudsman, submission

2.76 There were, however, some objections to disclosure of political affiliation and indeed any requirement for candidates to respond to any template.

“I caution against adopting a number of the proposals floated in the discussion paper – such as introducing mandatory questions which candidates are required to respond to. I think such suggestions are ill-conceived and knee-jerk reactions to perceived problems which do not actually exist.

“...I don’t want the VEC or the State to decide what information is relevant for deciding between candidates, and what sorts of things voters should know, such as through imposing an arbitrary template of questions for candidates to respond to (whether voluntarily or compulsorily) on official information sent to voters.

“...I believe that such candidates have a right to privacy and any move to officially sanction a question for candidates to respond to in this regard [whether it be on a mandatory or voluntary basis] is inconsistent with this right... Further, I believe that such a requirement or invitation would also be inconsistent with the Equal Opportunity Act 2010 (on the basis of discriminating against candidates on the basis of their political belief and activity) and the Charter of Human Rights and Responsibilities Act 2006.”

Cr Geoff Lake, Monash City Council, submission

- 2.77 In addition to privacy considerations, an argument against requiring candidates to declare their membership of a political party is that many candidates who are such members stand as genuine independents with no intention of implementing their party's wider policy agenda despite voters believing that they will. In any case, the party's platform may have little real application to the matters that constitute the majority of council business. Nor will this disclosure requirement identify candidates with distinct political affiliations but no formal party membership.

Considerations and conclusions

- 2.78 Voters are clearly seeking more detailed and objective information on the candidates on whom they are being asked to make a judgement. The capacity for voters to review a template containing candidate responses to a set of basic, relevant questions before casting their vote would improve the confidence with which voters participate at future local government elections.
- 2.79 The Panel supported the notion of all candidate profiles, including a slightly expanded 200-word candidate statement (300 words for the City of Melbourne) being made available in postal ballot packs sent to voters. This would assist voters to be able to compare the credentials of candidates and receive limited details on their policy platform.
- 2.80 In supporting greater disclosure, the Panel believes that there is a balance between the need to improve the quality of the information available to voters and protecting the rights of candidates wishing to contest council elections.
- 2.81 The Secretariat sought legal advice on the question of whether a requirement that candidates respond to the particular series of questions set out in Attachment 2 of Appendix 4 (page 135) would be prevented by the provisions of the *Charter of Human Rights and Responsibilities Act 2006* (the Charter).
- 2.82 The Panel was advised that the proposed approach does not breach the Charter and if challenged, it would be found consistent with the Charter as demonstrably justified in a free and democratic society. The starting point is the importance of voters being in a position to exercise their right to vote in an informed manner. The High Court has repeatedly emphasised the importance of voters exercising a free and informed choice as electors.
- 2.83 While requesting a citizen to disclose their party membership may be considered sensitive private information in many circumstances, in the context of contesting an election there are strong arguments for making this information available. A majority (81 per cent) of respondents to DTPL's community opinion survey supported such a disclosure. The Panel believes these public interest considerations outweigh privacy concerns that may rule out requesting such information in other settings.
- 2.84 The purpose of the candidate template is to facilitate informed voting. It would operate in a neutral way, requesting the same information of all candidates without discrimination. Disclosure is voluntary. No candidate is forced to provide information. Even if a candidate decides not to provide any or only some information, that candidate is not excluded from participating in public affairs. The only consequence is that the electorate is informed that the candidate has not provided answers to some or all of the questions. Whether or not this impacts on the candidate's chances of being elected will depend on whether a voter chooses to give weight to this when casting their vote.

- 2.85 To balance the concerns about voter confusion between party membership and endorsement, it is also suggested that both sets of information be provided in the candidate template.
- 2.86 The Panel believes voters are sufficiently discerning to be trusted with the facts about party membership and to assess its relevance in their decision making as they cast their vote.
- 2.87 The Panel **recommends that:**
- 19. To address the insufficiency of comparable information about candidates, each candidate be asked a standard set of questions as part of the nomination process.**
 - 20. The answers to these questions be made available to voters in the form of a candidate information template in the postal ballot packs provided by the VEC and this information made available on the VEC website.**
 - 21. While candidates would have the right to withhold answers to some or all of the prescribed questions, all their answers (including 'no response') would be made available to voters.**
 - 22. The standard questions on the nomination form ask candidates to provide information on:**
 - **their contact details, including a phone number and a recent photograph**
 - **whether they live in the municipality that is being contested and, if not, their entitlement to be on the voters' roll for the municipality**
 - **work and professional experience**
 - **voluntary experience, council and community leadership experience and/or relevant committee and board memberships**
 - **any training and/or information sessions they have attended to prepare themselves to discharge the responsibilities of a councillor**
 - **whether they are a member of a registered political party**
 - **whether they are endorsed by a registered political party to stand in the local government election they wish to contest**
 - **a 200-word candidate statement (300 words for Melbourne City Council teams and groups).**

Section 3. Campaign donations

2.88 Campaign donations are part of a healthy democratic process, one of the legitimate ways of participating in politics. At the same time, campaign donations raise legitimate concerns that the contribution of significant amounts to candidates' election war chests may influence decisions made by the candidates that donors help elect.

2.89 As the Ombudsman has observed:

"All donations carry an associated risk; the expectation that something will be provided in return, like influence over a councillor's activities or decisions."

George Brouwer, Victorian Ombudsman, submission

2.90 A variety of regulatory approaches have been put in place by governments to address this issue. These include:

- banning donations from particular business interests and international sources
- placing caps on donations
- requiring donations above a particular amount to be disclosed within specific timeframes.

2.91 Conflict of interest provisions have been legislated to address the risk that the decisions of a councillor will be influenced by direct or indirect personal interests. The State Government's guidelines⁴¹ for councillors on conflict of interest provide that:

"As a member of a Council, it must be clear that your private interests are not affecting your public duties as a Councillor and that you are not using your position for personal benefit. This is why the law says you cannot participate in a decision when you have a conflict of interest."

2.92 Disclosure and conflict of interest requirements for campaign donations are part of a wider regime of disclosure and withdrawal from decisions that flow from the fact that the decisions of councils can confer a range of benefits on councillors, their relatives and campaign donors. Conflicts may arise from the letting of contracts, planning decisions and a range of other council decisions that include councillors' direct and indirect interests.

2.93 Sections 77 and 78 of the *Local Government Act 1989* clearly set out the range of direct and indirect interests that may lead to a conflict.

2.94 A direct conflict of interest occurs when there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of a councillor would be directly altered if a matter is decided in a particular way⁴². A councillor has an indirect conflict of interest because of:

- a close association with a family member, relative or housemate who has a direct interest
- holding shares above a certain value in a company with a direct interest
- having received an applicable gift (including hospitality) or gifts with a total value of more than \$500 within the five years preceding from a person or organisation with a direct interest

⁴¹ Local Government Victoria, October 2012, *Conflict of Interest: A Guide for Councillors*, Melbourne, p. 3.

⁴² *Local Government Act 1989*, section 77B(1) (Vic).

- being party to civil proceedings in relation to the matter
- where there is a reasonable likelihood that the councillor's residential amenity will be altered if the matter is decided in a particular way.

2.95 If a councillor has a conflict of interest in a matter to be considered at a council meeting, under Section 79 of the *Local Government Act 1989* he or she must disclose the conflict of interest immediately before the matter is considered, notify the mayor/chair they are leaving the meeting and leave the room and any area where the councillor can see or hear the meeting until the matter has been concluded. Significant penalties apply where a councillor fails to comply with the conflict of interest rules.

2.96 It is important to recognise that legislating to prevent conflicts of interest does not automatically translate into compliance. The Ombudsman has advised the Panel:

"I have tabled several reports in recent years that have identified conflict of interest issues being mishandled or not acknowledged in councils, particularly by elected councillors, including:

- *being involved in Council votes in decisions that would influence a private business interest*
- *attempting to influence council policy in areas where they, family or friends have a business interest*
- *inappropriately approaching Council officers in an attempt to further personal interests and interfere with the administrative activities of the Council*
- *wilfully ignored or refused to acknowledge conflicts of interest despite their responsibility as elected officials."*

George Brouwer, Victorian Ombudsman, submission

2.97 The current system in Victoria allows individuals and organisations to donate to candidates to support their campaigning with no limits or caps on the amounts to be donated, but also imposes disclosure requirements and conflict of interest provisions. Donations of \$500 or above must be disclosed. All candidates must lodge a donation return, regardless of whether they receive a disclosable donation or not. Where a donation of \$500 or more is received, a conflict must be declared, which requires an elected councillor to remove himself or herself from consideration of any matter relating to the donor.

2.98 The submissions the Panel received regarding campaign donations contained a range of views. There was a consensus that donations were appropriate and should be disclosed in a transparent way. In other respects, there were significant differences. Some believed that the existing situation was appropriate; some thought that corporate donations were unacceptable; and others thought that developers should be precluded from making donations. Caps on contributions were supported and also opposed.

"There is general agreement across the sector that the right to accept donations should be maintained, as long as there is full disclosure so that voters understand who is helping finance a candidate's campaign."

Municipal Association of Victoria submission

"The VLGA believes that all donations regardless of the amount should be disclosed in a fully transparent way. The introduction of caps on the democratic process should not be considered. Donations play a relatively minor role in most local government elections outside of the City of Melbourne and to a certain extent, the City of Greater Geelong."

Victorian Local Governance Association submission

"It is contended that if postal elections are mandated, the cost of running a campaign is reduced. By extension, it can be argued that a low-level cap on donations would not unduly inhibit a candidate's campaign but may also move a little closer to achieving a level playing field for all candidates in financial terms. The cap of \$2,200 applying in other jurisdictions is considered reasonable so long as it is subject to regular indexation."

Manningham City Council submission

"We support the banning of both direct and indirect campaign contributions by corporate entities and the capping of both direct and indirect campaign contributions by private persons to \$500 in any 12 month period."

North and West Melbourne Association Inc. submission

"CRA believes strongly that both direct and indirect campaign contributions from any corporate entity should be banned and restricted to a limited, set amount by private individuals. All donations should be publicly disclosed on receipt."

Carlton Residents Association Inc. submission

"Campaign donations should continue to be allowed. A cap should be considered to reduce the risk of undue influence, but is likely to disadvantage candidates that don't have access to support from organisations including political parties."

Brimbank City Council submission

"Funds should be capped around an amount which is reasonable to ensure that there is no potential conflict or advantage expected of a donor."

Whitehorse City Council submission

"Donations should be capped to a reasonable amount. A straight forward formula could be so much per person on the electoral roll as the total dollar limit on donations that may be accepted."

Stephen Hart, submission

"(Should campaign donations be allowed?) Yes but not from property developers as in many areas they are prospective applicants for planning permits that would raise a conflict. Many candidates may not have sufficient resources to mount a campaign and so any assistance they can get is often useful be it in kind with signs and posters, printing etc or meeting other costs."

Stonnington City Council submission

"Council considers that the lodgement of the donation disclosure is an important consideration to ensure that there is transparency in decision-making by councillors. Council agrees with the argument... that, rather than banning donations or excluding selected industries, a cap be set at a low level to reduce the risk of undue influence. Council considers that this level should be under \$500 as this is consistent with the amount which applies to the conflict of interest provisions in the Local Government Act."

Wyndham City Council submission

Considerations and conclusions

- 2.99 The Panel considered the suggestion that donor-specific limitations be placed on campaign donations from corporations and especially from groups such as developers.
- 2.100 Such ‘gifting’ limitations have been attempted by the New South Wales (NSW) government to address corruption concerns. The High Court recently declared Section 96D of the *NSW Election Funding, Expenditure and Disclosure Act 1981* constitutionally invalid. Section 96D had sought to prohibit political donations by bodies corporate and unincorporated associations. The Court accepted the implied freedom of political communication derived from the Commonwealth Constitution imposed limits on the capacity of a state legislature to make laws with respect to the conduct of state and local government elections⁴³. Justice Keane stated that “Section 96D is apt to distort the flow of communication within the federation by disfavours some sources of political communication and this necessarily favouring others”⁴⁴.
- 2.101 The path of donor-specific prohibitions is fraught, both legally and in terms of the right to participate. The Panel also looked at the proposals for capping donations and the conflict of interest provisions.
- 2.102 Looking at the conflict of interest provisions, they are fundamentally about dealing with the intersection of interests acquired in a private capacity with the duties of a councillor. People who become councillors are not expected to abandon their private interests. Rather, the law requires that they not participate in council decisions that engage these interests.
- 2.103 The Panel noted that campaign donations do not fit well into the category of private interests. Campaign donations are not interests acquired in the course of private life, which need to be managed once a person is elected councillor. Campaign donations are sources of conflicts of interest generated by the pursuit of public office. It is anomalous that candidates are permitted to receive campaign donations without limit when the act of accepting the campaign donation will prevent them from discharging their responsibilities as councillors with respect to council issues involving donors of more than \$500.
- 2.104 The issue, however, goes beyond the consequences for individual councillors. The combination of unlimited campaign donations and the conflict of interest provisions is central to the functioning of councils as a whole in considering important strategic decisions. This is most notable when sufficient numbers of councillors have received campaign donations that prevent the council forming a quorum. This has happened in recent months with Melbourne City Council. When this occurs, not only are conflicted councillors prevented from participating in a decision, but councillors who are not in conflict are disenfranchised. Unless some remedial action is taken, it can be anticipated that such occurrences will increase in the future.
- 2.105 The Panel believes that there needs to be a harmonisation of the conflict of interest provisions relating to campaign donations by the introduction of a cap on permissible donations. The simplest way of harmonising would be to introduce a cap on donations matching the current conflict of interest provisions – \$500. In considering this option, the Panel examined the incidence and scale of campaign donations in the 2012 council elections:
- 87.5 per cent of all candidates at the 2012 elections reported no disclosable donations under \$500⁴⁵
 - 50 per cent of donations made were between \$500 and \$1000⁴⁶
 - 21 per cent of donations made were between \$1001 and \$2000⁴⁷.

⁴³ [2013] HCA 58, [24]–[26] (French CJ, Hayne, Crennan, Kiefel and Bell JJ), [151]–[159] (Keane J).

⁴⁴ [2013] HCA 58, [140].

⁴⁵ Secretariat analysis of donation returns.

⁴⁶ Summaries of campaign donation returns available on 77 council websites.

⁴⁷ Summaries of campaign donation returns available on 77 council websites.

- 2.106 In the light of this data, the Panel believes that the most appropriate path would be to retain the disclosure threshold at \$500, but cap donations at \$1000, and harmonise this with a conflict of interest threshold of the same level (also \$1000). While nominating levels for caps and conflicts of interest is a matter for judgement, the advantages of the \$1000 level are considerable. The Panel believes that the strengths of setting the cap at \$1000 are that it would, simultaneously:
- allow the 50 per cent of donors who made a donation in 2012 to continue to donate at the same level
 - allow the 21 per cent of donors who made a donation of between \$1001 and \$2000 in 2012 to donate at a slightly lower level than in 2012
 - set the cap at a level (\$1000) below that which would create a substantial risk of a councillor subordinating their public responsibility to a private interest.

2.107 **The Panel recommends that:**

23. The State Government legislate to limit the amount that each candidate may receive as a campaign donation from any individual or organisation to \$1000, and that the threshold that triggers a conflict of interest for a sitting councillor because of a campaign donation be varied to above \$1000.

2.108 The Panel noted that there would be advantage in applying the limit more broadly to gifts that elected councillors can receive during their term of office. However, such reform is outside the terms of reference for this review and has therefore not been specifically addressed in recommendations by the Panel.

Donation disclosure requirements

- 2.109 Submissions strongly endorsed the importance of disclosure of campaign donations. Some advocated real-time disclosure of donations. This would give people an insight into potential financial influences on candidates before they voted. Currently, candidates are required to disclose donations of \$500 or more (in cash or in kind), but have up to 40 days after the election is held to do so.
- 2.110 To examine the possibility of full disclosure of all campaign donations before voters cast their votes, the Panel looked at the options for implementing real-time reporting.
- 2.111 Under the current postal voting system, voters can cast their votes at any time over a 17-day voting period. In the 2012 election, a large number of voters cast their votes in the first few days of the voting period. To allow all voters to understand who has contributed to campaigns, it would be necessary to establish a final campaign disclosure lodgement date at the start of the voting period and prohibit donations from this point.
- 2.112 This would significantly curtail the period in which campaign donations could be received within the election period. The period in which donations would be disallowed is a period in which many donations are likely to be made.
- 2.113 The Panel saw significant disadvantages of a real-time disclosure requirement in a uniform postal voting environment including, in particular, limiting a donor's capacity to exercise their political right of communication by making a campaign donation to a narrow window of the campaign period.
- 2.114 The Panel also considered that the proposed cap of \$1000 on campaign donations removes the capacity for large donations to be made and thereby reduces the risk that candidates will be compromised in their capacity to fulfil their responsibilities as councillors.

Donations to groups at Melbourne City Council

2.115 The Melbourne City Council elections require candidates for Lord Mayor and Deputy Lord Mayor to run as a joint team. Further, elections for the other councillors at Melbourne City Council allow groups to contest; eight such groups ran in 2012). The Panel proposed that the allowable donation threshold of \$1000 be expanded by the multiple of the number of people in the team or group. This means that, for example, where a group of six participate in a Melbourne City Council councillor election, that the allowable donation limit would be \$6000 (six times \$1000); donations to joint teams for Lord Mayor/Deputy Lord Mayor would be limited to \$2000 (two times \$1000). Further, any donations made to individual candidates who are part of a team/group are automatically counted as donations to the team/group itself and subject to the group's aggregated cap.

2.116 The Panel therefore **recommends that:**

24. Noting the specific election arrangements in the City of Melbourne, the limit for campaign donations to joint teams and groups at its elections be the number of candidates running in the relevant team or group multiplied by the donation threshold.

25. Any donation made directly to an individual in a joint team/group counts as a donation to that team/group and is subject to the cap.

Section 4. Dummy candidates, candidate participation and candidate capability

2.117 In this section, we examine the challenges presented by dummy candidates, the level of candidate participation and candidate quality.

Dummy candidates

2.118 Significant concern about the existence of dummy candidates was a strong and persistent theme raised by stakeholders during the consultation. Most people who raised this were troubled by the perception that too many candidates contest local government elections without the intention of being elected, but rather to secure and transfer votes to another candidate. A large number told the Panel they believe this undermines the integrity of the electoral system.

“The idea that ‘dummy candidates’ were particularly prevalent in the 2012 elections was pervasive.”

Victorian Local Governance Association submission

“It does make a mockery of something that is already cynical in the minds of people. It is a perfect display of what needs to change. And I would very much support the idea of a more onerous, ...training program, you know, before you get to run the race. You know, and it’s a must. It’s – it is – something has to happen so these sort of things don’t happen again.”

Judith Brooks, President, Barwon Heads Association, Geelong public hearing

“...I think there needs to be some sort of law to get rid of these dummy candidates. I don’t know how to do that, but that’s my opinion.”

Peter Cole, Wantirna South public hearing

“I see the issue of ‘dummy’ candidates as a real threat to the integrity and reliability of the institution of local government. If we can’t be confident that every one of the 26 candidates standing is completely and genuinely putting themselves forward as an honest and committed contender, then I would deem the system to be deficient and fundamentally flawed.”

Leanne Raditsas, submission

“Candidates should be required to provide Statutory Declarations that they were ‘legitimate’ candidates. This would stop all but the most unethical and morally corrupt candidates from serving as ‘dummy’ candidates.”

Joe Lenzo, submission

“[The nomination process] should be more onerous. It is too easy for a dummy candidate to nominate by just turning up one day...”

Cr Matthew Kirwan, Greater Dandenong City Council, submission

“I also think that our system is being abused by allowing too many dummy candidates, candidates should be genuine.”

Elizabeth Jeffrey, submission

- 2.119 The Panel's view was that if candidates meet the eligibility criteria, they should be entitled to stand. The Panel also considered, however, that it is not desirable for the election result to be impacted by the running of dummy candidates. A widespread perception that the practice is extensive undermines confidence in the local government electoral process.
- 2.120 The Panel's proposed reforms to strengthen eligibility criteria and give voters the information they need to cast an informed vote may also be expected to reduce concern about dummy candidates. The proposed changes likely to have this effect introduce requirements that candidates:
1. be enrolled for the municipality (removing the provision that allows non-enrolled persons to nominate by claiming an entitlement to be enrolled that they have failed to act on)
 2. make in-person declarations as part of the nomination process on a no-exceptions basis
 3. make definite declarations of eligibility, unambiguously confirming that none of the disqualification conditions apply to them
 4. provide proof of identity, a recent photograph and contact details when nominating for public distribution
 5. supply names and signatures of six voters in the municipality who endorse their candidacy in order to nominate
 6. submit template-based information for distribution to voters, which prescribes information about qualifications and experience for the role of councillor, party membership and endorsement and whether they have attended training or information sessions
 7. agree for the council to obtain a national criminal record check and a check of the ASIC register of persons prohibited/disqualified under the provisions of the *Corporations Act 2001* (Cwlth) on their behalf, if elected.
- 2.121 In addition, the Panel proposed a further measure. The Panel has clearly strengthened the amount of information on candidates available through the postal pack, in the interest of enabling voters to make a better informed choice between candidates. The Panel, however, believes that the publication of candidate how-to-vote recommendations does not enhance voter ability in this respect, but is a major inducement to dummy candidates standing purely as a mechanism for siphoning preferences.
- 2.122 The Proportional Representation Society highlighted that these arrangements are unique to Victoria.

"...the proliferation of dummy candidates is assisted and contributed to by two aspects of the arrangements in Victoria. One, in our view, is the distribution by the returning officer of candidates' how to vote recommendations. This doesn't apply in... surrounding jurisdictions."

**Geoffrey Goode, Proportional Representation Society –
Victoria/Tasmania, Melbourne public hearing**

"Turning to candidates' information, in postal elections the opportunity to provide a photo, 150 words and your preferences is essentially a free kick to what you might describe as a lazy or so called dummy candidate. An option would be not to allow that to be included in the election pack that is sent to the voter by the VEC or the election provider."

John Watson, Brimbank City Council Commissioner, Melbourne public hearing

"It is suggested that candidate preferences not be included in the ballot pack which may deter ballots being stacked with 'dummy candidates.'"

Bayside City Council submission

- 2.123 The Panel believes that communication of preferences should be a matter for candidates to pursue through their own campaign efforts. The Panel recognised that this approach may create more work for some candidates, but is important to removing incentives for running dummy candidates.
- 2.124 The VLGA submission noted that in South Australia, its peak body, the Local Government Association, has a specific website for election candidates. Candidate profiles and contact details (all the information included on nomination forms) for all candidates are automatically uploaded to the website, regardless of whether a candidate statement is submitted. Candidates have the option of submitting a text attachment with the candidate statement for voters' viewing. The VLGA recommended that the VEC establish a central website that lists all candidate information and allows the candidate to upload a supporting document.
- 2.125 There is merit in voters having the ability to access a centralised online site to find out more about candidates, in addition to the information already provided in ballot packs. Candidates who wish to participate can provide extra information on their campaigns as they see fit (including preferencing details). If this was to occur, it should be administered by a body other than the VEC, whose role, as explained above, should be to inform voters on the voting process and provide some standard limited details on candidates' profiles. The peak bodies – the MAV and VLGA – may wish to explore establishing such a site, perhaps along the lines of the South Australian model.
- 2.126 **The Panel recommends that:**

26. Candidates' how-to-vote recommendations not be contained in the postal packs circulated by the VEC.

- 2.127 It is noted that the current system of 'full preferential' marking of ballot papers that applies to all council elections in Victoria (except at Melbourne City Council) – where voters must mark preferences against all candidates on the ballot paper and votes may be re-allocated to other candidates during the vote count based on preferences – places some onus on candidates to network with other candidates and do deals on preferencing each other. Some submitters suggested that, as a way of decreasing the reliance on preferencing and therefore the involvement of dummy candidates, 'optional preferential' voting be introduced at council elections. Under this system, which is used in a variety of forms in some other government elections in Australia, voters do not have to mark preferences against all candidates on the ballot paper.

"Dummy candidates are empowered by full preferential voting and the ability to publish how-to-vote information in the postal vote material circulated to eligible voters. The incentives to run dummy candidates would be considered reduced if the voting system was optional preferential and candidates were unable to include how-to-vote information with the circulated postal vote material."

Ian Farrow, submission

- 2.128 The rules by which voters mark ballot papers and how votes are counted are significant factors in who is ultimately chosen to represent voters in the respective ward or whole council area. Vote counting and ballot paper marking will be considered in the Panel's second report on electoral representation (due later in 2014).

Candidate participation

2.129 A number of suggestions were made through the public consultation process with a view to improving levels of candidate participation. These included suggestions to:

- increase allowances to councillors to compensate them for their work on behalf of the community
- reduce the terms of councillors from four years to three or two years.

“...flexibility of term should be considered in terms of attracting candidates and quality candidates to stand for election. Four years may be too long, five years may be too long, but two or three years might suit some candidates.”

Anthony Schinck, Chief Executive Officer, Ballarat City Council, Ballarat public hearing

2.130 In considering these proposals, the Panel examined current levels of candidate participation.

2.131 For the 2012 elections, the VEC initially received 2004 nominations for the 631 vacancies (273 elections) across 78 municipalities. Three candidates retired after the close of nominations and one candidate died before election day, leaving 2000 active nominations at the close of voting⁴⁸.

2.132 The 2012 elections saw fewer very large fields than at the 2008 elections (with a small number of conspicuous exceptions, including 85 nominations for Casey City Council⁴⁹ and 72 for Melton City Council)⁵⁰.

2.133 The 2012 elections also saw fewer uncontested elections than the 2008 elections. In 2012, 28 wards and unsubdivided municipalities had uncontested elections (because the number of candidates at the close of nominations was equal to the number of vacancies). There were no failed elections⁵¹. This indicates that levels of participation were more uniform across the state when compared with the 2008 elections, which saw uncontested elections in 50 wards, in addition to one failed election⁵².

2.134 The overall ratio of candidates to vacancies has remained constant at slightly over 3:1 for both the 2008 and 2012 elections⁵³.

2.135 While there is room for improvement as long as any uncontested election or very large field persists, overall, these numbers suggest strong and healthy levels of participation.

2.136 There is no clear evidence that reducing councillor terms from four years to three years would encourage a larger pool of citizens to offer their services as councillors. Candidate nomination numbers remain strong and there is no conclusive evidence to date that a larger proportion of councillors are resigning prematurely than was the case before 2008, when four-year council terms were introduced. It is suggested that a watching brief be maintained on this issue and any trends that may emerge over time.

48 VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. iv.

49 *ibid*, p. 150.

50 *ibid*, p. 153.

51 *ibid*, p. iv.

52 VEC, 2009, *Report of local government electoral activity 2008-09 – Part I: Report of the conduct of the 2008 local government elections*, Melbourne, p. vi.

53 VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. iv.

Candidate capacity

2.137 The consultation also revealed a level of concern about the knowledge and qualifications of candidates and their capacity to undertake the increasingly complex and challenging role of councillor.

2.138 The skills, knowledge, integrity and commitment of successful candidates are fundamental to the performance of all levels of government. This inevitably raises the issue of how to improve candidate quality. Some highlighted the fact that the traditional winnowing by parties in the selection process for candidates to stand at federal and state levels does not apply to local government.

“At the State and Federal level the pre selection process of the major political parties offer some screening to ensure that appropriate candidates stand for and are elected to the State and Federal Parliaments. As such no screening process either formally or informally applies to Victorian Councils and consideration should be given to mechanisms which require candidates to make more informed choices about standing for local Council elections.”

Horsham Rural City Council submission

2.139 Many of the proposals to the Panel regarding lifting councillor capability focused on increased education and training, either prior to election or as part of a rigorous and systematic induction program. These included proposals to link financial loadings to certification demonstrating the acquisition of key competencies.

2.140 Some stakeholders advanced the view that certain skills, training or qualifications ought to be a mandatory prerequisite in standing for office as a councillor.

“..the three main areas of councillor education are governance, finance and planning. You can arrive on council without any great knowledge of any of those three areas. In terms of the education system, I personally would like to see it mandatory, in terms of councillors going through these areas and being tested on these areas over a period of time and being able to show that they have competency in these areas. I think, you know, as has been said, you don't have to have any qualifications to run for any level of office in this country, and are we the better for it? Maybe not.”

Cr Andy Richards, Greater Geelong City Council, Geelong public hearing

2.141 Australia's democratic traditions suggest that citizens should not have their right to political participation blocked by the imposition of requisites as to skills and qualifications. There are some commonalities in the business of exercising the role of councillor and those of a board member (overseeing multi-million dollar budgets, making major procurement and planning decisions, managing revenues and exercising judgement about overarching strategic directions and asset allocation). The skills of a corporate director would undoubtedly be relevant to these aspects of the role. However, the responsibilities of a council are, in some circumstances, different to those of some corporate boards. A councillor is charged under the legislation with taking into account community wellbeing and making judgements about the public interest, including questions of equity and fairness.

“I'd be very loathe to see a section where it says that you should be qualified as far as education or whatever else goes because, as I said earlier, they're community activists, the average councillor, and there shouldn't be a hurdle put in their way if they haven't had the opportunities that some other candidates have had around education.”

Cr Bill McArthur, President, Municipal Association of Victoria, Melbourne public hearing

2.142 The Panel believes that providing voters with clearer and more comparable information about the skills and qualifications of candidates is a more democratic and effective way of allowing these to be weighed in the minds of voters who consider them to be important. Recommendations to this effect are addressed under the information section (Section 2, page 57) of this chapter.

- 2.143 While the electoral system needs to have integrity and operate efficiently, it is only one of the mechanisms for encouraging participation by high quality candidates. As one councillor observed:

“The question though is can the nomination process be improved? And the critical issue here is about how do we attract quality candidates. I don’t know that the process is necessarily the answer, that’s not the road to salvation here. And again it’s something that is probably something that’s much more deep seated in our community around that notion of civic responsibility..”

Cr Jim Cusack, Moonee Valley City Council, Melbourne public hearing

- 2.144 Peak organisations, supported by governments, play the lead role in encouraging citizens to aspire to the role of councillor and be properly equipped to assume the responsibilities of councillor when they take office.

- 2.145 Organisations such as the MAV and the VLGA already play an important role in promoting the strengths of local government in Victoria and encouraging capable and committed citizens to nominate and stand for council. These efforts should continue. In particular, they may contribute by providing the opportunity for all aspirants to the office of councillor to have the kind of training and preparation necessary. This is fundamental in ensuring that, on assuming office, every Victorian councillor understands the commitment required, has mastered the legal and governance principles that should guide their conduct and has the baseline skills to acquit themselves as responsible and effective local government representatives.

- 2.146 Victoria’s Ombudsman has advocated that such training be mandatory for councillors on assuming office and should be reinforced on a regular basis.

“...I consider mandatory training should be provided to councillors about their legal and governance obligations. Given the complexity of what this can mean in practice, such training should be more than once during a term.”

George Brouwer, Victorian Ombudsman, submission

- 2.147 The Panel understands that training of councillors will be addressed by a parallel review of governance being undertaken by Local Government Victoria. With respect to candidates, the Panel suggests that the State Government encourages peak organisations to make training opportunities available to candidates that most effectively enhance their ability to fulfil the role of councillor.



Chapter 3

Caretaker period

Introduction

- 3.1 Local communities expect that council resources will not be used during the election period to unduly influence the outcome (including conferring an unreasonable advantage on incumbent councillors who are running as candidates). Also, council decision making must not bind the authority of the incoming council.
- 3.2 There are straightforward legislative prohibitions on decision making that apply during the caretaker period in the lead up to an election. These provisions proscribe certain decisions. In addition, there are legislative requirements relating to the certification by a CEO of communication material produced by a council during the caretaker period.
- 3.3 Two problems are evident when assessing the effectiveness of the implementation of caretaker provisions. The first relates to the legislative provisions themselves and the second, to the council policies that support implementation of these provisions. In this chapter, the Panel recommends changes to caretaker provisions to improve clarity, consistency and practicality in their application.

Key issues

Legislative provisions

LEGISLATIVE PROHIBITIONS ON DECISION MAKING

- 3.4 The caretaker provisions in the *Local Government Act 1989* define what decisions are not to be made during the caretaker period leading up to an election. Unlike Commonwealth or state parliaments, it is common practice for councils to continue to meet and make decisions during the caretaker period, but these decisions are circumscribed by restrictions in the *Local Government Act 1989*.
- 3.5 Table 3 shows the contrasting decision making limitations for state and local government during the caretaker period.

Local government	State government
Council can continue to meet.	Legislative Assembly is dissolved and does not meet.
No major policy decisions may be made during the election period before a general election. Major policy decisions are defined below.	Government avoids implementing major policy decisions that are likely to commit an incoming government. It should be noted that the conventions only apply to the implementation of decisions, not to their making or announcement.
No decision can be taken for the following activities: <ul style="list-style-type: none"> • CEO employment or remuneration • termination of employment of CEO 	Government avoids making significant appointments.
<ul style="list-style-type: none"> • contracting exceeding \$150,000 for provision of goods and services • contracting exceeding \$200,000 for carrying out of works • contracting exceeding 1 per cent of council's revenue from rates and charges in the preceding financial year • entrepreneurial activity exceeding \$100,000 or 1 per cent of council's revenue from rates and charges in the preceding financial year. 	Government avoids entering major contracts or undertakings.

Table 3: Existing legislative caretaker provisions for local government and State Government (Source: *Local Government Act 1989*; Department of Premier and Cabinet Victoria, *Guidelines on the Caretaker Conventions*)

- 3.6 The Panel's consultation did not raise any issues regarding breaches of the legislative caretaker provisions. Nor did the Inspectorate's report on the 2012 elections raise any concerns about the application of the statute. On the evidence available, therefore, there appears to be a high level of compliance with the legislative provisions.
- 3.7 A few submitters did, however, suggest broadening of the legislative provisions to cover matters not currently addressed in the *Local Government Act 1989*.

The West of Elgar Residents Association submission suggested:

"WERA supports the clarification of caretaker conventions and in particular the use of Council resources for electioneering and communications which can conceivably have an electoral impact. WERA supports further codification of these conventions as suggested:

- *A commitment to ensuring that council resources are not used for electioneering*
- *Procedures for councillors use of council phones and equipment, limits on staff actions*
- *Correspondence, use of social media and websites, media releases, events and functions.."*

West of Elgar Residents Association submission

- 3.8 Some submitters also highlighted the need for more clarity in the caretaker provisions. The Monash Ratepayers Incorporated submission stated that "specifying explicit rules of what councillors can do and not do during caretaker period is very important..."
- 3.9 Other submissions made the important point that there may be areas not covered by the current legislation that may require consideration and possible codification.

LEGISLATIVE PROVISIONS RELATED TO CERTIFICATION OF ELECTORAL MATERIALS

- 3.10 The requirement for council CEOs to certify all publications during the caretaker period applied for the first time at the 2012 elections. It is understood these arrangements were introduced to ensure that CEOs were aware of all written communications produced by council at this time and that publication of such material could be prevented if it were found to contain election content. No submissions to the Panel questioned the underlying intent of ensuring that council resources are not used for improperly conferring advantage to incumbents. However, a number of CEOs asserted that the requirement for certification was overly onerous and prescriptive.

- 3.11 The VLGA noted the prevalence of varying interpretations of the legislative provisions.

"It is important to note that the interpretation of the caretaker provisions can differ between local government areas and that many councils endorse caretaker policies which are more onerous and restrictive than required by the Act."

Victorian Local Governance Association submission

- 3.12 There appeared to be a degree of confusion relating to the interpretation of specific provisions, in particular, the meaning of 'advertisement, handbill, pamphlet or notice'. Some CEOs have interpreted the certification provisions to encompass a broad range of council materials, including parking fines and rate notices. In some instances, legal advice to councils has confused rather than clarified the provisions. The following submission highlights this issue:

"I would say the caretaker period was a confusing period for us. We found it difficult to get direction on which way we should be going, with lack of definition of what we're required to do in the Local Government Act. And even getting legal advice, we received two forms of legal advice and they were both conflicting..."

"We decided to go with the one that was the most cautious approach. And I think we did go down the very cautious avenue to ensure that we did comply with the Act. Which got to the point where

we were almost certifying everything that we produced... So we were at the point where even, well do we have to get parking infringement notices authorised? Like there was no – no clear direction to us on how far we needed to go... Because we did... take it extremely seriously and to try and comply. And after discussions with other councils, some were basically closed down for that period, where we tried not to close everything off. We just tried to make sure we were certifying... everything that we were sending out. But then there are other councils that didn't really do much at all."

Sharlene Still, Governance Manager, Greater Shepparton City Council, Shepparton public hearing

- 3.13 In addition, the increasing use of social media by councils has added to the volume of material that may need to be certified in future. Wyndham City Council's submission noted:

"Council does (however) have concerns with regard to the requirement for the CEO to certify all council documents as an unreasonable burden as this amounted to hundreds of documents. Clarification is required as to the types of documents that are required to be certified."

Wyndham City Council submission

Council policies to support implementation of the caretaker provisions

- 3.14 There is a requirement for councils to observe the legislative requirements outlined above. There is no legislative requirement for councils to adopt caretaker policies. The Inspectorate and Local Government Victoria have, in various forms, encouraged councils to adopt policies to ensure they have considered and agreed the manner in which they will discharge their functions consistent with the law and the spirit of caretaker convention.

- 3.15 For the 2012 elections, the Inspectorate released a number of what it considered best practice council caretaker policies for councils to consider and adopt. These policies covered a broad range of matters that are not covered by the current legislation. Notwithstanding this initiative, one CEO noted in response to an anonymous CEO survey that issues remained with the sector's approach to the caretaker arrangements:

"The late release of the model caretaker policy by the Local Government Investigations and Compliance Inspectorate caused Council to rewrite and adopt an amended policy that contained more stringent provisions aligned to the model or best practice examples. Despite the model policy provided there was no adopted uniform approach within the local government sector. There was a lack of consistency and application of the policy between councils. This created an uneven experience across the sector. Councils that adopted the model policy face significant resistance."

Response to DTPLI survey of council CEOs

- 3.16 There was also a polarising tendency in councils to adopt either overly risk-averse interpretations of the policy, in order to avoid any possibility of infringement, or more fluid and less cautious approaches.

- 3.17 Many councils adopted very strict and overly cautious approaches to their caretaker period and enshrined these in caretaker policies; the Panel heard criticism of these during the hearings. Some councillors were, however, unaware that the policies they adopted were not a legislative requirement. This is highlighted in the following:

"The experience of standing councillors at the last election during caretaker period was very frustrating. For a potential candidate they were able to attend any event, have photos taken, and make comments in the press and a lot more. For the standing Councillor it was a very different story whereby they were very restricted... as it may be seen as an unfair advantage and a breach of the Local Government Act 1989."

“There needs to be level playing field for ALL people standing for elections, whether they be a standing Councillor or not.”

Strathbogie Shire Council submission

- 3.18 The lack of consistency in these policies was also the subject of criticism, as some councillors and candidates considered themselves adversely impacted by the policy’s application. The need for consistency was highlighted in the following:

“The view of LGPro is that there needs to be a consistent approach across the industry. Some people get a document and interpret it a different way and I think that we need to continually keep [sending] communication back to the 79 councils about caretaker periods. The LGPro recommendations are that we need a clearer standard of caretaker policy provision...”

Dennis Hovenden, President, LGPro, Melbourne public hearing

- 3.19 The Inspectorate also conducted compliance audits of the 2012 caretaker policies of councils. It should be noted these were qualitative in nature and not based on assessment of compliance with the legislation. It found only eight councils had comprehensive, detailed policies that “captured the necessary requirements of the *Local Government Act 1989*⁵⁴”. The Inspectorate’s analysis further identified that 93 per cent of caretaker policies did not cover ward funds or councillor discretionary funds and 63 per cent of policies did not cover section 76D (misuse of position) provisions. Social media matters were also not covered in 45 per cent of the policies. These findings point to matters of policy that may need to be addressed.

Considerations and conclusions

- 3.20 The Panel concluded that, with the exception of the prescriptive certification requirements, the legislative provisions were generally sound. The Panel also found, however, that there may be room for addressing matters not currently contemplated in the legislation. The Panel noted that there had been an effort to reduce inconsistencies and misinterpretations to date, underpinned by detailed guidance from Local Government Victoria (LGV)⁵⁵ and the provision of good practice examples of caretaker policies to councils by the Inspectorate. It considered that the status of this policy guidance needs to be clarified as to be unambiguous in its application.
- 3.21 In relation to the certification requirement, the Panel arrived at the conclusion that this level of prescription was unnecessary, given the significance of penalties for offences relating to electoral material, and that prescription of management practice was not necessarily required to obviate remaining risk. The Panel considered that the management of this issue could be addressed in the codification of caretaker conventions more broadly, as discussed below.
- 3.22 The Panel believes that a more uniform and detailed codification of the ‘do’s and don’ts’, consistent with the Inspectorate’s identified best practice policies and inclusive of matters related to certification, is needed to ensure consistency in application and to minimise the current subjectivity that has led to misinterpretation and dispute.
- 3.23 Such a level of clarity will enable councils and their CEOs to plan set timelines for decision making on known and anticipated matters ahead of the caretaker period, and to manage delays where appropriate. The fact that election dates for local government are known years in advance and occur only once in every four years, with the caretaker period of a relatively short duration (32 days), further facilitates such advanced planning. Governments, businesses and community members impacted by any adjustments to the conduct of local government business during the caretaker period could be informed in advance to minimise any negative impacts.

⁵⁴ Local Government Investigations and Compliance Inspectorate, 2013, *2012 Election Report*, p. 5.

⁵⁵ Local Government Victoria, “Election Caretaker Arrangements: Governance Practice Note No. 5 (March 2012)” and various circulars.

- 3.24 DTPLI surveyed⁵⁶ council CEOs on any flow-on implications from more stringent caretaker provisions and tightening of provisions around decision making in particular. The only concerns raised were in relation to state planning timeframes. The Panel was confident that this concern is resolvable by amending legislation prescribing statutory planning timelines for local government, to harmonise them with the restriction on decision making during the caretaker period. For example, planning applications that intersect with the caretaker period could have their deadline for decision making extended by the caretaker period (32 days). CEOs did not identify any non-statutory council decision making timelines that could not be adjusted to take account of the election timetable. CEOs surveyed on this question indicated overwhelmingly that such matters could be brought forward or deferred.

“...from my perspective, we had a couple of issues running during that period where we probably delayed a couple of council decisions to avoid conflict in terms of the caretaker provisions. Nothing of that was going to halt development of the city or cause major difficulties.”

Mark Henderson, Chief Executive Officer, Mildura Rural City Council, Mildura public hearing

Proposed codification of good practice

- 3.25 The good practice examples highlighted by the Inspectorate provide a useful guide to matters that would benefit from codification. Instead of relying on councils to adopt these practices through individual caretaker policies, the Panel was of the view that codifying such practices ensures that all councils would act to consistently high standards during the caretaker period.
- 3.26 Below are some of the good practices that the Panel considered worthy of codification. The actual mechanism for codification would be left open for consideration, but the Panel suggests consideration of a ministerial guideline or regulation.

MATTERS SUGGESTED FOR INCLUSION IN THE CODE

Scheduling of significant decisions

- 3.27 As discussed above, CEOs have indicated that they would be able to schedule most decisions around the caretaker period if needed. It would be useful to define the types of decisions that should be avoided during the caretaker period and prescribe any necessary restrictions to unavoidable decisions.
- 3.28 Statutory timelines that require decision making during the caretaker period should be reviewed to ascertain if any adjustments can be made to avoid decision making during the caretaker period.

Scheduling of grant making

- 3.29 Any grant making during the caretaker period would need to be managed so that perceptions of advantage to councillors contesting the elections is minimised. The Panel did not think there was a need to suspend all grant making, as this may have a negative impact on councils' support for community services and activities. The limitation of grant making to the prevention of distribution of grant funds may be sufficient to mitigate any perceptions of undue advantage.

⁵⁶ DTPLI, 2013, unpublished survey, “CEO Survey on the Local Government Electoral System”.

Suspending council communication

- 3.30 The Panel was mindful of the importance of councils keeping their communities updated on the provision of council services at all times, including during the caretaker period. Notwithstanding this, it is proposed that all council publications and social media be suspended for a short window in a four-year period, unless absolutely necessary for advising of ongoing council services and facilities, for example, library and sporting facility opening hours. To this extent, the Panel agreed with comments from one former CEO and existing commissioner who argued, “I really find it difficult to believe that for such a short period happening so rarely that council simply can’t stop issuing publications. An option would simply be to ban them from issuing publications”. This approach would be easier to implement with the broader application of a caretaker regime, in which council communications activity would be largely suspended. It would also render unnecessary the existing mandatory certification arrangements.

Suspending public consultation

- 3.31 Council sponsored public consultation during the caretaker period should be suspended when it involves controversial issues or where the holding of the consultation itself is a matter of controversy.

Scheduling of council functions and events

- 3.32 Public perception of the council functions and events organised during the caretaker period should be considered in codifying the types of council events that can be organised and the participation of councillors at such events, especially those who are recontesting. Use of council resources to raise the profile of councillors should be avoided.

Scheduling and management of council meetings

- 3.33 CEOs should be provided with clear rules about the issues that can be considered by councils during the caretaker period. The above discussion has identified many of the sensitivities that should be considered in setting agendas and preparing meeting papers. The caretaker provisions should spell out the matters that should be avoided and ensure that council meetings are not used as a platform for recontesting councillors to ‘advertise’ their policy positions and commitments, or for criticising other candidates.
- 3.34 The Panel recognised that current statutory requirements may result in the council needing to discuss its annual report during the caretaker period. This need may, in itself, present opportunities for the process and document to be used as a vehicle for campaigning. A determination will need to be made if adjustments to the statutory timelines for the finalisation of annual reports and submission to the Minister for Local Government are required and, if not, what other prescriptions would be necessary to aid CEOs with managing the process.

Access to council information

- 3.35 Public perception of the incumbent candidates having access to council information not available to other candidates should be avoided. Codification of how councils manage requests for information during the caretaker period is necessary to avoid any perceptions of bias or undue advantage.

Recommendations

The Panel recommends that:

27. The State Government amend the *Local Government Act 1989* to codify good practices identified by the Inspectorate to ensure clear and uniform boundaries for council decision making and activities during the caretaker period.
28. The caretaker provisions be expanded to suspend the issuing of non-essential council publications during the caretaker period.
29. The State Government remove the publication certification requirement placed on council chief executive officers during the caretaker period.
30. In order to ensure that councils are not adversely impacted by the new caretaker arrangements, the State Government look to amend legislation prescribing statutory planning timelines for local government to harmonise them with the restrictions on decision making during the caretaker period.



Chapter 4 Elections

Introduction

- 4.1 This chapter deals with the polling method used for elections, how the services required to execute an election are best delivered, and how complaints may be handled more effectively and expeditiously.
- 4.2 At present, the *Local Government Act 1989* provides that local government elections may be conducted by one of two polling methods: postal voting or attendance voting (voting in person at a voting centre on election day). Under the *Local Government Act 1989*, councils decide which of the two polling methods will be used in their municipality.
- 4.3 The Panel explored whether the two systems of attendance and postal voting should continue, or whether a uniform polling method should be adopted. A close examination of the issue made a strong case for the introduction of a uniform system of postal voting for council elections. This would strengthen consistency of practice, reduce voter confusion, raise participation and formality rates, and reduce costs.
- 4.4 A council can decide to conduct elections itself or contract an electoral commission. Since the 1990s, every Victorian council has contracted the conduct of elections to either the AEC or the VEC. In 2001, the AEC withdrew from the Victorian market and the VEC has been contracted by all councils to provide election services since then.
- 4.5 The Panel explored making the VEC the default statutory election service provider. While there are a number of advantages in amending the *Local Government Act 1989* in this way, there is also a risk that a legislated monopoly may lead to an unwarranted rise in cost pressures for councils. In this chapter, the Panel addresses the arguments for legislating the VEC's role as the statutory election service provider and the steps that should be taken to protect councils against unreasonable election service costs.
- 4.6 There were 456 complaints received for the 2012 elections, compared to 223 complaints for the 2008 elections⁵⁷. In this chapter, the Panel examines complaints and looks at the factors that may have contributed to the increase as a basis for considering possible complaints system improvements.

⁵⁷ Local Government Investigations and Compliance Inspectorate, 2013, *2012 Election Report*, p. 3.

Polling method

Issues

- 4.7 Attendance voting was, for many years, the mandated method for all local government elections. Following changes to the *Local Government Act 1989*, by the mid-1990s, two-thirds of councils had adopted postal voting, with only one-third utilising attendance voting. This trend has continued. In 2012, only eight council elections (all in the metropolitan area) used attendance voting. No rural councils have used attendance voting for some time.
- 4.8 In Australia, attendance voting is the polling method for federal and state elections and for local government elections in New South Wales. In South Australia, Tasmania and Western Australia, the postal voting method is exclusively used for local government elections. In Victoria, Queensland and the Northern Territory, local government elections are conducted using a mix of attendance and postal methods.

POLLING METHOD AND PARTICIPATION

- 4.9 Since 2000, postal elections for Victorian councils have consistently produced higher participation rates than attendance elections. For local government elections conducted by the VEC between 2000 and 2005, the average participation rate difference was 8.84 per cent⁵⁸.
- 4.10 For the general elections in 2008 and 2012, which were conducted solely by the VEC for all councils that had elections, the difference was 6.41 per cent and 8.91 per cent respectively⁵⁹.
- 4.11 The difference in participation rates for general elections since 2000 is shown in Table 4.

Year(s)	Polling method with a higher participation rate	Difference in participation rates (%)
2000–5 ⁶⁰	Postal	8.84
2008 ⁶¹	Postal	6.41
2012 ⁶²	Postal	8.91

Table 4: Difference in participation rates (per cent) for local government postal and attendance general elections conducted by the VEC
(Source: VEC website <https://www.vec.vic.gov.au/Results/results-munistats-participation.html>)

58 VEC, viewed 9 December 2013, <<https://www.vec.vic.gov.au/Results/results-munistats-participation.html>>.

59 *ibid.*

60 41 general elections conducted on 18 March 2000, 16 general elections conducted on 16 March 2002, 54 general elections conducted on 15 March 2003, 22 general elections conducted on 26 November 2004, 54 general elections conducted on 26 November 2005.

61 79 general elections conducted on 29 November 2008.

62 78 general elections conducted on 27 October 2012.

- 4.12 The difference in participation between attendance and postal elections appears to be largely accounted for by lower participation at attendance elections by voters on the CEO's list and by voters aged 70 years and over, as Tables 5 and 6 illustrate. Voting is not compulsory for either of these groups.

Voter type	Group	Enrolled	Voted	Voted (%)
Voters on the state roll	18–69 yrs	520,482	398,575	76.6
	70+ yrs	82,562	38,396	46.5
	Total	603,044	436,971	72.5
CEO's list voters		99,293	9424	9.5
Total		702,337	446,395	63.6

Table 5: Voter turnout at attendance elections (eight councils) at the 2012 elections (Source: VEC)

Voter type	Group	Enrolled	Voted	Voted (%)
Voters on the state roll	18–69 yrs	2,421,862	1,865,727	77.0
	70+ yrs	410,310	312,029	76.0
	Total	2,832,172	2,177,756	76.9
CEO's list voters		459,394	250,258	54.5
Total		3,291,566	2,428,014	73.8

Table 6: Voter turnout at postal elections (69⁶³ councils including Melbourne City Council) at the 2012 elections (Source: VEC)⁶⁴

- 4.13 As the tables show, of CEO's list voters (made up mostly of non-resident property owners), only 9.5 per cent voted at attendance elections in 2012, compared to 54.5 per cent at postal elections.
- 4.14 Of voters aged 70 and over, 46.5 per cent voted at attendance elections in 2012, compared to 76.0 per cent at postal elections (77.5 per cent at the Melbourne City Council postal election).
- 4.15 For voters on the state roll aged under 70, the difference in the participation rate between attendance and postal elections was negligible.
- 4.16 Where postal voting is adopted, the turnout for voters aged 70 and over is almost identical to that for younger voters for whom voting is compulsory. In the Melbourne City Council election in 2012, non-compulsory voters (aged 70 and over) voted in higher proportions (77.5 per cent) than voters aged 18–69 years (63.8 per cent) for whom voting was compulsory. This suggests that whether voting is compulsory is less important than whether people can vote by post or have to go to a polling booth on a particular day.

⁶³ Ararat Rural City Council did not have a contested election in 2012 as it received the same number of nominations as there were vacancies.

⁶⁴ Note the figures in Tables 5 and 6 cover contested elections only. The VEC advises the participation figures in each table have been determined by counting marks on the voters' roll. This is greater than the total votes counted because some postal votes were returned late or excluded from the count because, for example, they were unsigned.

4.17 There was support for and against both polling methods. A sample of the submissions are as follows:

“The majority of councils use and prefer postal voting for the following reasons:

- *significant increase in non-resident voter participation*
- *significant increase in 70+ years voter participation*
- *mitigates against low level, or no, candidate information for pre-poll voters unable to attend polling booths on election day*
- *maximises likelihood of candidates providing the statutory threshold of information to voters, thus minimising the need for candidates to expend funds on hard copy campaign collateral or seek/accept donations to offset printing costs. Leads to more equitable environment.”*

Municipal Association of Victoria submission

“Many public housing tenants claim they do not receive ballot papers; these are too large to fit into their mailboxes. A carton of ballot papers was found in the foyer of a tower block... Attendance at a polling booth gives council elections the standing and legitimacy of federal and state elections.”

Carlton Residents Association Inc. submission

“Manningham supports the adoption of a single polling method – that being full postal voting as is the case in South Australia, Tasmania and Western Australia. Postal voting has the added advantages of being less costly than attendance elections and provides for arrangements that enable voters to better inform themselves of the credentials of the various candidates via the candidate statements.

“It is contended that the perception that attendance voting encourages more ‘active’ democratic participation is more myth than substance. With a number of polling places for each ward, candidates can only be at any one polling place at any one time. They usually spend most of their time at the busiest polling place. Voters attending other polling places do not see them nor do they have the benefit of candidate statements.”

Manningham City Council submission

“...attendance elections result in a higher level of community engagement via the conduct of school fetes, community group fundraising and similar type activities held adjacent to the electoral venues... Attendance at polling stations better focuses and therefore enables local candidates to provide direct information to voters...”

Yarra City Council submission

4.18 Some submissions advanced the position that the difference in participation rates in attendance voting municipalities was accounted for by different demographic factors, including higher proportions of young renters, absentee ratepayers and highly itinerant voters, who are more likely to be disengaged from the democratic process.

“...The fact that only 50 per cent vote is not an issue really for Yarra because 45 per cent of households are rented, so that means it’s not compulsory for many, many people who are on the roll who are non-resident property owners, even though they’re on the roll.”

Cr Jackie Fristacky, Mayor, Yarra City Council, Melbourne public hearing

4.19 As illustrated previously in tables 5 and 6, the data suggests that postal voting improves the participation rates for CEO’s list voters (including non-resident owners) and voters aged 70 and over.

“The Murrindindi Shire Council general election was conducted through postal voting and this was successful. With a large proportion of absentee voters (holiday home owners), attendance voting would not have been as successful.”

Murrindindi Shire Council submission

- 4.20 One municipality that has applied both postal and attendance voting provides an insight into the impact of different polling methods. In Stonnington, attendance voting was used in 1993 and 2012, while in the intervening years, postal voting was used. As the results in Table 7 and Figure 3 demonstrate, 1993 (52 per cent) and 2012 (56 per cent) (the years of attendance voting) were the two elections with the lowest participation rates for the whole period.

Year	Voting method	Participation rate (%)
1993	Attendance	52.0
1996	Postal (single wards)	64.2
1999	Postal (only six wards contested)	60.0
2002	Postal	63.2
2004	Postal (multi-wards)	65.3
2008	Postal	65.1
2012	Attendance	56.3

Table 7: Participation rates for Stonnington City Council elections, 1993–2012
(Source: Stonnington City Council submission)

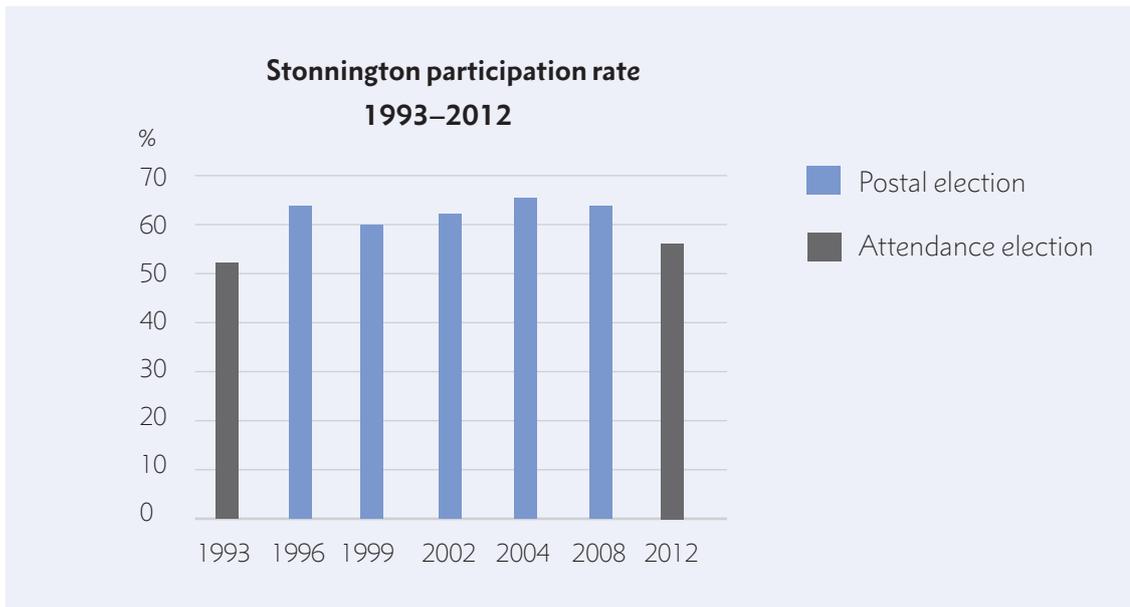


Figure 4: Participation rates for Stonnington City Council elections, 1993–2012
(Source: Stonnington City Council submission)

- 4.21 Cr Lisa Ruffell from Greater Bendigo City Council highlighted that voter participation can be affected by the lack of clarity in the polling method adopted.

“There is still some confusion in the community about whether the council election is an attendance election or a postal election. While it is clear to voters where they receive their voting papers, there are a percentage of voters who disregard the VEC envelopes and when it comes to receive a fine on non-voting think they should have been attending a school or a community hall to vote.”

Cr Lisa Ruffell, Mayor, Greater Bendigo City Council, Bendigo public hearing

- 4.22 The potential for uncertainty and confusion can be compounded when councils change the polling method from election to election, and where postal voting municipalities abut attendance voting municipalities.

POLLING METHOD AND VOTER FORMALITY

- 4.23 Attendance voting consistently delivers lower formality rates. In 2008, the informal voting rate for attendance general elections was 9.9 per cent, compared to 3.8 per cent for postal general elections (2.64 per cent at the Melbourne City Council postal election). In 2012, the informal voting rate for attendance general elections was 10.1 per cent, compared to 4.7 per cent for postal general elections (2.16 per cent at the Melbourne City Council postal election)⁶⁵.

Polling method	Informal voting rate (%)	
	2008	2012
Attendance	9.9	10.1
Postal	3.8	4.7
Differential	6.1	5.4

Table 8: Informal voting rate (per cent) for attendance and postal voting in 2008 and 2012 (Source: VEC)

POLLING METHOD AND COST

- 4.24 The VEC reports that “Postal voting... is somewhat cheaper (approximately 25–30 per cent average) than attendance elections”⁶⁶. This was borne out by a comparison of the cost of the 2012 elections, based on de-identified data provided by the VEC. As shown in Table 9 below, the cost of postal voting elections was 70 per cent of the cost of attendance elections in 2012: \$6.52 per vote cast for postal elections, compared with \$9.29 per vote cast for attendance voting.

Polling method	Average contested election voters (number)	Average turnout (number)	Average turnout (%)	Total average cost (excluding GST)	Average cost per vote
Attendance	87,792	55,795	63.6	\$518,080	\$9.29
Postal ⁶⁷	47,022	34,104	72.5	\$222,247	\$6.52

Table 9: Cost per vote for attendance and postal council elections in 2012 (Source: VEC)

⁶⁵ VEC, 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. 39.

⁶⁶ VEC, *Security of Postal Voting*, p. 2, viewed 20 November 2013, <<https://www.vec.vic.gov.au/files/PP-PostalVotingSecurity.pdf>>.

⁶⁷ The average turnout includes results of all postal elections, except the Melbourne City Council leadership team and Geelong mayor, and the costs include the costs of all postal elections, including Melbourne City Council (councillors and leadership team) and Geelong City Council (councillors and mayor). The analysis of the data also found that postal election participation rates were similar for municipalities with similar electorate sizes.

TIMING OF POSTAL VOTING

- 4.25 For state elections, the elector's vote is admitted to the count if delivered to the VEC or voting centre before 6 pm on election day, or posted before election day and **received** by the VEC within nine days after election day⁶⁸. By contrast, postal ballots for local government elections must be **received** by the returning officer by 6 pm on the day before election day.
- 4.26 This requirement has the effect of significantly reducing the period of voting for local government elections relative to state elections. While technically, voting may 'close' on the day before election day, most voters are effectively compelled to post their ballot paper up to two days earlier to ensure their votes are received in time⁶⁹.
- 4.27 The VEC reported that in 2012, more than 116,000 votes were excluded from the local government election count because the votes were received in the five working days after election day⁷⁰. The Panel believes that there is merit in extending the period for receipt of ballots for local government postal elections so that many of these votes are included in future elections, appreciably lifting the participation rate. This is discussed further in the considerations and conclusions section. One implication of this proposed change, it must be acknowledged, would be a delay in the declaration of the result by up to one week, with a consequential delay in the swearing in of new councillors.

CONCERNS ABOUT POSTAL VOTING

- 4.28 The principal concerns regarding postal voting relate to the security of the system and the conception that postal voting attenuates the active expression of civic participation.
- 4.29 Issues associated with the security and integrity of the system largely relate to:
- voters failing to receive ballot packs, particularly non-resident voters, whose mail may be forwarded to an agent
 - theft of ballot packs or handling of ballots by candidates.
- 4.30 Where ballots packs are sent to real estate agents, they must be distinguished from other mail and conveyed to the non-resident voter for action. There cannot be complete confidence that all ballot packs reach the intended recipient. The Panel believes that further work may be required to ensure that agents direct ballot packs to non-resident voters. Consideration should be given to an intensive communications campaign with agents in the month before local government elections to reinforce this message.
- 4.31 Concerns were raised at the Bendigo public hearing about the security of ballot papers. Ms Joan Donovan argued that:

"Australia Post effectively acts as a de facto electoral office with no constraints and offering no added protection to what should be considered sensitive mail. From this point, the votes are entered into the local mail system with the expectation that they'll arrive without interception at the polling booth. In essence, VEC subcontract out a major and vital part of their role to Australia Post and as a result, the votes have no more protection than everyday mail."

Joan Donovan, Bendigo public hearing

⁶⁸ In addition, a vote must be accepted if the envelope is postmarked the Sunday immediately after election day but with the voter's declaration witnessed on or before election day.

⁶⁹ The VEC recommended that the State Government note mail delivery patterns have changed, affecting the dispatch and return of standard mail services. (VEC, 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. 28.)

⁷⁰ Data supplied by the VEC.

4.32 The VEC acknowledges in its report on conduct of the 2012 local government elections that:

“...in the past there have been isolated and unsubstantiated allegations that postal elections in Victoria are open to postal voting fraud. The VEC has an extensive fraud prevention initiative designed to protect the integrity of postal voting”⁷¹.

Victorian Electoral Commission, Report on Conduct of the 2012 Local Government Elections

4.33 The VEC seeks to mitigate any risk to postal voting through a variety of fraud detection and prevention measures. Those adopted at the 2012 elections included:

- postal ballot material specifically designed to fit a standard household letterbox with no protrusion
- random checks by VEC staff in high-density residential blocks during the mailing period
- a radio and print advertising campaign coinciding with the mail-out of ballot packs
- security personnel conducting 1 160 hours of observation around housing estates with bulk letterboxes. No concerns were raised by them in relation to postal election fraud
- a partnership with Crimestoppers Victoria, including a sponsored print and radio advertising campaign aimed at encouraging members of the public to call Crimestoppers if they observed suspicious activity in relation to the suspected theft of ballot packs or suspicious activity near letterboxes
- spot checks conducted by the VEC to compare signatures on declaration envelopes with original signatures on the enrolment forms or other source documents.

4.34 The VEC notes in its publication on the security of postal voting:

“On each occasion that a critic in Victoria has stated they had evidence of postal voting fraud – that is that bulk theft and completion of ballot packs was occurring – the Victorian Electoral Commission approached the individual with a request to produce any evidence. No evidence was ever produced and the VEC failed to get any response from the individual to explain why the evidence could not be produced. The fact that something may possibly happen does not mean that it is happening. The VEC has never encountered any evidence of any organised or systematic abuse of the postal voting system in the state. Further, there is no existing evidence of the same in any State or Territory in Australia”⁷².

Victorian Electoral Commission, Security of Postal Voting

4.35 The Panel acknowledged that there are security risks associated with postal voting. Maintenance by the VEC of active fraud detection and prevention measures means that the limited risks are outweighed by the extensive benefits of uniform postal voting.

“We strongly support the use of postal voting. That’s resulted in a higher turnout of voting, a greater ability for electors to consider their vote, and a higher rate of formal votes. And we think there’s little evidence that the postal voting system is insecure or has faced any form of abuse.”

Peter Brown, CEO, Horsham Rural City Council, Horsham public hearing

⁷¹ VEC, 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. 29.

⁷² VEC, *Security of Postal Voting*, p. 2, viewed 20 November 2013, <<https://www.vec.vic.gov.au/files/PP-PostalVotingSecurity.pdf>>.

REDUCING ACTIVE CIVIC EXPRESSION

- 4.36 Some advocates of attendance voting believe that uniform postal voting would limit active civic participation.

“I would like to see the attendance model of voting maintained as this at least provides some link between the councillors and the community... Attendance also gives greater focus on the democratic process whilst at the same time fostering a sense of community. For example; most polling booths are located in schools and community halls and this gives fund raising opportunities to those organisations as well as an opportunity to interact with the local community.”

Beverley Moss, submission

- 4.37 The Panel supports efforts to strengthen community engagement in local elections. However, the contribution to the democratic process of consistently higher average active participation rates for postal elections is more substantial.

Considerations and conclusions

- 4.38 The Panel was persuaded that a uniform system of postal voting should be adopted because it brings the substantial benefit of increasing the number of people who vote and vote validly. There are also advantages in that it will bring uniformity, consistency and a capacity to improve communication of the process by authorities and reduce confusion for voters.
- 4.39 The adoption of across-the-board postal voting would reduce confusion because the VEC would be in a position to deliver a clearer, simpler voter information campaign with a single set of information outlining a uniform process for the casting of a vote.
- 4.40 The Panel heard that confusion about polling methods is reinforced where geographically contiguous municipalities adopt different polling methods. Instances were reported of voters delaying their vote to polling day, only to learn on polling day that they were enrolled in a postal voting municipality and had missed their opportunity to vote.
- 4.41 The Panel believes that adoption of a uniform postal voting approach would be strengthened if the deadline for postal ballots to be posted was extended, by broadly aligning arrangements with those that apply for Victorian state elections. It is proposed that votes be accepted if posted by the Friday that concludes the voting period. Further, a vote would be admitted to the count if it was received by the VEC by the Friday following the close of voting. This would allow for more votes to be validly included and not unreasonably delay the election result declaration and swearing in of the incoming councillors. This would also be broadly consistent with the treatment of votes cast for state elections.

Recommendations

31. The State Government adopt a uniform postal voting polling method for local government elections for 2016.
32. The timeline for receiving a vote by post be broadly aligned with that which applies for Victorian state elections; that is, votes may be posted on or before the last Friday of voting and received by the VEC within five working days after the close of voting.

Election services provision

Issues

- 4.42 Councils can choose to conduct their own election or to contract an electoral commission to conduct the election. Since the 1990s, councils have opted to contract the service either through the AEC or the VEC, as the two contractors available to councils.

THE SERVICE PROVIDER MARKETPLACE

- 4.43 In 2001, the AEC decided not to compete for local government contracts, resulting in a monopolistic situation with the VEC as the only supplier remaining in the marketplace. Since 2001, all councils have contracted the VEC.
- 4.44 It appears that this trend will continue into the foreseeable future. While there have been some concerns raised about the VEC's management of specific functions, almost all submitters who expressed a view stated that the VEC should continue to conduct local government elections.
- 4.45 There is no indication that the AEC is likely to re-enter the market, and barriers to entry for new service providers are high while the VEC continues to adopt a marginal cost structure model. Private election service providers have emerged in New South Wales. It is not known if these providers are willing to extend their reach into Victoria beyond the municipalities along the Victoria–NSW border, or if they can offer a high quality, cost-effective alternative.
- 4.46 In light of the VEC monopoly on council election services being likely to persist for the foreseeable future, there is a strong case for making the VEC the statutory service provider for Victorian council elections. The advantages in doing this are discussed in detail below. This section then explores the process for ensuring that instituting the VEC as the statutory provider can be achieved in a way that is consistent with cost containment and achievement of high levels of service delivery.

"We consider that the VEC should be the sole provider on any analysis other than a cost analysis. MAV members consider that competition in electoral services is generally needed to keep costs down."

Municipal Association of Victoria submission

The VEC as the statutory election service provider

- 4.47 The VEC has made representations to the Minister for Local Government to consider a statutory role for the VEC as the default provider of Victorian local government election services. Queensland, South Australia and Tasmania have already assigned this role to their electoral commissions for local government and state elections.
- 4.48 The strongest argument in support of the VEC being assigned the statutory provider function is the support to the integrity of the system served by appointing a single, independent, impartial and expert provider. In many respects, this is a judgement councils themselves have made in appointing the VEC as the provider over many years.

- 4.49 A survey of CEOs⁷³ showed that 75 per cent of CEO responses subscribed to the view expressed by Tim Tamlin, CEO of the South Gippsland Shire Council that “the VEC is best placed to conduct elections as they possess significant electoral experience and knowledge and have a proven track record in conducting Council elections and are removed from local influences. From a Council position it makes operational sense to outsource this task to the VEC as conducting an election internally would result in significant operational disruption to existing resources”. A further 10 per cent nominated the VEC or the AEC as the providers best placed to deliver local government elections. All CEOs indicated that the election should be conducted by an objective, independent service provider.
- 4.50 The capacity of councils to effectively conduct elections was raised by Dr Brian and Mrs Nina Earl in their written submission.
- “...local government are not a dedicated election agency, they manage wide-ranging municipal issues and managing an election is additional to their responsibilities, and personnel changes are not conducive to understanding how to manage Council elections.”*
- Dr Brian and Mrs Nina Earl, submission**
- 4.51 Current procurement rules require each council to undertake a public tender process for contracting election services above \$150,000. As noted previously, since 2001, the VEC has been the only organisation prepared to tender for local government election service provision. The need to go to tender where there is only one provider is cumbersome and inefficient. In 2012, the Minister for Local Government gave exemptions allowing councils to contract directly with the VEC without undertaking a tender process. The MAV also sought to streamline the tender process through an aggregated procurement for services in 2012, in which 54 councils participated. The VEC reported that, even with these processes, the procurement rules created delays and uncertainties.
- 4.52 The Panel identified benefits in capitalising on the VEC’s involvement in state elections and the associated expertise and experience it has developed over the last decade conducting both state and local government elections.
- 4.53 A single election provider could also achieve further improvements through leveraging economies of scale.
- 4.54 The Panel recognised that service providers should be encouraged to innovate. Providing certainty of VEC’s primary role over a longer period of time would create the incentive for investment in technological solutions to improve voter services, such as online checking of enrolment details.
- 4.55 The view of Kelvin Tori, CEO of Melton City Council that “engagement of an independent third party such as the VEC ensures the highest levels of probity and good governance, avoiding any suggestion of conflict of interest or impropriety”⁷⁴ was also echoed by many of the CEOs.
- 4.56 Some CEOs shared the concern of Peter Johnston, CEO of the Macedon Ranges Shire Council that “council staff involved, if elections were held in-house, may be compromised in view of their need to develop working relationships with current and then elected councillors. The time of councils conducting their own elections has passed and this option should now be closed off”⁷⁵.
- 4.57 The Panel also recognised that local circumstances may necessitate some level of variation in the way elections are conducted; for instance, around communication necessary for different communities in a municipality. The VEC has demonstrated its capacity to deliver a customised service without compromising quality and while maintaining consistency of standards.

73 DTPLI, 2013, unpublished survey, “CEO Survey on the Local Government Electoral System”.

74 *ibid.*

75 *ibid.*

COST OF CONDUCTING ELECTIONS

- 4.58 The Panel considered whether the VEC should be made the sole statutory provider of Victorian council elections.
- 4.59 The Panel did not receive many submissions on the cost of conducting elections or on the VEC's costing model. However, the Panel is aware that there is some concern from a small number of stakeholders that the VEC may capitalise on its market position to escalate its pricing approach.
- 4.60 In its discussions with the VEC, the Panel was advised that the majority of each council's invoice for its election is comprised of expenses incurred locally, such as a voter information campaign, returning officer costs, voting centre costs, ballot material and vote counting. A small amount of the overall invoice relates to short-term contract staff at the VEC's head office, engaged specifically for the local government program, as well as a contribution to the low-cost, statewide voter information campaign. The VEC does not recover the costs of core staff, building and accommodation costs for the VEC's head office infrastructure and the costs of broader computer software and hardware development, and absorbs any costs that arise as a consequence of VEC actions.
- 4.61 The VEC advised that its marginal cost recovery model ensures that each council is directly charged for only those products and services used for delivering that council's election, and are in addition to the VEC's core operating costs. The VEC did not indicate any plans to change its marginal cost recovery approach.
- 4.62 In response to queries from the Panel, the VEC provided a list of de-identified costs for local government elections that it conducted between 2004 and 2012. In providing the cost list, the VEC highlighted that there are a number of variables that change the cost of an election including the polling method (postal or attendance), structural changes to the council, the occurrence of uncontested elections, and changes to the communications specifications required by councils.
- 4.63 Analysis of de-identified cost data provided by the VEC shows that there has been a rise in average cost per enrolled voter⁷⁶ for the provision of election services since 2004, from \$3.74 to \$5.43, a period subsequent to the VEC becoming the monopoly provider (in 2001). These figures do not include the cost of Melbourne City Council elections⁷⁷. In comparing average cost figures across time, it should be noted that the specific services and service levels differ. While there are minimum legislative requirements associated with specifications contained in the *Local Government Act 1989*, individual councils have the ability to specify activities and levels of provision in engaging the VEC that are unique to a council. This makes comparison difficult.
- 4.64 Within the limitations of the ability to track cost trends, there is no reason to suggest that, to date, the VEC has had an appetite to exploit its market dominance to charge unreasonably high election costs to councils. This does not remove the need for oversight. In its written submission, Stonnington City Council highlighted this.

"..the VEC needs to be regularly reviewed independently, to ensure that Councils are getting the value for the service and not just a one-size fits all approach. Councils need flexibility and also need assurance that once locked in costs are not going to shift with a greater burden on Councils."

Stonnington City Council submission

76 This dollar figure is lower than the cost figures that appear in Table 9: Cost per vote for attendance and postal council elections in 2012 because those figures refer to cost per vote cast, while here the Panel is referring to cost per enrolled voter.

77 The cost of Melbourne City Council elections was not included because of the different way elections are conducted for Melbourne City Council, such as effectively conducting two elections (both a mayoral leadership team election and an election of councillors) instead of one election, the council rather than the VEC preparing the voters' roll, and the added complexity in vote counting for Melbourne City Council.

- 4.65 This oversight should be undertaken by an entity that has experience in dealing with monopoly providers, such as the ESC.
- 4.66 The ESC has been Victoria's independent economic regulator of prescribed essential utility services supplied by the electricity, gas, ports and rail freight industries since 2002 and for water and sewerage services since 2004. It has experience in overseeing monopolies and pricing and service provision issues.
- 4.67 Both Indigo and Moorabool Shire Councils commented that there is inherent tension "...between integrity of electoral process and cost containment. While we want cost effective services, it is critical that integrity of electoral system be maintained."

INSTITUTING AN INDEPENDENT AND IMPARTIAL PROVIDER

- 4.68 The Panel considered a range of views regarding the need for the entity conducting the elections to be independent and impartial. While a minority view was that councils conducting their own elections elicited more community ownership of the process, most stakeholders strongly advocated that the integrity of the electoral system can only be safeguarded by the independence of the entity conducting the elections.

"...the use of an electoral commission, as opposed to an internally run general election, allows for an independent, transparent and accurate result that has been achieved via an expertly run service."

Moonee Valley City Council submission

Recommendations

The Panel recommends that:

33. The State Government establish a statutory role for the VEC to conduct all local government elections under the *Local Government Act 1989*.
34. The State Government establish a pricing and service provision oversight role, potentially assigned to the Essential Services Commission, to ensure that prices and service standards are kept to a reasonable level.

Revised system for conducting elections

4.69 The present and proposed systems for providing election services are outlined in Figures 5 and 6.

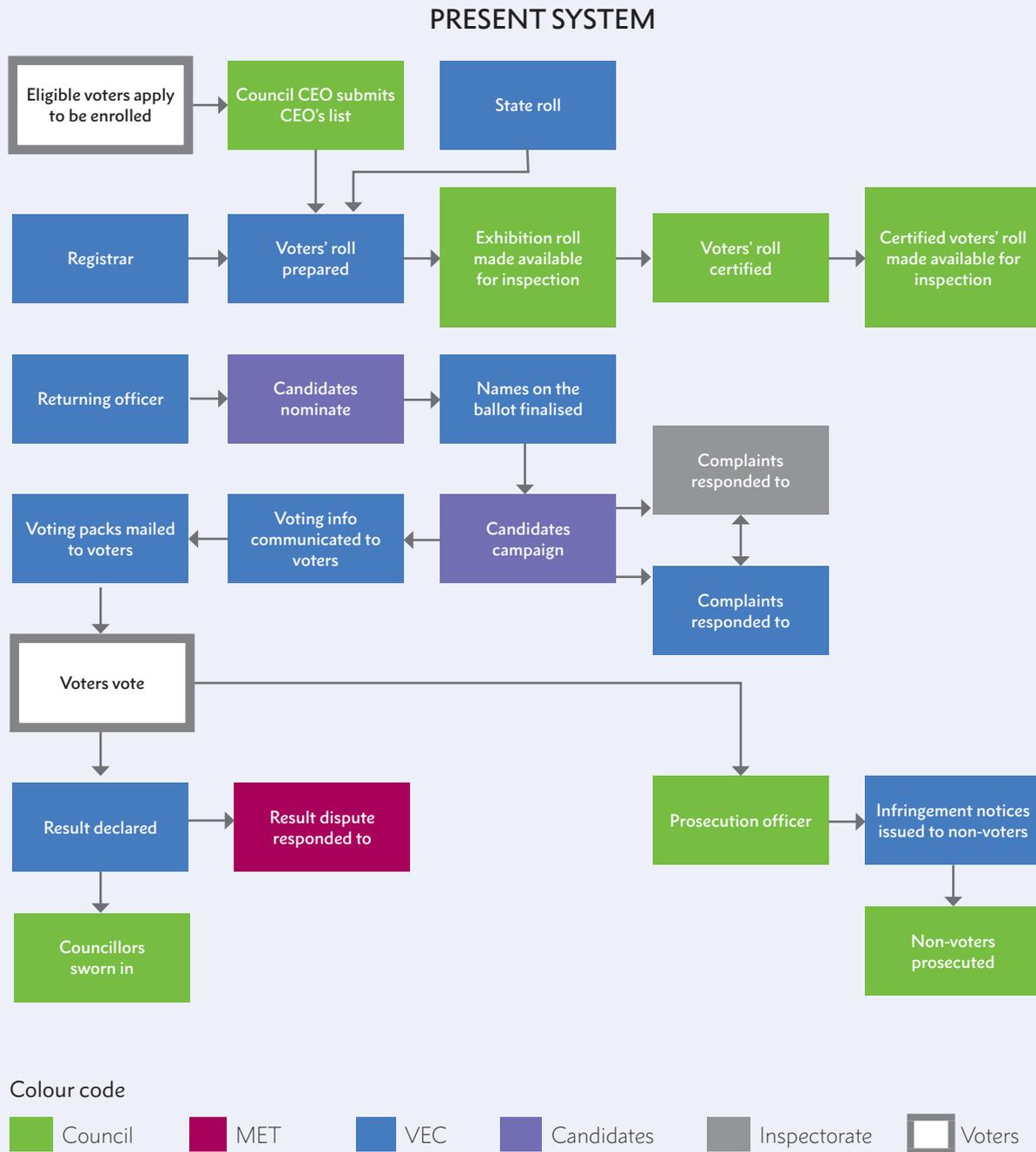
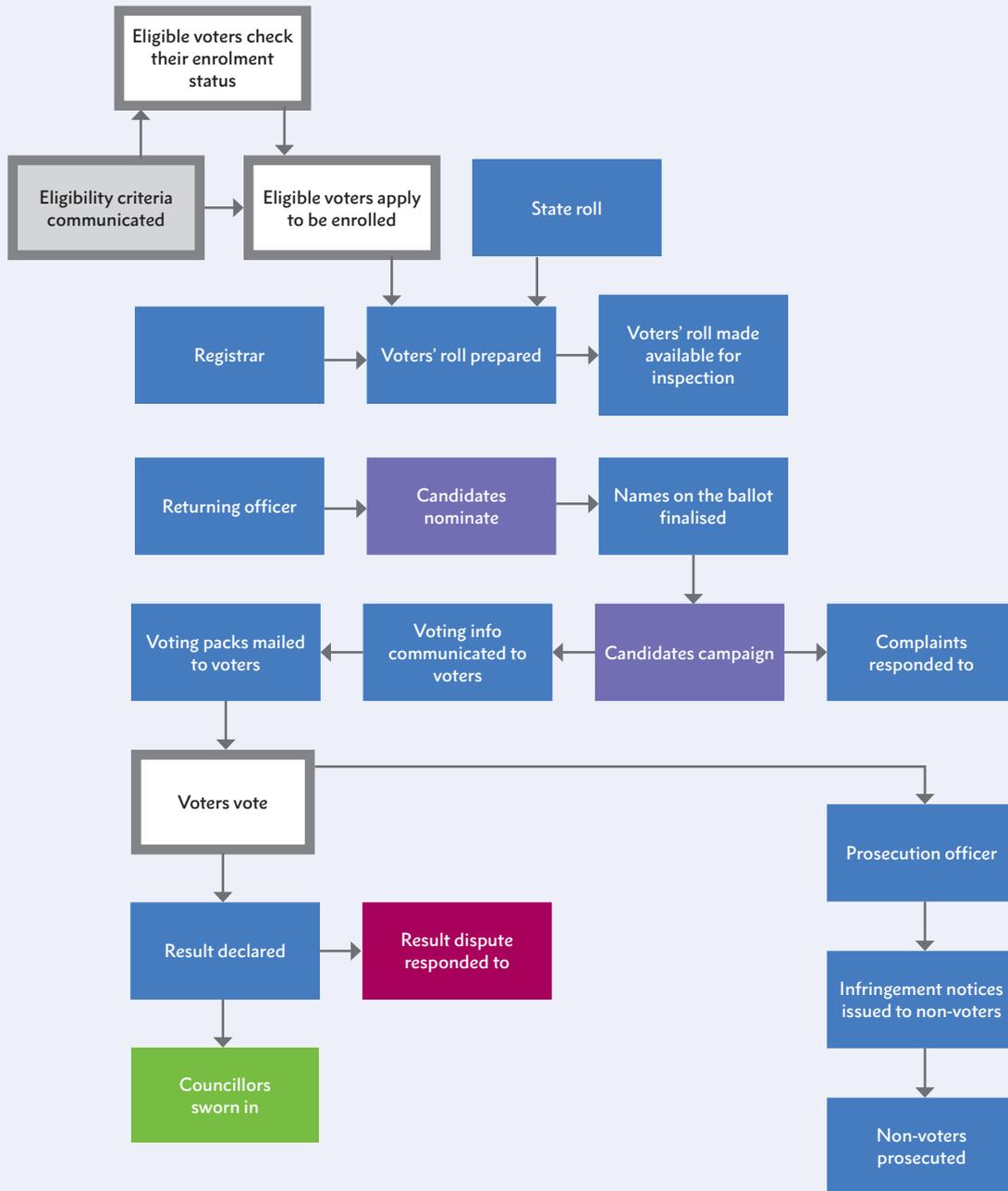


Figure 5: Current roles and responsibilities for conduct of local government elections⁷⁸
 (Source: Local Government Electoral Review Panel)

78 It should be noted that in the current system, the registrar, returning officer and prosecution officer roles could be undertaken by councils, the VEC or another state or Commonwealth electoral commission. As such, the preparation of the voters' roll, the nomination process, the conduct of the elections, and prosecution of non-voters could be the responsibility of councils, the VEC or another state or Commonwealth electoral commission.

PROPOSED SYSTEM



Colour code

- Victorian Government
- Council
- MET
- VEC
- Candidates
- Voters

Figure 6: Proposed roles and responsibilities for conduct of local government elections (Source: Local Government Electoral Review Panel)

Complaint handling and candidate investigation and prosecution

Introduction

- 4.70 This section discusses the process by which complaints made during and after the elections are received, investigated and, where appropriate, prosecuted.
- 4.71 An effective system of responding to complaints is essential to the integrity of the election process. As the Panel's discussion paper⁷⁹ noted, unlawful conduct and poor candidate behaviour (real or perceived) at council elections has the potential to undermine the public's confidence in the electoral system and the reputation of the sector.
- 4.72 The 2012 general elections saw a significant increase in complaints about candidate behaviour when compared with the 2005 and 2008 elections. This prompted the Panel to consider:
- whether the increase in complaints reflects a deterioration in candidate conduct and a rise in breaches of the *Local Government Act 1989*
 - the adequacy of the current framework of offences under the *Local Government Act 1989* to manage candidate conduct
 - whether existing mechanisms for resolving complaints are rigorous and properly integrated.
- 4.73 These three matters are discussed in turn below.

The rise in complaints at the 2012 elections

- 4.74 The 2012 general elections saw 456 complaints made, of which 383 were investigated by the Inspectorate as potential breaches of the *Local Government Act 1989*⁸⁰. Of these 383 complaints, 84 breaches were sustained⁸¹. The 2008 elections, by comparison, were subject to only 223 complaints⁸², of which 138 were investigated as potential breaches of the *Local Government Act 1989*. Of these 138 complaints, 28 breaches were sustained⁸³.
- 4.75 Not only were complaints far higher relative to previous local government elections, they were also more than twice as high as those received by the VEC relating to the 2010 Victorian **state** election⁸⁴ (167 complaints).

⁷⁹ Local Government Electoral Review Panel, 2013, *Local Government Electoral Review Discussion Paper*, p. 61.

⁸⁰ Local Government Investigations and Compliance Inspectorate, 2013, *2012 Election Report*, p. 10.

⁸¹ *ibid*, pp. 10–11.

⁸² *ibid*, p. 10.

⁸³ Data supplied by Local Government Victoria.

⁸⁴ VEC, August 2011, *Report to Parliament on the 2010 Victorian State Election*, p. 91.

4.76 A range of views has been offered in the effort to explain this high level of complaint and breaches in the 2012 local government elections. Different stakeholders attributed the rise to:

- the record number of candidates involved, many of whom were first-time candidates
- a widespread lack of understanding of those behaviours that are allowable and those that constitute breaches of the *Local Government Act 1989*
- the absence of party vetting of the content of election campaign material, as occurs at state elections
- the rise of social media, expanding the scope for political commentary and critique
- the creation of an additional complaints handling authority – the Local Government Investigation and Compliance Inspectorate – in addition to the VEC.

“We had a record number of candidates and there were more candidates in the local government election than there were for the entire federal election that’s just gone.

“Again, you’ve got individuals who have got no party support or whatever behind them so they act individually, and I think it also reflects the current environment where access to information via the web creates an environment where people can actually challenge the world as we know it rather than years ago where that wasn’t available.

“The social media has created a whole new environment out there among candidates, a whole new way of getting information out. Whether it be good, bad or indifferent it certainly generates a different debate and a different level of understanding from the community.

“You’ve also got community groups out there that are very active around the legitimacy of local government and a few other levels of government as well and they create another environment out there as well. Yes, it’s a tough old world and instant access to a platform that’s never been seen before.”

Cr Bill McArthur, President, Municipal Association of Victoria, Melbourne public hearing

4.77 While it is not possible to be definitive about the causes of the increase in complaints, an examination of the nature of complaints can be instructive.

4.78 Of those complaints assessed by the Inspectorate for investigation (of which 252 were made originally to the VEC and referred on), the three main types related to alleged breaches, predominantly by candidates and their helpers, of specific provisions of the *Local Government Act 1989*. These three types of complaints made up 68 per cent of all complaints⁸⁵:

- section 55A (misleading or deceptive material) – 30 per cent
- section 55 (lack of authorisation of electoral material) – 24 per cent
- section 57 (false or defamatory statements) – 14 per cent.

4.79 These three categories of complaints, while occurring at a lower volume (89 in total), followed a similar pattern in 2008, comprising 64 per cent of all complaints at those elections⁸⁶:

- section 55A – 33 per cent
- section 55 – 22 per cent
- section 57 – 9 per cent.

⁸⁵ Local Government Investigations and Compliance Inspectorate, 2013, *2012 Election Report*, p. 10.

⁸⁶ Data supplied by Local Government Victoria.

- 4.80 These three types alone accounted for 260 complaints in 2012, compared to only 39 comparable complaints received by the VEC about candidates and political parties for the 2010 **state** elections⁸⁷. This indicates that the absence of party vetting of the content of election campaign material, as occurs at state elections, may be one driver of higher complaint numbers for local government elections.
- 4.81 The fact that almost 300 of the 383 matters investigated by the Inspectorate did not constitute a breach of the *Local Government Act 1989* reinforces the perception that at least some of the escalation in complaints in 2012 was driven by a lack of understanding by complainants of what is allowable, or a desire to discredit an opponent.
- 4.82 This data suggests that candidates and the public are not fully aware of candidate behaviours that are breaches of the *Local Government Act 1989*, in particular the publication of misleading or deceptive material⁸⁸.
- 4.83 In its report on the 2012 elections, the VEC reported that it received a high volume of complaints on candidate conduct, false or defamatory information, and misleading or deceptive information⁸⁹. The VEC noted that a significant number of complaints alleging misleading or deceptive information and false or defamatory statements being published were lodged by first-time candidates⁹⁰.
- 4.84 While a significant driver, a lack of understanding of the electoral law is insufficient by itself to explain the rise in poor candidate behaviour at the 2012 elections. Accordingly, the Panel examined the adequacy of the current regulatory environment and the rigour of the complaints handling process.

Candidate behaviour and the adequacy of the offences framework

- 4.85 Given that most complaints were found not to constitute breaches of the *Local Government Act 1989*, there were suggestions from some stakeholders to expand the regulatory environment to encompass a wider range of offences. The Panel therefore considered whether existing avenues for redress for inappropriate behaviour by candidates and others were adequate within the context of an election campaign.
- 4.86 A number of submitters presented views to the Panel on how the behaviour of candidates and others affected them.

“Is it acceptable that a wife of a councillor administers a Facebook page with absolute disgusting, appalling and derogatory remarks about myself and other councillors, included edited images, yet neither the VEC, the council or the police could do anything to stop the behaviour during the election? There needs to be appropriate consequences for appalling behaviour for breaches and if we are to have integrity in council elections, encourage quality candidates to apply.”

Kim McAliney, Sunshine public hearing

“...some candidates ran good campaigns, some ran poor. Some were quite libellous and got away with disgusting behaviour.”

Frank Sullivan, Knox Ratepayers Association, Wantirna South public hearing

⁸⁷ VEC, 2011, *Report to Parliament on the 2010 Victorian State Election*, p. 92.

⁸⁸ As determined by the courts, it is an offence only if electoral material is misleading or deceptive about the act of casting a vote, not about the forming of a voter's opinion on who to vote for.

⁸⁹ VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. 55.

⁹⁰ *ibid*, p. 56.

4.87 Some of these argued that candidates should have been afforded more protection from such behaviour by making such behaviour offences under the *Local Government Act 1989*.

4.88 In addition to suggestions to increase the range of offences around candidate conduct, there were also calls by some to increase penalties. Greater Dandenong City Council argued that:

“...Inappropriate behaviour is not thoroughly investigated and penalties are not enough – why would anyone malicious worry about the consequences, especially when you will only get a slap on the wrist after you have won.”

Greater Dandenong City Council submission

4.89 The *Local Government Act 1989* currently regulates a range of activities that have the potential to directly influence voters’ and candidates’ rights to freely participate in democratic elections⁹¹. These include:

- compulsory disclosure of authors’ identities for electoral material
- prohibition of misleading or deceptive material about the casting of a voter’s vote
- registration and distribution of how to vote cards at attendance elections
- prohibition on bribery and undue influence on voters and candidates
- prohibition on interference at polling centres and in the mail-out of postal ballot packs.

4.90 There is also a wide range of illegal behaviours that may occur within the broad orbit of the election, but that are not failures of the election process or breaches of the *Local Government Act 1989*. This may include vandalism, assault, property damage and other offences, as well as behaviour that causes detriment or harm to other candidates. These matters are regulated through criminal law sanctions.

4.91 The Panel noted that the *Local Government Act 1989* provided for an offence to have been committed when false or defamatory statements regarding the conduct or character of a candidate were made⁹². A defamatory statement is one that harms a person in their reputation or their business, or is likely to result in the person being shunned, avoided, ridiculed or despised. *The Defamation Act 2005* requires that there must be “an appropriate and rational relationship between the harm sustained by the plaintiff and the amount of damages awarded”⁹³.

4.92 As noted earlier, in 2012, the Inspectorate received complaints based on alleged offences under section 57 of the *Local Government Act 1989*⁹⁴. Section 57 remained in force during the 2012 general elections, but was repealed shortly after.

4.93 The Panel received one submission asking for section 57 to be reinstated. In his submission, Mr David Madill opined that the 2012 “election campaign in the City of Kingston was dishonest and unpleasant experience” and highlighted his complaint about a deceptive flier that he received.

⁹¹ *Local Government Act 1989*, sections 55–59 (Vic).

⁹² *Local Government Act 1989*, section 57 (Vic).

⁹³ *Defamation Act 2005* (Vic).

⁹⁴ Local Government Investigations and Compliance Inspectorate, 2013, *2012 Election Report*, p. 12.

4.94 The repeal of section 57 was based on the fact that other avenues for redress against defamation already exist under other legislation:

“Although (the repeal of section 57) engages a candidate’s right not to have his or her reputation unlawfully attacked, it does not limit this right. The Defamation Act 2005 already codifies the common law of tort of defamation, providing a person with a right of action if another person makes a defamatory statement about them. This effectively covers the types of statement to which section 57 of the Act is intended to apply. Furthermore, not only were prosecutions under section 57 very uncommon, under the Defamation Act courts are provided with a wide discretion to impose damages up to \$250,000 for non-economic loss, which is considerably more than the penalty under section 57 of the Act”⁹⁵.

4.95 Commonwealth legislation also previously provided for an offence of defaming a candidate, however, this was also repealed in 2007 on the basis that aggrieved candidates would seek redress under the applicable statutory or common law.

4.96 The Inspectorate acknowledged with respect to section 57 that “the repealed provision also provided a defence if the person involved had reason to believe that the statements they made were true. In addition, there was no offence where such representations were expressed as a matter of opinion. Where matters were expressed as statements of fact, it was the responsibility of the aggrieved person to prove that the alleged statements were untrue”⁹⁶.

4.97 On the matter of misleading or deceptive material – another significant source of complaints – the Panel noted that the High Court of Australia has limited the application of this provision⁹⁷ to make it an offence for someone to mislead or deceive a voter only in relation to the casting of their vote; that is, the act of completing their ballot paper, not in relation to the person’s opinion on who to vote for. Similar provisions exist in all other jurisdictions, including in the *Victorian Electoral Act 2002*⁹⁸.

4.98 With respect to arguments to strengthen penalties as a means of providing a deterrent for poor behaviour, the Panel noted that penalties for offences under the *Local Government Act 1989*, including many electoral offences, were significantly increased through legislation in November 2009. For example, fines for unlawful nomination increased by 12 times and became an indictable offence, attracting a prison term of up to two years. Fines for interfering with postal ballot packs increased by 24 times and now attract a prison term of up to two years. Many other penalties, including those relating to lack of authorisation of electoral material and misleading or deceptive material, were similarly strengthened.

4.99 It is also true that while some stakeholders argued the case for more regulation, others argued for less.

“A whole range of things... left me with the impression that the Local Government Act is now extremely prescriptive and is, in many instances I think, trying to legislate for common sense. I don’t believe that that’s possible.”

Daryl McClure, Bendigo public hearing

4.100 The Panel’s consideration of the adequacy of existing behavioural thresholds under the *Local Government Act 1989* also had regard for conditions under other legislation and the provisions of section 15(3) of the *Charter of Human Rights and Responsibilities Act 2006* (the Charter). The Panel was cognisant of the risk of impinging on freedom of expression if a regulatory response was not properly calibrated with the Charter and other legislation.

⁹⁵ Powell, in Victoria, Assembly, Second Reading, 20 June 2012, p. 2873.

⁹⁶ Local Government Investigations and Compliance Inspectorate, 2013, *2012 Election Report*, p. 13.

⁹⁷ *Local Government Act 1989*, section 55A (Vic).

⁹⁸ *Electoral Act 2002*, section 84 (Vic).

- 4.101 Many stakeholders noted that advances in technology, particularly in social media, are increasing the low-cost avenues for candidates to communicate with the electorate. While this may allow for more undesirable behaviour to occur, it also provides for rebuttals of perceived offensive behaviour. This gives the electorate increasing opportunity to consider differing points of view and commentary on the conduct of candidates, which will better inform their decision on who to vote for. The opportunity to respond may be of little comfort, however, to candidates who sincerely believe that they have been maligned or otherwise misrepresented. The emergence of social media is presenting regulatory challenges for electoral authorities everywhere and effective responses are still being explored.
- 4.102 The Panel believes that greater scope to mitigate undesirable candidate behaviour lies in non-regulatory means, through better information and education for candidates.
- 4.103 The VEC issues a handbook⁹⁹ to all candidates, which includes an overview of the authorities engaged in the complaints process and defines some common electoral offences. By itself, however, the handbook appears to be insufficient in assisting candidates to avoid behaviours that may result in their prosecution. The relevant section of the handbook is included at Appendix 5 (page 137).
- 4.104 It is apparent that more needs to be done to make candidates aware of the rules embedded in the electoral offence framework, particularly with respect to electoral material. The guidance contained in the VEC's Candidate Handbook is limited. A number of councils see a greater role for candidate education in the lead up to nominations:

"It is appropriate that education and advice is where improvements are made rather than the actual complaint mechanisms available.

"The engagement of candidates at mandatory sessions prior to nominating may assist, however it is critical that proper educators/engaging presenters are at these sessions rather than the technical experts. Give clear examples of what is acceptable and what isn't in plain language for candidates."

Baw Baw Shire Council submission

"Greater education for candidates and Councillors on the electoral process would ensure that candidates were aware of their obligations during the election campaign. Council believes a clear understanding of the rules of engagement and the expected standards of candidate conduct will give the candidates and the electorate greater confidence in the electoral process."

Boroondara City Council submission

- 4.105 The Panel supported the view promulgated by the VLGA that engagement and education would be a more effective approach in improving candidate conduct than additional regulation.

"It's our contention that there are so many factors at play in relation to candidate conduct and particularly around knowledge, attitudes, cultural, capability constraints, all of those things culturally and behaviourally are quite complex, but... it's actually around engagement and education, we think, is the best way forward in terms of raising the standards generally, and, in turn, that will decrease the amount of complaints arising from elections."

Cr Samantha Dunn, President, Victorian Local Governance Association, Melbourne public hearing

⁹⁹ VEC, 2012, *Candidate Handbook Council Elections 2012*, Melbourne.

Streamlining the complaints mechanism to make it easier to navigate

4.106 Given the rising volume of complaints, it is critical that they be efficiently and transparently managed.

4.107 While there was little consensus from stakeholders to the review about the drivers behind the increase in the volume of complaints in 2012, a number of people raised concerns over confusion arising from the existence of two different bodies charged with handling complaints and the time taken to resolve each matter.

“Efforts should be made to centralise the complaints process, with one agency responsibility for oversight of as many aspects of election conduct as possible. It makes sense for this to be the VEC and for the functions or areas of oversight of the Local Government Investigations and Compliance Inspectorate to be merged into the VEC for the purposes of the election period to provide for a more seamless approach to dealing with election related complaints.”

Municipal Association of Victoria submission

4.108 On the subject of jurisdiction over complaints, there are a number of organisations involved in responding to complaints that are lodged. As highlighted in the Panel’s discussion paper¹⁰⁰, the involvement of these organisations is determined by the nature of the complaint and their respective statutory responsibilities.

4.109 In recent elections, the VEC has advised candidates that it would be the first port of call for initial complaints. In 2012, the 73 complaints the VEC dealt with directly, without further referral, related to the administrative aspects of the election, such as decisions made by the returning officer in carrying out their statutory functions. The major issues it addressed related to enforcement of legislated deadlines, candidate eligibility rulings, candidate statement content, how to vote card content, conduct of election staff, and perceived lack of security relating to the handling of ballot material.

4.110 The VEC referred possible breaches of the *Local Government Act 1989* to the Inspectorate¹⁰¹, which has powers to investigate such matters, including the power to compel appearances and produce documents.

4.111 From submissions received, awareness of the complaint handling protocols between the VEC and Inspectorate appears low. Some expressed disappointment with how their complaints were resolved and an impression of being ‘fobbed off’ by one authority to another. This points to a need for greater clarity and a more streamlined process, where possible.

“A streamlined and published complaints handling process will help avoid confusion. This would include a central primary contact point where complaints can be discussed and attempted to be worked through before being elevated if no solution is found.”

Moonee Valley City Council submission

¹⁰⁰ Local Government Electoral Review Panel, 2013, *Local Government Electoral Review Discussion Paper*, p. 48.

¹⁰¹ VEC, 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. 55.

- 4.112 Some stakeholders expressed concern that their complaints were not resolved quickly enough believing that, where possible, all complaints should be investigated and appropriate action taken before conclusion of the election. However, as one council commented, expeditious handling should not be at the expense of due process:

“Time is of the essence when conducting investigations, particularly where it has the potential to impact on the result of an election. Mechanisms to receive and investigate complaints and take corrective or punitive action in a swift and decisive way are essential to the smooth conduct of elections. Timeliness should not however override a person’s right to due process and procedural fairness.”

Knox City Council submission

- 4.113 The Chief Municipal Inspector provided an insight into some of the challenges in investigating complaints, which assists in understanding why it can take time for matters to be resolved.

“To prove the points of proof, that involves a compilation of a brief of evidence – which may be statements, it may be handwriting analysis, a whole range of issues – and it takes time, and we adhere to best practice prosecution guidelines, which is fair to all people in the process. So it’s basically aimed at, we get a brief of evidence and we also get advice from the Victorian Government Solicitor.”

David Wolf, Chief Municipal Inspector, Inspectorate, Melbourne public hearing

- 4.114 There was some support for the establishment of an advisory line, which would not only be the initial point of contact for complaints, but could also help potential complainants by giving them information on whether it would be worthwhile proceeding with a formal complaint. There is a need to ensure that the regulatory framework provides a mechanism for seeking redress only when other more appropriate mechanisms have failed.

“The VEC or Council could appoint someone to check the validity of complaints and explain their assessment to candidates before a complaint is referred on to a responsible authority.”

Dr Brian and Mrs Nina Earl, submission

- 4.115 Many of these challenges are difficult to resolve, and the heat and tension associated with election debate mean resolution of all grievances to the satisfaction of all complainants is not possible.
- 4.116 One way of improving the transparency of a system that is seeing a higher volume of complaints, and is clearly challenging to navigate, is to create a single complaint handling body. The advantages in having a single entity being responsible for and managing the whole complaint handling process from start to finish, including investigations and prosecution, are clear. The Panel believes that a single, integrated entity would strengthen system transparency, consistency and accountability and help address the challenge of properly resourcing the process. It would also assist in dealing with complaints fully and within acceptable timelines and reduce obstructions for people with genuine complaints.

Considerations and conclusions

- 4.117 The challenges in regulating candidate behaviour during an election are significant.
- 4.118 Judgements are required about which behaviours are best regulated by election-specific laws and those that are better left to legislative protections that apply across society, which are usually more encompassing. Wider community arguments about where lines should be drawn between rights to freedom of expression and rights to be free from denigration or misrepresentation also become sharper during the election period.
- 4.119 Candidates often seek redress from statements or behaviour that may damage their candidacy with greater urgency than usual. Time is of the essence. Yet observation of the rules of natural justice, which take time to run their course, is more, not less, important during an election contest.

- 4.120 The charged nature of the environment sometimes means that complaints that may not be ordinarily made are made in the heat of the contest and, once issued, are not withdrawn. The incentive to make frivolous complaints, which may damage an opponent or take up their time in defending their conduct, can be significant and is an element in many campaigns.
- 4.121 The nature of many electoral offences (allegations of misleading or deceptive material, lack of authorisation, and false or defamatory statements) creates significant evidentiary challenges, which set a high bar for successful prosecution. The challenge has increased with the rise of social media, which has created platforms for anonymous commentary and critique, is less qualified than face to face engagement and may be more offensive, but less amenable to prosecution than traditional communication.
- 4.122 If regulation of elections in general is challenging, the challenges can be even greater for local government elections. Many participants are not career politicians and lack the party vetting of materials and behaviour, which can contain illegal behaviour at federal and state elections, thus removing a layer of self-regulation. Low levels of understanding of the rules of engagement are common, and this uneven understanding generates more unfounded complaints and more breaches made in ignorance of acceptable behaviour. In this often emotionally charged environment, the pressure on candidates to communicate their message, in a compressed period of time in an intense competition with high stakes inevitably means that some will behave in ways that are unacceptable to their competitors.
- 4.123 While for the 2012 elections this experience was more common than at previous elections, it is important to recognise that the lion's share of offensive behaviour was at the lower end of the offence scale. Most actions that were formally challenged through the complaints process were not found to constitute breaches.
- 4.124 The increase from 28 breaches sustained in 2008 to 84 breaches in 2012 is serious and should not be dismissed. However, nor should its significance be exaggerated. Of the 84 breaches¹⁰².
- 13 were unable to proceed due to insufficient evidence
 - two warranted no further action
 - one warranted a request for formal compliance
 - 49 warranted a formal warning
 - 19 warranted criminal investigation for failure to lodge a donation return (resulting in 14 prosecutions, one set of charges withdrawn and four matters unresolved to date).
- 4.125 A significant number of breaches of the *Local Government Act 1989*, if sufficiently serious, can result in the disqualification of an elected councillor or an election being voided. Of those breaches that were proven in 2012, none were so serious as to result in the disqualification of an elected councillor or an election being voided.

OFFENCES FRAMEWORK

- 4.126 Within this context, the Panel reached the following position in relation to the extent of regulation over participants' behaviour at council elections:
- Candidates are already subject to laws that define the acceptable standards of behaviour. These laws are as rigorous as those that apply in other jurisdictions and levels of government, and the penalties attached to offences against them were significantly increased in 2009.

¹⁰² Data supplied by the Inspectorate.

- Regulation specific to electoral conduct should only apply where there is an additional need to protect voters' and candidates' free right to participate in the electoral process. In this respect, the existing electoral offences (summarised in 4.89) provide the necessary protections to all participants. In particular, section 54 unequivocally requires that "a person must not hinder or interfere with the free exercise or performance by any other person of any political right or duty that is relevant to an election"¹⁰³.
 - The broad trend in regulation of behaviour (both defamation and misleading or deceptive material) during elections in Australia has been towards contraction rather than expansion. This has been in recognition that greater protections and more severe penalties relating to poor candidate behaviour exist outside of the narrow remit of the electoral law and regulation, and these avenues are likely to best serve candidates who believe they have been misrepresented or subjected to defamation.
 - Candidates and others should continue to have the right to freely express their views and platforms within the constraints of the general law in the lead up to elections. Candidates aggrieved over their treatment at election time should make use of existing avenues for redress under the current civil and criminal regulatory frameworks that cover behavioural standards for all members of the public – for example, defamation, trespass, assault and property damage.
 - Candidates have the ability to take advantage of the increasing low-cost avenues for communicating directly with the electorate to respond to alleged misleading or deceptive information.
- 4.127 An expansion of education and information efforts on acceptable behaviours is warranted as part of an effort to reduce the volume of both breaches and complaints. To this end, the Panel believes that the VEC:
- in keeping with the requirement for all candidates to nominate in person, should use the nomination process to reinforce the need for candidates to understand and comply with the offences framework as defined by the *Local Government Act 1989* and, in particular, to avoid actions that are likely to lead to breaches of sections 55A and 55 (which accounted for 55 per cent of complaints at the 2012 elections)
 - encourage candidates, as part of the regime of VEC election briefings for candidates, to undertake training with the MAV or VLGA to strengthen their understanding of the offences framework and avoid behaviour that would place them at risk of prosecution.

COMPLAINTS MECHANISM

- 4.128 On the premise that a statutory role will be established for the VEC to conduct elections, it would be a natural extension for complaint handling, investigation and prosecution to be included in that statutory role. The VEC advises that it is already the enforcement agency for state elections and responsible for investigating and prosecuting offences. It has the experience, structures and processes in place to undertake the same function for local government elections. This approach was also suggested by Monash City Council.

"The complaint handling process is fragmented. Efforts should be made to centralise responsibility to one agency for oversight of as many aspects of election conduct as possible. The VEC appears to be the logical choice, with the functions of the Local Government Investigations and Compliance Inspectorate being given to the VEC for the purposes of the election period to provide for a more seamless approach to dealing with election related complaints."

Monash City Council submission

¹⁰³ *Local Government Act 1989*, section 54 (Vic).

- 4.129 Creating a centralised electoral enforcement role would not only enable a streamlining of existing arrangements, and so engender greater efficiency and cost effectiveness, it would reduce confusion among complainants and remove the perception of a lack of accountability arising from the redirection of complaints after they are received. Resourcing issues would be more efficiently managed and the normal business of the Inspectorate may be less heavily impacted by the elections.
- 4.130 The Inspectorate would be able to continue its ongoing role of investigating breaches of the *Local Government Act 1989* other than electoral offences.
- 4.131 Given the large volume of complaints made during the short timeframe of council elections, it is imperative that the VEC be sufficiently resourced to efficiently handle them, which may require bringing in additional staff at peak periods as necessary.
- 4.132 The proposed complaints handling system should have the capacity to:
- deal with complaints fully and within acceptable timelines
 - correct unlawful behaviour as early as possible
 - deliver procedural fairness
 - not deter people with genuine complaints by creating unnecessary obstacles or red tape.

Recommendations

The Panel recommends that:

35. The State Government include complaint handling, investigation and prosecution functions in establishing a statutory role for the VEC to conduct local government elections.
36. The VEC, as part of the in-person nomination process, reinforce to candidates their obligation to familiarise themselves and comply with the offences framework as defined by the *Local Government Act 1989* and, in particular, to avoid actions that are likely to lead to breaches of sections 55A and 55.
37. The VEC, as part of its regime of briefings for candidates, encourage all candidates to undertake briefing sessions with peak bodies, designed to assist them to avoid behaviour that may undermine the standard of candidate conduct at the election or place them at risk of prosecution for breaches of electoral offences.
38. The VEC, as part of its statutory role, establish an advisory line for complainants, providing information to assist them in determining whether to proceed with a formal complaint.



Chapter 5
After the elections

Introduction

- 5.1 This chapter deals with the operation of two functions that occur after elections – the enforcement of compulsory voting and disputing the validity of an election. Matters relating to candidate investigation and prosecution are dealt with in Chapter 4 (page102).
- 5.2 As previously discussed, voting is compulsory at federal and state levels, with those failing to meet their obligation to vote at election time being subject to a fine. In the case of council elections, voting is compulsory for only some, albeit a majority, of voters. For these voters, non-voting is subject to a penalty, unless an acceptable explanation is provided.
- 5.3 The Panel found that many people accept their liability for being penalised for not voting and pay their fine or provide an acceptable reason for not voting. Others, however, ignore the request to pay their fine or provide a reason for not voting, and have no action taken against them. The Panel believes that this situation is inconsistent and inequitable. It made two recommendations in addressing the issue.
- 5.4 The Panel also explored a series of questions pertaining to potential improvements to the resolution of election disputes. In particular, the Panel examined:
- the clarity of current provisions for disputing an election
 - whether all parties who may need to challenge the validity of an election result can, in fact, do so
 - whether current mechanisms are capable of providing adequate resolution when the validity of an election is challenged.
- 5.5 A response to strengthen current provisions is suggested.

Non-voting enforcement and the role of the prosecution officer

- 5.6 Where voting is compulsory, and failure to vote is subject to a fine, it is fundamental to the integrity of the electoral system that compliance measures are imposed fairly and consistently. This is currently not the case for local government elections in Victoria.
- 5.7 The CEO of a council is the prosecution officer under the *Local Government Act 1989*. In almost all cases¹⁰⁴, the CEO contracts out the issuing of infringement notices to the VEC. The VEC first issues an apparent failure to vote notice to non-voters. Where a sufficient explanation for not voting is given, no further action is taken. Where no adequate explanation is given, an infringement notice is sent and, if necessary, a penalty reminder notice. Figure 7, which appeared in the Panel's discussion paper¹⁰⁵, illustrates how the non-voting enforcement process works.
- 5.8 In state elections, a similar process is followed by the VEC where, if no explanation is given and the fine is not paid, the VEC proceeds to prosecution. Following the 2010 Victorian state election, the VEC lodged over 66,000 cases with the Infringements Court¹⁰⁶. In the case of council elections, however, if a reminder notice is sent and no explanation is given and the fine is unpaid, the VEC does not have prosecutorial power. Instead, it prepares a brief of evidence for the CEO of the council to prosecute through the Infringements Court. Prosecution of those who fail to pay the fine is not mandatory and people who have failed to vote and have ignored all notices are often not pursued.
- 5.9 At the 2012 elections, 505,582 apparent failure to vote notices were sent. Of these cases:
- 172,439 non-voters provided a valid reason for not voting
 - 333,143 infringement notices to pay a fine were issued by the VEC and, where required, a reminder notice was sent¹⁰⁷.
- 5.10 Of the 333,143 non-voters who received an infringement notice, 123,094 paid the fine and 210,049 failed to do so. While some of the 210,049 non-voters may have applied for an internal review and had the infringement withdrawn, and others may have applied for the matter to be referred to a court, the vast majority simply declined to pay the fine. In any event, with its contractual role completed, the VEC prepared 175,696 court files for potential prosecution by council CEOs through the Infringements Court¹⁰⁸.

104 74 out of 78 councils contracted this function to the VEC in 2012.

105 Local Government Electoral Review Panel, 2013, *Local Government Electoral Review Discussion Paper*, p. 69.

106 VEC, 2012, VEC Annual Report 2011–12, Melbourne, Appendix F.

107 Figures supplied by the VEC.

108 Figures supplied by the VEC.

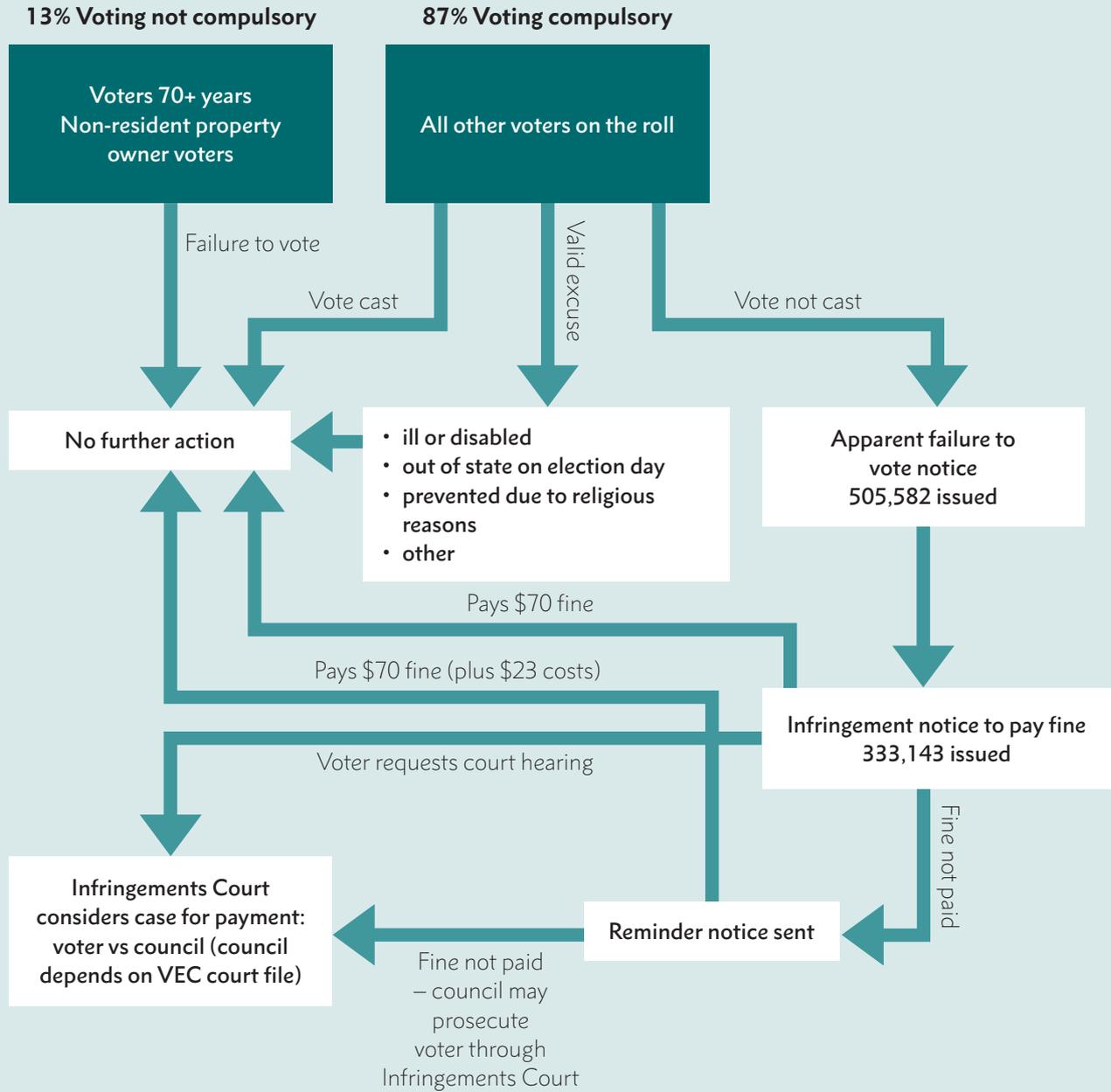


Figure 7: Non-voting enforcement for the 2012 elections (Source: figures provided by the VEC)

- 5.11 The evidence suggests that few of the non-voters who did not provide a valid excuse or pay the fine faced any adverse consequences.

"I think at the moment the system is split into two components: the VEC conducts part of the enforcement process and then the prosecutions are left to individual councils. However, my understanding is that councils, as a general rule, don't proceed past this point and so people who pay the fine early are unfairly treated in comparison with those who choose to ignore the fine."

Peter Brown, CEO, Horsham Rural City Council, Horsham public hearing

- 5.12 Information provided by CEOs in response to queries about non-voting enforcement substantiates this view. From the responses received¹⁰⁹ to an anonymous survey of CEOs, almost no councils chose to follow up failures to pay arising from the infringement notice process with court action, highlighting the high cost of court prosecutions. The following comments from CEOs surveyed by DTPLI are representative of the vast number of responses to the question of what action councils took following the completion of the VEC's work:

"Council did not undertake additional activity after the handover of infringement files from the VEC because of the resources required, and the view that to pursue the infringements in court would not be viable."

"Council did not undertake any additional activity after the completion of the VEC contract other than dealing with the occasional enquiry."

"We did not take any additional action after the VEC had completed their actions."

"No further additional activity was taken by council as it was cost prohibitive."

DTPLI survey of council CEOs

- 5.13 Only a handful of councils indicated that they lodged with the Infringements Court the VEC list of non-voters who had failed to pay their fine or offer an adequate explanation. Wodonga City Council was a rare example, with CEO Patience Harrington stating that "...Council received a list of persons who had failed to vote and had not provided a satisfactory explanation and had not paid the fine. Council lodged this list with the Infringements Court"¹¹⁰.

- 5.14 Such lack of consistency in the rigour of enforcement across the state can mean that the extent to which compulsory voting is enforced becomes a vagary of where a voter happens to live. In rare instances prosecutions follow, but in most the matter is considered too expensive to pursue and is allowed to lapse, as outlined in one council's submission.

"The enforcement process provided by the VEC as part of the election contract is relatively cost efficient. Once the enforcement process is handed back to the council it enters the costly phase of collection... The upfront costs that would be incurred to pursue this matter further are prohibitive and it is unlikely that the council would recover the necessary payment of fines to break even."

109 DTPLI, 2013, unpublished survey, "CEO Survey on the Local Government Electoral System".

110 *ibid.*

- 5.15 The Panel was advised by the Department of Justice that court action would cost councils \$50.10 per action (the lodgement fee per individual). If prosecution and collection were successful, councils would receive between \$122.10¹¹¹ and \$149¹¹² from the non-voter. Insufficient data means it is not possible to ascertain the actual financial risk of progressing prosecution for non-voting beyond the issuing of infringement notifications.
- 5.16 Although concerns were raised about the high upfront cost of prosecution, many councils received substantial amounts from infringements at the 2012 elections from non-voters pursued by the VEC. Ten councils reported receiving \$200,000 or more from infringement fines. Drawing on a sample of 32 CEOs who responded to the DTPLI CEO survey, councils recovered on average \$3.51 for every \$1 spent on the infringement notice process conducted through the VEC (collectively outlaying \$1,316,850 and recovering \$4,631,933)¹¹³.
- 5.17 The Panel believes that the attachment of penalties is not the central reason why people vote. The more important driver of participation is the civic duty to vote. The VEC's survey of voters following the 2012 elections showed that only 23 per cent of voters indicated that the threat of being fined influenced their decision to vote¹¹⁴. The fact that voters aged 70 and over (who were not obliged to vote) cast their vote in similar proportions to voters aged under 70 (who were liable to be fined for not voting) where voting was by postal ballot, points in the same direction.
- 5.18 Nonetheless, voting's symbolic function as a signal of civic duty is important and, to this end, the Panel has recommended that voting be compulsory for all enrolled constituents for future elections.
- 5.19 This universal nature of compulsory voting applying to the proposed franchise reinforces the need to make its enforcement consistent and equitable. Standards of non-voting enforcement should be at least as rigorous and consistent as those that apply to state elections.

111 This amount is made up of \$72 for the infringement and \$50.10 for the Infringements Court lodgement fee.

112 An additional \$27 is recovered for cost of the enforcement order, if such an order is required as part of the infringement prosecution process.

113 DTPLI, 2013, unpublished survey, "CEO Survey on the Local Government Electoral System".

114 VEC, 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. 60.

Considerations and conclusions

- 5.20 The Panel believes that, in order to ensure consistent and equitable application of enforcement, the role of prosecution officer should be centralised and vested in the VEC. In keeping with the recommendations on election services provision in Chapter 4 (page 99), the VEC's role in non-voting enforcement would be formalised and reflected in the legislation. This would allow the VEC to undertake all aspects of the responsibility for prosecuting those who fail to vote at each stage. This approach also capitalises on the VEC's systems for non-voting enforcement, refined through undertaking this function for Victorian state elections.
- 5.21 Having a single entity undertake this role would allow the rigour of the non-voting enforcement regime to be made uniform across the state and align with the standards of enforcement for Victorian state elections¹¹⁵.
- 5.22 Effective non-voting enforcement must be accompanied by a communications program that clearly explains to the electorate their obligations and consequences of not voting. It is the Panel's view that the responsibility for such a program should primarily rest with the State Government and could be undertaken by the VEC, given the scale and reach required. The Panel also believes that it would be reasonable for the Victorian Government to consider sourcing any revenue collected in excess of costs arising from prosecuting non-voting infringements to fund the voter communications program.

Recommendations

The Panel recommends that:

39. The role of the VEC as prosecutions authority be formalised as part of its statutory role and that the VEC assume this responsibility for all aspects of the prosecution process, including prosecution for failure to pay fines for failing to vote.
40. The VEC adopt a policy for prosecuting failures to vote for local government elections consistent with the application of this function for Victorian state elections under section 173 of the *Victorian Electoral Act 2002*.

¹¹⁵ The VEC pursues all non-voting enforcement through the Infringements Court at state elections. (VEC, 2011, *VEC Report to Parliament on the 2010 Victorian State Election*, p. 89.)

Election validity

- 5.23 When a voter or candidate believes that an action has occurred that may render the election result invalid, an opportunity exists to challenge the result through a MET established through the Magistrates' Court.
- 5.24 After the 2012 elections, five applications were made to the MET, a decrease from 12 applications made after the 2008 elections¹¹⁶ and 10 after the 2005 elections (where 54 out of 79 councils held elections)¹¹⁷.
- 5.25 The Panel examined a number of policy questions on how the resolution of election disputes may be improved. Specifically, it examined:
- whether the *Local Government Act 1989* should be clearer on the grounds on which an election result can be overturned
 - who should be able to challenge an election through a MET
 - whether a MET decision should be able to be appealed
 - related to this, whether the jurisdiction of a MET should be raised to avoid appeals.

The grounds on which an election result can be overturned

- 5.26 The *Local Government Act 1989* is silent on what grounds a MET can declare an election void. The common law is therefore applied, which consists of two criteria:
- There was no real election at all – that is, the electorate did not have a fair and free opportunity to elect the candidate preferred by the majority.
 - The election was not conducted under the requirement of the relevant legislation.
- 5.27 In practice, this sets the bar high for voiding an election. It is not sufficient for it to be demonstrated that a breach of the *Local Government Act 1989* has occurred. Such a breach will not, in itself, void an election or require the exercise of any other power of the MET.
- 5.28 Upon examination, the Panel determined this to be appropriate. It concluded that the common law tests of election validity continue to provide the best guide to resolving disputed council elections. There may be a range of circumstances that potentially impact on an election outcome, which would require consideration case by case. It would not be appropriate to otherwise unreasonably limit what can be considered by a MET by attempting to codify all matters it can hear.

¹¹⁶ VEC, 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. 56.

¹¹⁷ VEC, 2006, *Report for the Victorian local government elections 2005*, Melbourne, p. 55.

Who should be able to challenge an election through a MET?

- 5.29 Under current arrangements, a MET can be triggered by a complaint from a candidate or any group of at least 10 voters.
- 5.30 The Panel considered it to be an anomaly that the VEC or its returning officer is not able, within current arrangements, to make an application to the MET to initiate an inquiry. This is more anomalous when it is recognised that the VEC is frequently named as a respondent in applications by others to a MET.
- 5.31 Recommendation 13 in the *VEC's Report on Conduct of the 2012 Local Government Elections* proposed that consideration be given to allow the returning officer (or the election service provider) to be able to make an application to the MET for an inquiry if necessary¹¹⁸. The Panel supports this recommendation. A number of circumstances can be conceived in which the VEC could discover an irregularity in some aspect of the election; for example, a problem with a count.
- 5.32 This reform would bring arrangements for local government elections into line with those for Victorian state elections, in that the VEC has power to make an application in its own right to the Court of Disputed Returns at a state election.

APPEALING A MET DECISION

- 5.33 The *Local Government Act 1989* currently allows a MET decision on the validity of a council election to be appealed to and reviewed by VCAT (exercised by a presidential member of the tribunal)¹¹⁹.
- 5.34 This arrangement has no equivalent at state level. At state elections, a decision of the Court of Disputed Returns (which is the Supreme Court) is final and cannot be appealed. The MAV supported removal of the appeals process and an elevation of the MET's jurisdiction to the Supreme Court.

“Two alternative solutions have been put forward by the MAV membership. The first is to provide resources to allow timely decisions by the Municipal Electoral Tribunal, and to provide that the MET decision is final and not reviewable by VCAT (as is the case of state elections). The second... is to have a Justice of the Supreme Court constitute the MET.

“The Municipal Electoral Tribunal should be constituted by a Justice of the Supreme Court, rather than a Magistrate to reflect the importance of its review functions. A Supreme Court Justice is a more suitably qualified judicial officer to fulfil these functions and this would be more consistent with the approach taken at state and federal elections.”

Municipal Association of Victoria submission

118 VEC, 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne, p. 58.

119 *Local Government Act 1989*, Section 48 (Vic).

Considerations and conclusions

- 5.35 The Panel recognised that the Court of Disputed Returns (the Supreme Court) is a higher jurisdiction than the Municipal Electoral Tribunal (the Magistrates' Court) and there may be merit in having council election reviews dealt with at that level for consistency reasons. However, there is concern that the Supreme Court may not be able to accommodate such hearings, which would be all clustered around election dates and need to be resolved with a degree of expedition. The nature of court listings such as this for the Supreme Court could mean delays of many months before a future listing could be accommodated.
- 5.36 MET hearings for the 2012 elections were all commenced by early 2013, with four of the five matters completed by mid-2013. While the complexity of some matters necessarily means that an application cannot be determined as quickly as would be desired, the Panel was not convinced referral of election disputes to the Supreme Court would lead to expedited decisions, but rather risks protracted outcomes.
- 5.37 With regard to appeals, it is noted that little use has been made of the existing appeal mechanism to VCAT in recent times, with the last appeal occurring after the 2005 general elections. If appeals at future elections become frequent, take an unreasonably long time to resolve and unfairly compromise the standing of the incoming council, there may be reason for the State Government to reconsider alternatives to the current appeal arrangements at that time.

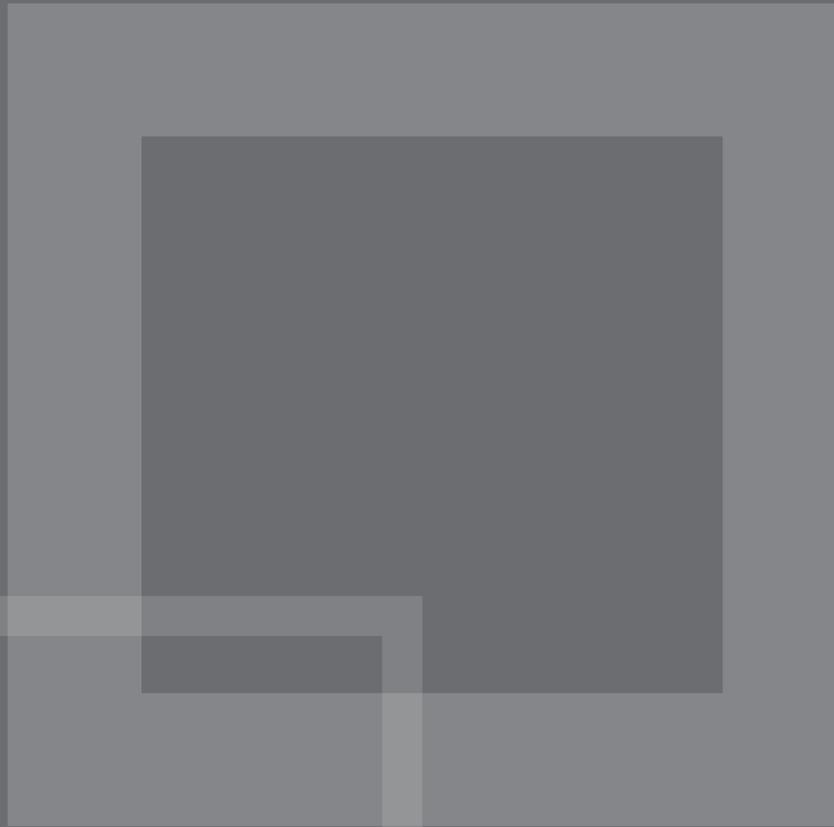
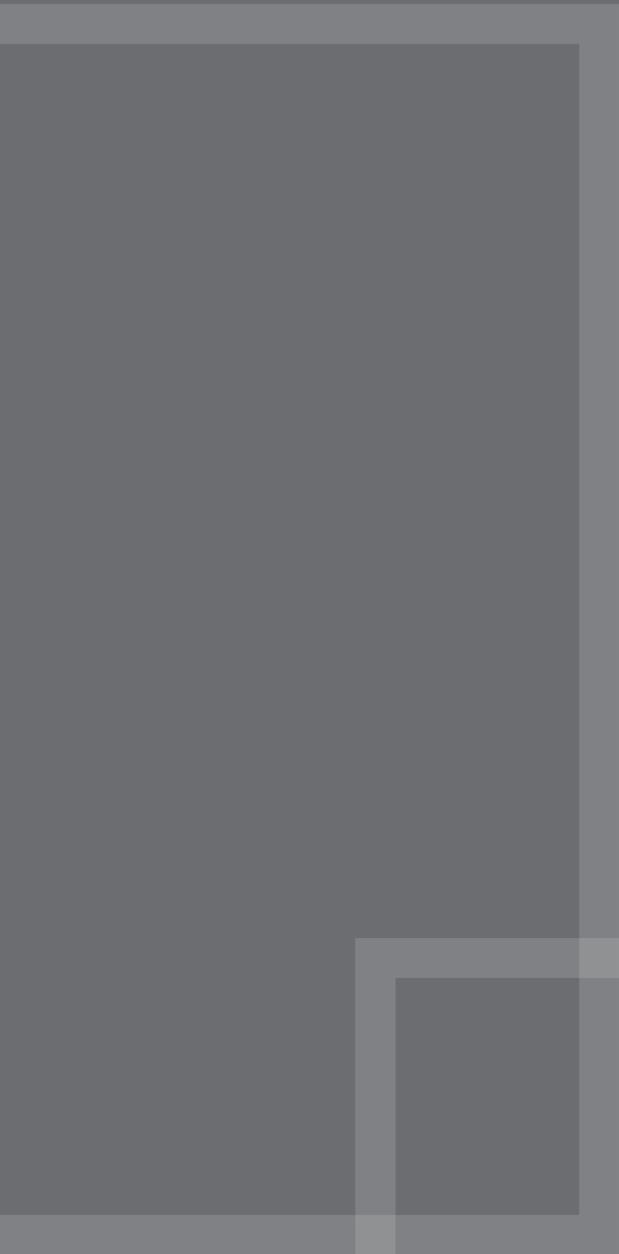
Recommendations

The Panel recommends that:

41. The State Government introduce a provision into the *Local Government Act 1989* to empower the returning officer (or the election service provider) to make an application to the MET to initiate an inquiry into the validity of a council election, if necessary.



Appendices



Appendix 1

Speakers at public hearings of the Local Government Electoral Review Panel

Public hearings were held in 13 locations across Victoria. Speakers are listed in order of appearance.

Melbourne CBD

Thursday 3 October 2013

Rt Hon. R Doyle
 Mr W Gately AM appeared with Ms L Williams
 Cr B McArthur appeared with Mr R Spence
 and Ms A Lyon
 Mr D Wolf appeared with Mr R Millard
 Cr S Dunn appeared with Ms M McPherson
 Mr D Hovenden
 Mr J Watson
 Cr J Fristacky
 Cr A Stevens
 Cr A Altair
 Cr J Wegman

Geelong

Monday 7 October 2013

Mr T O'Connor
 Mr J Burgess
 Cr T Ansett
 Cr M Heagney
 Mr S Wickham
 Ms J Brooks
 Cr B Harwood
 Cr A Richards
 Cr J Farrell
 Mr C Wallace
 Mr P Fox
 Mr G McDonald

Horsham

Tuesday 8 October 2013

Mr P Brown
 Cr P Clarke
 Mr G Baker

Ballarat

Wednesday 9 October 2013

Mr A Schinck appeared with Mrs A De Jong
 and Mr R Leith
 Ms J Verlin AM
 Mr D Bateman
 Cr D Clark

Bendigo

Thursday 10 October 2013

Ms J Donovan
 Cr J Williams
 Ms R Manning
 Cr L Ruffell
 Mr P Hanscha
 Mr D McClure

Sunshine

Friday 11 October 2013

Mr B Jaboor
 Ms K McAliney
 Cr G Gupta
 Ms J Nathan
 Mr M Kriechbaum

Melbourne CBD**Monday 14 October**

Cr J Hyams
Cr J Mulholland
Cr J Cusack
Cr K Orpen
Cr J Watts
Prof. B Costar
Mr J Mills
Mr A Van Der Craats
Mr J Caputo appeared with Mr M. Assan
Mr G Goode
Ms M Griffin
Mr R Davis
Ms C Bird
Mr A Bonifazio
Mr M Cachia
Cr T Laurence
Cr O Walsh
Mr L Allan
Mr G Page
Dr S Rennie
Mr A Gunter
Mrs J Jacomb

Wantirna South**Tuesday 15 October 2013**

Mr B Harris
Cr A Munroe
Mr P Slattery
Mr P Tully
Mr F Sullivan
Mr P Cole
Mr G Reynolds
Ms C Richards
Mr P Patterson
Cr G Lake
Mr G Page
Ms M McKay

South Morang**Wednesday 16 October 2013**

Cr R Griffin
Cr R Kirkham
Ms L Shnookal
Mr B Mawhinney
Ms B Moss

Mildura**Thursday 17 October 2013**

Mr B Grogan
Mr M Henderson
Mr R Sexton
Ms C Callas
Cr J Harris
Ms P Shugg
Mr T Williams
Mr L O'Connor
Cr K Zanker

Shepparton**Thursday 17 October 2013**

Mr B Hayward
Ms W Clarke
Ms S Still
Cr R Weatherald
Mr J Gray
Mr G Hamilton appeared with Mr K Turnour
Cr C Furlanetto
Cr M Polan
Cr W Buck

Wodonga**Friday 18 October 2013**

Cr M Byatt
Mr K Scully
Mr K Klemm
Ms T Atkins
Mr G Nevin

Traralgon**Monday 21 October 2013**

Mr F Hirst
Mr IB McDonald
Mrs L Beech

Appendix 2

Names of people and organisations that made public submissions to the review¹²⁰

Mr Lyle Allan	Mr Victor Eddy
Ms Tammy Atkins	Electoral Regulation Research Network
Ballarat City Council	Ethnic Communities' Council of Victoria
Banyule City Council	Cr Jan Farrell
Mrs Jan Bauer and Mr Fred Bauer	Mr Ian Farrow
Baw Baw Shire Council	Mr Richard Fisher
Baw Baw Shire Ratepayers' and Citizens' Association	Mr Clive Fox
Bayside City Council	Cr Hugh Fraser
Mr Steve Beardon	Mrs Colleen Furlanetto
Mr Harvey Benton	Mr Leo Gamble
Cr Janet Blake	Mr Aldo Gerzino
Boroondara City Council	Mr John Glazebrook
The Hon. Ron Bowden J.P. and Mrs Lynne Bowden	Mr Kelvin Goodall
Brimbank City Council	Mrs Lynley Graham
Mr Lewis Brock	Mr John Gray
Mr George Brouwer, Victorian Ombudsman	Greater Dandenong City Council
Mr Robin Bryant	Greater Frankston Business Chamber
Mr Noel Buck	Greater Shepparton Better Local Government Association Inc.
Cr Mark Byatt	Greater Shepparton City Council
Cardinia Residents' and Ratepayers' Association	Mr Ronald Hards
Carlton Residents Association	Mr Bernard Harris
Central Goldfields Shire Council	Mr Stephen Hart
Coalition of Resident and Business Associations – Melbourne	Mr Bernie Hoefler
Committee for Geelong	Horsham Rural City Council
Committee for Moe	Indigo Shire Council
Mr Louis Cook	Mr Tom Ingpen
Corangamite Shire Council	Mr Adrian Jackson
Ms Janet Cropley	Mr Royden James
Democratic Audit of Australia	Keilor Residents' and Ratepayers' Association Inc.
Docklands Community Association	Dr Joan Kimm
Mrs Anna Dominguez Smith	Kingston City Council
Mrs Joan Donovan	Cr Matthew Kirwan
Dr Brian and Mrs Nina Earl	Knox City Council
East Gippsland Shire Council	Knox Ratepayers' Association
	Mr Robert Krelle

¹²⁰ A number of people who made submissions to the review requested that their name not be made public.

Cr Geoff Lake
Mr Roger Lambert
Mr Warwick Leeson OAM
Mr Joe Lenzo
Mr David Madill
Mr Leonard Mainard
Manningham City Council
Cr Sue Marstaeller
Ms Pam Mcleod
Ms Janina McMahan
Cr Jack Medcraft
Melton City Council
Mr John Mills
Mitchell Shire Council
Monash City Council
Monash Ratepayers Inc.
Moonee Valley City Council
Moorabool Shire Council
Mornington Peninsula Ratepayers' and Residents'
Association Inc.
Mornington Peninsula Shire Council
Ms Beverley Moss
Mount Alexander Shire Council
Cr Jenny Mulholland
Municipal Association of Victoria
Ms Angela Munro
Cr Andrew Munroe
Mr Anthony Murphy
Murrindindi Shire Council
Mr Gary Nevin
Mrs Peta Nicholls
North and West Melbourne Association Inc.
Michael O'Callaghan (Snr)
Planning Backlash Inc.
Port Phillip City Council
Proportional Representation Society of Australia
(Victoria–Tasmania)

Pyrenees Shire Council
Ms Leanne Raditsas
Ratepayers Victoria Inc.
Residents Ratepayers and Friends of Berwick
Village Inc.
Ms Christine Richards
Mr Brian Robinson
Mr Gerrit Schorel-Hlvaka
Scytl Australia Pty Ltd
Mr Trevor Shewan
Ms Pam Shugg
Stonnington City Council
Strathbogie Shire Council
Surf Coast Shire Council
Swan Hill Rural City Council
Mrs Emily Tang
Mr Stephen Tuck
Mr Peter Tully
Mr Lee Turner
Victorian Electoral Commission
Victorian Immigrant and Refugee Women's
Coalition
Victorian Local Governance Association
Dr Jackie Watts
Mr Robin Weatherald
Cr Rosemary West
West of Elgar Residents Association
Whitehorse City Council
Mr Stephen Wickham
Cr James Williams
Mr Tim Williams
Mr Alan Witchell
Wyndham City Council
Yarra City Council
Cr David Young
Mr Karel Zegers

Appendix 3

History of changes to the voter franchise for Victorian local government elections

1958	<p>Voters had to be:</p> <ul style="list-style-type: none"> • at least 21 years old <i>and</i> • liable to be rated for any property in a ward either as an owner or occupier of a property (including certain non-rateable property), <i>and</i> • a natural born or naturalised subject of Her Majesty. <p>Eligible voters in boroughs and shires had up to three votes per ward, depending on their property's value.</p> <p>Up to 3 owners or occupiers (but not both) could be enrolled for a property. A corporation liable to pay rates could appoint one representative.</p>
1966	Franchise expanded : the spouse of an eligible voter liable to be rated could also be enrolled on application.
1969	Multiple voting entitlements for a single property abolished. Voters could still vote in more than one ward across a municipality.
1974	Franchise expanded : the right to enrol extended to non-Australian citizens.
1983	<p>Franchise expanded:</p> <ul style="list-style-type: none"> • voters on the state roll aged 18 years or over automatically added to the voters' roll (voting age changed from 21 years to 18 years).¹²¹ Number of voters increased by 30 per cent.¹²² • residents not on the state roll but living at a property in the municipality for one month, in Victoria for three months and in Australia for six months, could apply to be enrolled. <p>Franchise also contracted: the number of owners or occupiers per rateable property (other than on the state roll) who could be enrolled reduced to one.</p>
1989	Franchise contracted : one non-resident owner or one non-resident occupier (i.e. commercial tenant) per rateable property was automatically enrolled.
1993	Franchise expanded : all owners or occupiers of rateable property not otherwise automatically enrolled could apply for enrolment.
1995	Removal of compulsory voting for people aged 70 years and over.
1997	Two non-resident owners or non-resident occupiers per rateable property were automatically enrolled (increased from one).
2004	<p>Franchise contracted:</p> <ul style="list-style-type: none"> • eligible voters could only vote once in a municipality • franchise restricted to: <ul style="list-style-type: none"> - residents on the state roll <i>and</i> - owners or occupiers who pay the council rates (because the landlord has transferred responsibility for paying rates to them). This change disenfranchised some residents and commercial tenants and in particular resident non-Australian citizens.

¹²¹ Franchise extended on recommendation of the 1979 Board of Review into the role and administration of local government (Board of Review Final Report, November 1979, *Local Government in Victoria: Role, Structure and Administration* p. 196).

¹²² Kevin O'Toole & Neil Burdess 2003, 'Municipal Wards in Victoria 1982-1999', School of Social and International Studies, Deakin University, p. 3.

Appendix 4

Proposed revised nomination form

<h3 style="margin: 0;">Nomination Form</h3> <p style="margin: 0;">Candidate to submit this form in person to Returning Officer before close of nominations.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">COUNCIL</td> <td style="width: 50%;"></td> </tr> <tr> <td style="padding: 5px;">WARD <small>(if applicable)</small></td> <td></td> </tr> </table>	COUNCIL		WARD <small>(if applicable)</small>	
COUNCIL					
WARD <small>(if applicable)</small>					
<p>CANDIDATE DETAILS (please use BLOCK LETTERS)</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">OFFICE USE ONLY Date and Time Lodged</td> <td style="padding: 5px;">...../...../..... :.....:.....am/pm</td> </tr> </table>	OFFICE USE ONLY Date and Time Lodged/...../..... :.....:.....am/pm		
OFFICE USE ONLY Date and Time Lodged/...../..... :.....:.....am/pm				
<p>Silent Elector? YES/NO</p>					
Title					
Date of birth for roll checking purposes					
Given Names					
Surname					
Address on Voters Roll/ Entitlement Address					
	V I C Postcode				
Residential Address (if different from above)					
	V I C Postcode				
Mailing Address (if different from above)					
	V I C Postcode				
	BUSINESS HOURS AFTER HOURS				
Landline	(0) : (0) :				
Fax	(0) : (0) :				
Mobile Phone					
Email					
<p>* Please asterisk which of the above phone, fax or email details you can be contacted on at short notice during business and non-business hours.</p>					
<p>Form in which candidate's name is to appear on the ballot paper (clearly indicate capitalisation & accents).</p>					
Surname					
Other Name/s					
<p>The following details will be made available to the public.</p>					
Contact Person <small>(media or public enquiries)</small>					
	BUSINESS HOURS AFTER HOURS				
Landline	(0) : (0) :				
Mobile Phone					
Email					
<p>Candidate's Signature..... Date/...../.....</p>					
<p>continued over page</p>					

DECLARATION

I, the candidate on this form, declare that I:

- apply to be a candidate for the office of Councillor for the Council and ward (if applicable) shown on the front of this form for this election. I have not nominated for any other position or Council election occurring on that day;
- am enrolled on the voters' roll for the council I am contesting in;
- have provided the signatures of six electors on the electoral roll for the municipality that I am applying to contest endorsing my nomination (at **Attachment 1**);
- am not a Member of an Australian Parliament, a ministerial officer, a parliamentary adviser or an electorate officer of a Member of an Australian Parliament;
- am not an undischarged bankrupt or the owner of a property subject to control under the law relating to bankruptcy;
- am not banned from managing a corporation;
- am not under conviction for a criminal offence that has a maximum penalty of five years' imprisonment or more and have not been convicted of such an offence in the past 10 years;
- am not a person of unsound mind;
- am not under convictions for electoral breaches;
- have not been found guilty of failures of duty as a Councillor which would disqualify me from contesting the election;
- am not disqualified to be a candidate under any other provision of the *Local Government Act 1989*;
- am aware that it is an offence under the *Local Government Act 1989* for a person who is not qualified to be a candidate and is not capable of being a Councillor to submit a nomination form;
- will only use the voters' roll data provided to me in accordance with the *Local Government Act 1989* and only for the purpose of conducting the election campaign. Within 30 days of the declaration of the result of the election, I will return the voters' roll and any copies to the VEC. I am aware that it is an offence under the Act not comply with these requirements;
- am aware that this form will be made available on request in the Election Office;
- have informed the person named as contact person, that the contact details, as provided on this form, will be published on the VEC's website and released to the public;
- understand that all candidates are obliged to follow the law and be familiar with the contents of the *Local Government Act 1989* and Regulations as distilled in the Candidate Handbook; and
- understand that all candidates are required to complete a candidate information profile, however complete, (in format prescribed at **Attachment 2**) for distribution to electors in voter ballot packs.

To be signed in the presence of the returning officer, after ticking each of the boxes above.

Candidate's Signature Date / /

Candidate's Name (Please print)

Returning Officer's Signature

Unlawful nomination – Penalty

If a person who is not qualified to be a candidate or is not capable of becoming a Councillor submits a nomination affirming their eligibility to stand, the person is guilty of an offence. If found guilty the person is liable to a term of imprisonment not exceeding two years or to a fine not exceeding 240 penalty units (currently \$34,560).

False Declaration – Penalty

A person who is required to make a written declaration by or under this Act or the regulations as a candidate, must not knowingly make a declaration which is false. If found guilty the candidate is liable to a fine not exceeding 240 penalty units (currently \$34,560).

Penalty is 120 penalty units (currently \$17,280).

Failure to return Voters' Roll – Penalty

A candidate who has been supplied a copy of the voters' roll fails to return a voters' roll to the VEC as required is guilty of an offence (penalty to be determined).

Nomination fee: \$250 received	cash / bank cheque (circle form of payment)
Candidate proof of identity provided:	Yes / No (circle as appropriate)
Roll CD provided to candidate:	Yes / No (circle as appropriate)

ATTACHMENT 1

I endorse the nomination of
 (Candidate's name on the front of this form)

for the office of Councillor for the Council and ward (if applicable) shown on the front of this form for this election.

Nominee's Full Name and Signature

.....
 Date ____ / ____ / ____ (entitlement address on the voters' roll)

Nominee's Full Name and Signature

.....
 Date ____ / ____ / ____ (entitlement address on the voters' roll)

Nominee's Full Name and Signature

.....
 Date ____ / ____ / ____ (entitlement address on the voters' roll)

Nominee's Full Name and Signature

.....
 Date ____ / ____ / ____ (entitlement address on the voters' roll)

Nominee's Full Name and Signature

.....
 Date ____ / ____ / ____ (entitlement address on the voters' roll)

Nominee's Full Name and Signature

.....
 Date ____ / ____ / ____ (entitlement address on the voters' roll)

CANDIDATE INFORMATION TEMPLATE

I live in the municipality that is being contested	Yes / No / No response (please circle one) If no, my entitlement to be on the voters' roll for the municipality is: .
My work and professional experience includes	(Please limit to five examples)
My voluntary experience, council and community leadership experience and/or relevant committee and board memberships include	(Please limit to five examples)
I have attended training and/or information session(s) to prepare me to discharge the responsibilities of a councillor	Yes / No / No response (please circle one) Name of training / information session: .
I am a member of a registered political party	Yes / No / No response (please circle one) If yes, name of party:
I am endorsed by a registered political party for this election	Yes / No / No response (please circle one) If yes, name of party:
Candidate statement (please limit to 200 words)	

Appendix 5

Extract from the VEC's *Candidate Handbook: Council elections 2012 – postal*

18. COMPLAINTS

Responding to Complaints

Before lodging a complaint with the Returning Officer, candidates are encouraged to carefully consider the following information. Many candidates lose considerable time during an election campaign by becoming involved in the complaints process when there has been no breach of the law.

Elections in Australia allow for robust debate and expression of opinion. Candidates are able to rebut the opinions expressed by others in the public domain during the campaign as long as they do not breach the law.

At the time of voting, electors can then consider all material before them and who authorised it when considering for whom to vote.

It is important that election participants understand the different responsibilities that apply in regard to the conduct of local government elections in Victoria.

The Local Government Investigations and Compliance Inspectorate is responsible for investigating and prosecuting alleged breaches of the LGA; for example, authorisation of election material (s. 55), misleading electoral material (s. 55A) and false or defamatory statements (s. 57). Further examples are included in Chapter 16, 'Election Offences'.

The Returning Officer is responsible for the administration of the election and has some specific responsibilities under the Act. The application of legislative timelines and the production of ballot materials are examples of activities that are the responsibility of the Returning Officer.

The Electoral Commissioner is responsible for appointing the Returning Officer and for preparing the voters roll. The Electoral Commissioner supports the Returning Officer by providing infrastructure, resources and advice relating to the conduct of the election.

The Council is responsible for the enforcement of Council local laws and Codes of Conduct where they apply. For example, placement of campaign posters/signs and use of Council resources for campaigning purposes.

All complaints should be addressed in the first instance to the Returning Officer and must be in writing. Complainants in most cases are alleging that there has been a breach of the law and as such there must be an evidentiary trail.

If the complaint relates to:

The administration of the election the Electoral Commissioner will respond on behalf of the Returning Officer.

A possible breach of the LGA the Electoral Commissioner will refer the complaint to the Inspectorate for their consideration and response. The Electoral Commissioner will also advise the complainant in writing that the complaint has been forwarded to the Inspectorate and that any further communication regarding the complaint should be directed to the Inspectorate.

Continued over page

Contact details are as follows:

Local Government Investigations and Compliance Inspectorate

GPO Box 2392

Melbourne 3001

Tel (03) 9665 9555

A possible breach of council local laws or council codes of conduct the Electoral Commissioner will refer the matter to the CEO for its consideration and response. The Electoral Commissioner will also advise the complainant in writing that the complaint has been forwarded to the CEO and that any further communication regarding the complaint should be directed to them.

A criminal matter the Electoral Commissioner will advise the complainant to refer the matter directly to the police. Examples include assault and vandalism. In all cases, the Electoral Commissioner will write to the person who is the subject of the complaint advising them that a complaint has been received and the nature of the complaint. This will allow the person who is the subject of the complaint to rectify the matter if necessary. The Electoral Commissioner may divulge who has made the complaint in some circumstances.

Misleading or deceptive matter (section 55A)

A high proportion of the complaints received by the VEC during council elections allege the distribution of misleading electoral material. Section 55A of the LGA provides that electoral material must not mislead or deceive voters in relation to the casting of their vote. The Courts have interpreted this phrase narrowly. Courts are particularly concerned with material that is likely to mislead or deceive voters in relation to how they mark their ballot paper.

False or defamatory statements (section 57)

The VEC also receives a number of complaints during council elections that allege a breach of section 57 of the LGA.

Section 57 states that a person must not make or publish any false or defamatory statement in relation to the personal character or conduct of a candidate. ...

Complaints alleging a breach of section 57 will be referred to the Inspectorate.

Chapter 16 covers a number of electoral offences.

Note: This is not an exhaustive list. Candidates must seek their own legal advice where necessary.

Appendix 6

Acknowledgements

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VICTORIAN LOCAL GOVERNANCE ASSOCIATION

Cr Samantha Dunn, Treasurer

Toby Archer, Director of Policy

MUNICIPAL ASSOCIATION OF VICTORIA

MELBOURNE CITY COUNCIL

Keith Williamson, Manager Governance Services



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