

Local Government Electoral Review

DISCUSSION PAPER

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Foreword

Our commitment to democratic government requires ongoing efforts to ensure that the electoral systems under which we choose our local government representatives are fair, transparent and promote effective participation.

These values are fundamental and electoral systems that embody them promote the election of representatives that will make decisions best serving the interests of the Victorian community.

Our local government system has evolved over decades, essentially through a series of progressive, incremental reforms. This review of the local government electoral system presents a fresh opportunity to look at the system of local democracy in its entirety.

This discussion paper is designed to begin a genuine dialogue about how local government democracy can best work. The issues and challenges outlined in it are a starting point for a wide-ranging discussion with the community, not a final analysis of the issues that require attention. The panel is keen to hear from a broad cross-section of the community on how the system may be improved.

The dual function of local government as both a service provider and a vehicle of local democratic governance reinforces the importance of having an electoral system that is fair and transparent, and which serves to promote a robust contest of ideas between candidates and high levels of participation by the electorate.

Local government plays a critical role in the delivery of services within our federal system of government. Its services span infrastructure, transport, health, planning and building control, business and economic development, waste and environmental management, and human and community services including aged and disability services. Its business is increasingly complex as the needs and wants of community expand and as interdependence with other levels of government grows.

The way the community exercises its choice over who will represent them and make decisions on these key civic functions has never been more important.

We will be seeking the views of Victorians on elements of the electoral system, with a view to proposing a range of improvements that will support the reputation of the local government sector and community confidence in the integrity of local democratic governance. I look forward to your involvement in that process.

Petro Georgiou AO

Chair

Local Government Electoral Review Panel

Terms of Reference

The Terms of Reference for the review are as follows.

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.

Local Government Electoral Review Panel

The three members of the Local Government Electoral Review Panel have experience in electoral systems and local government.



Petro Georgiou AO (Chair)

Petro Georgiou AO served as Federal Member for Kooyong from 1994 to 2010. During that time he held a number of positions on joint standing committees including Chair on the Electoral Matters and Science and Innovation committees.

In 2011, Mr Georgiou was appointed Vice-Chancellor's Professorial Fellow at The University of Melbourne, holding a joint appointment with Monash University.

Mr Georgiou is also a board member of the State Library of Victoria and the Australia and New Zealand School of Government.



Sally Davis

Sally Davis was manager of the Australian Electoral Commission's Electoral Education Centre from 2005 to 2009. Ms Davis was responsible for ensuring the delivery of the AEC's public awareness program to around 20,000 visitors each year. Ms Davis was also a communications project manager in the federal election support unit in 2009.

Ms Davis was elected councillor at the City of Stonnington between 1999 and 2004 (serving as mayor in 2002-2003). Ms Davis was also a senior lecturer in the Bachelor of Communications (Public Relations) at RMIT University.



Anne Murphy OAM

Anne Murphy OAM was a commissioner at the Whittlesea and Stonnington City councils during the local government amalgamations in the mid 1990s. Prior to that, she was a councillor and mayor at the City of Preston between 1987 and 1994.

Ms Murphy currently serves on a number of bodies including MAVIC Professional Indemnity and Fidelity Insurance (committee member) and KYM Employment Services (vice-president) and has previously held a range of directorships. Ms Murphy was formerly the president of the Municipal Association of Victoria.

Structure of discussion paper

This review will bring together ideas arising from research, feedback from the public, academia, institutions and the sector to propose a range of reforms for consideration by the Victorian Government. It will also incorporate findings from investigations on the 2012 elections undertaken by the Victorian Electoral Commission (VEC) and the Local Government Investigations and Compliance Inspectorate. It will revisit the underpinnings of our electoral structure and test these against the standards expected of elections in a modern democracy. The discussion paper provides a first step in this examination and a wide-ranging community discussion.

This discussion paper is structured in the order of what happens when a local government election is held. Hence we start with the creation of

the electoral roll and work our way through the process for candidacy nomination, the caretaker period and the election. This will cover terms of reference 1–3. Term of reference 4 deals with issues of electoral representation. The City of Melbourne is governed under its own legislation and has particular characteristics and requirements that warrant separate attention. Issues within each chapter and section will cross cut different aspects of the terms of reference and these are identified in the text.

Figure 1 shows the structure of the discussion paper.

Terms of Reference 1-3 Electoral process Participation Integrity					Terms of Reference 4 Electoral representation
Voters	Candidates	Caretaker period	Elections	After the elections	Electoral representation
Voters' roll Voter eligibility	Nomination process Candidacy requirements and disqualifications Candidate information Donations	Council decision making Publications	Polling method Complaints handling Election services provision	Candidate investigation and prosecution Non-voting enforcement Election validity	Representation Conduct of electoral representation reviews
City of Melbourne					City of Melbourne

Figure 1: Structure of discussion paper.

Background

The electoral system over time

The system of wards and elections has been a feature of Victorian local government since the initial establishment of councils in the mid-1800s.

Between 1900 and 1989, council electoral structures changed little, with councils retaining long-standing structures of being unsubdivided or subdivided into wards (or what were called 'ridings' in rural areas), each consisting of three councillors and with one of those councillor positions subject to an election each year. Unsubdivided municipalities are those in which councillors are elected from and represent the whole municipality. The Minister for Local Government could recommend to the Governor in Council a change to a council's electoral structure, either through an 'own motion' or on receipt of a request from the then Local Government Commission, a council or at least one-tenth of voters in the area to which the request related.

Following the council amalgamations in the mid 1990s that reduced the number of Victorian councils from 210 to 78 (now 79), a major task of the commissioners appointed to each council was to set new electoral structures for the first general elections and the return to democratically elected councillors.

By 2003, over half of all councils had selected single-member wards as their preferred electoral structure, predominantly in metropolitan areas. Just under one fifth had adopted a mixture of single and multi-member wards. These new structures, combined with the reduction in the permitted number of councillors and fewer councils, meant that the representation ratio of councillors per head of population increased fourfold since before the council amalgamations.

Amendments to the Local Government Act in late 2003 brought about several significant changes to the electoral system. All councils, including unsubdivided municipalities, were to be subject to electoral representation reviews at least once every two council terms.¹ The responsibility for the conduct of electoral representation reviews shifted from councils to an independent electoral commission.

Snapshot: prior to the 1990s

Prior to the 1990s the local government electoral landscape in Victoria looked quite different to today's. The features of the local government electoral system at the time are shown in Table 1.

Electoral representation	Conduct of elections and reviews
210 councils	Councils ran their own elections annually.
750 wards	Polling method was by attendance voting.
2200 councillors	Investigations were undertaken by the Office of Local Government.
Councils were either unsubdivided or consisted of three councillor wards.	Electoral reviews were undertaken by councils.
	Councillor-voter ratios for each ward if subdivided should not have varied by more than 5% from the councillor-voter ratio across the municipality.

Table 1: Features of the local government electoral system prior to the 1990s.

¹ The exception to this was the City of Melbourne – its electoral structure remained separately prescribed under the *City of Melbourne Act 2001*.

VICTORIAN ELECTORAL BOUNDARIES

The electoral boundaries prior to the 1990s are shown in Figure 2.

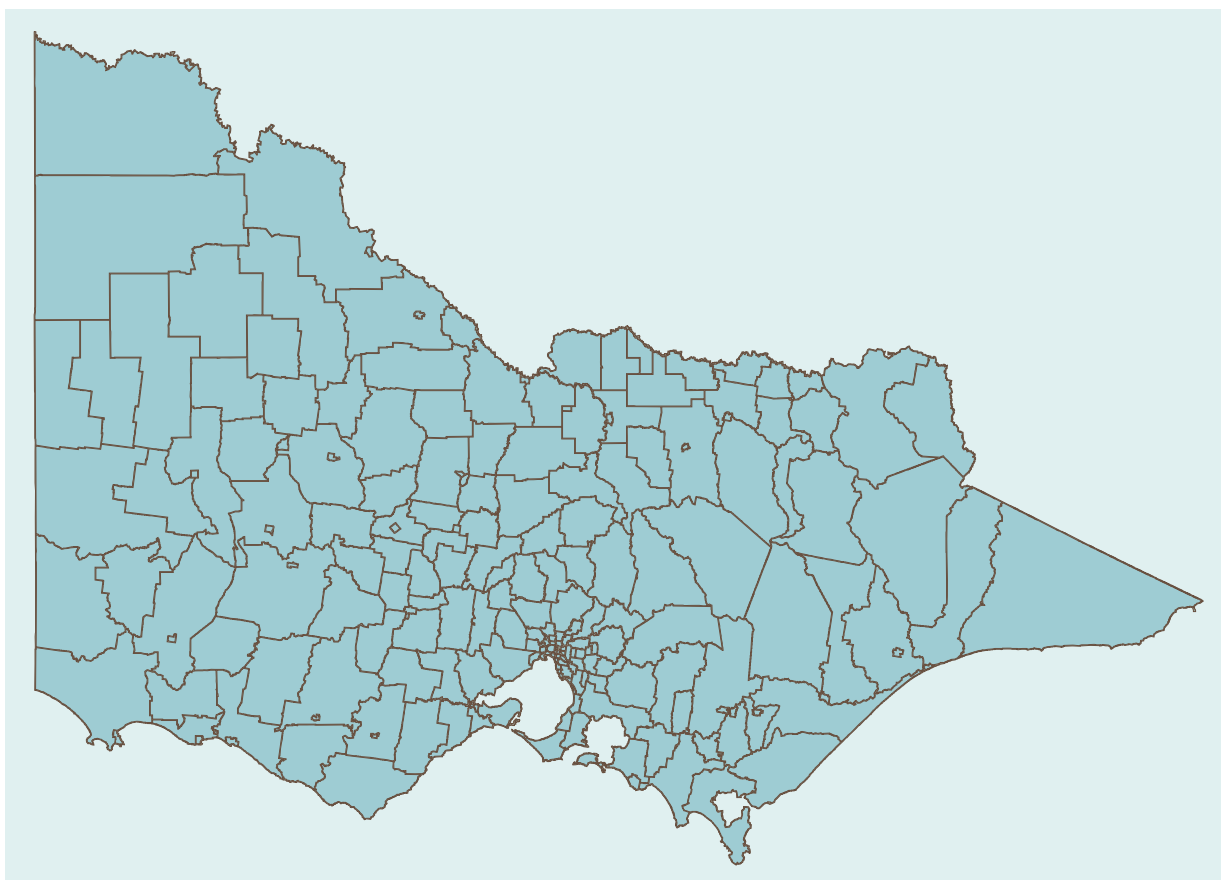


Figure 2: Victorian electoral boundaries prior to the 1990s.

Snapshot: 2013

The features of the current local government electoral system are shown in Table 2.

Electoral representation	Conduct of elections and reviews
<p>79 councils</p> <p>267 wards</p> <p>631 councillors</p> <p>Greater Geelong has (for its current term only) 13 councillors including a directly elected mayor.</p> <p>22 councils are unsubdivided; 16 have multi-member wards only; 30 have a mixture of single and multi-member wards, and 11 have single-member wards only.</p>	<p>In the absence of competition from other providers, the VEC conducts elections on the fourth Saturday in October every four years.</p> <p>70 councils have elections by postal voting only, eight have attendance elections (with postal voting by application).</p> <p>The VEC conducts electoral representation reviews for all councils at least every 12 years to ensure each council's electoral structure provides 'fair and equitable' representation to voters.</p> <p>Councillor-voter ratios for each ward should not vary by more than 10% from the voter ratio for the whole municipality.</p>

Table 2: Features of the current local government electoral system.



Background

The current electoral boundaries are shown in Figures 3 and 4.

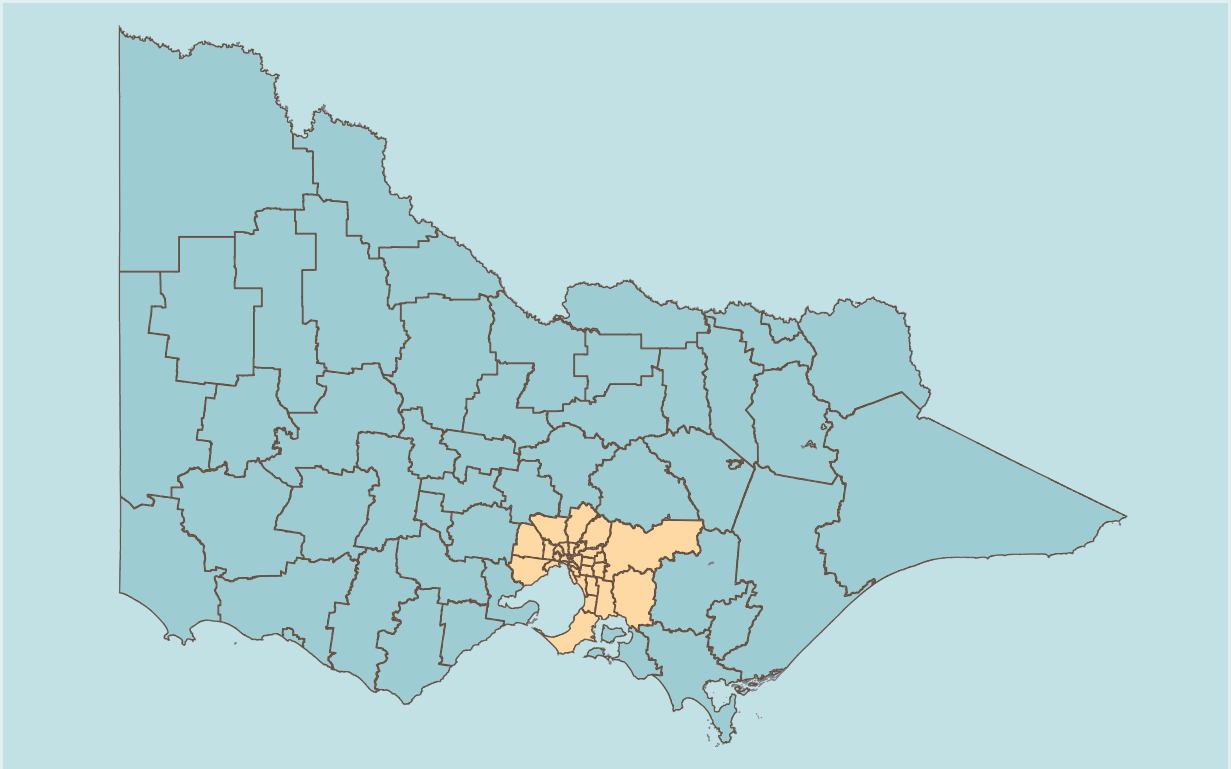


Figure 3: Victorian electoral boundaries in 2013.

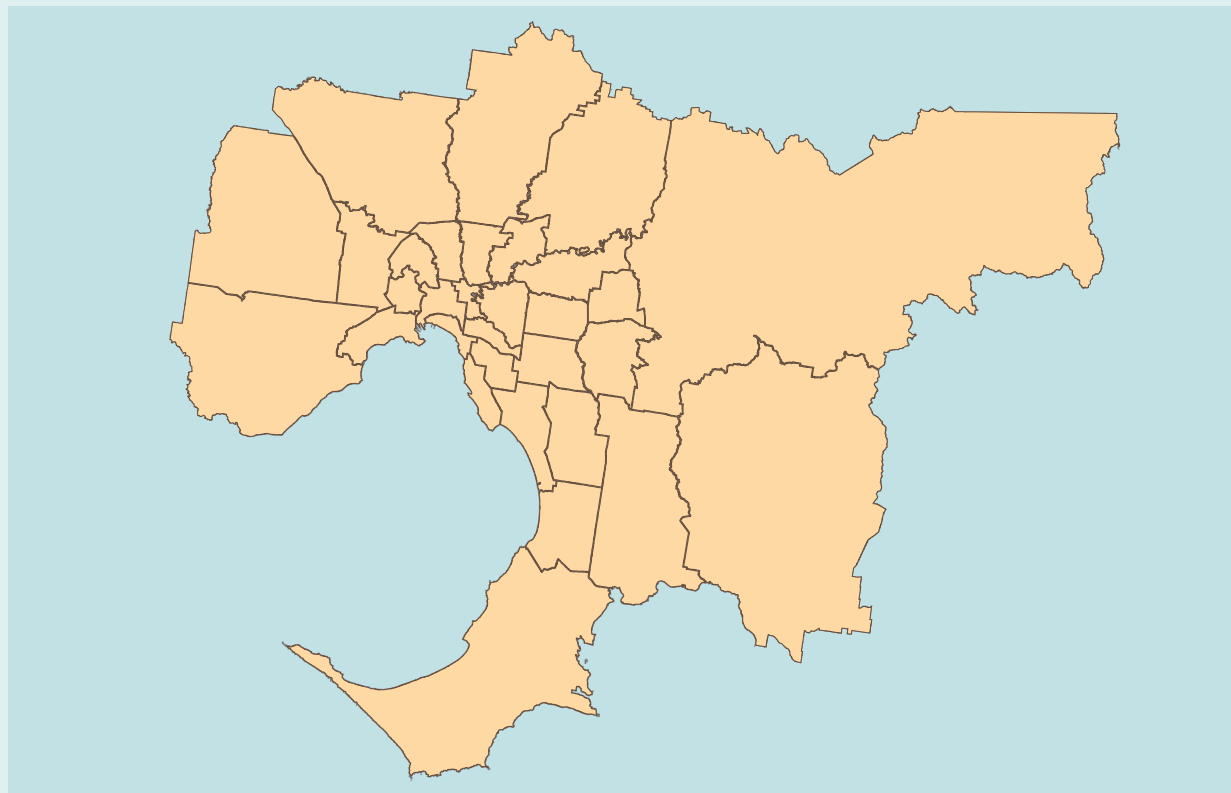


Figure 4: Victorian metropolitan electoral boundaries in 2013.





Chapter 1

Voters

Voter eligibility

Current arrangements

The right to vote at Victorian council elections is significantly broader than at state and Commonwealth levels.

Table 3 lists the types of voters that make up council voters' rolls (other than the City of Melbourne), including how each voter is enrolled and whether voting is compulsory. As you can see, voter entitlements for local government elections are complex.

		How enrolled	Is voting compulsory?
Voters who live in the municipality who are on the state roll			
Voters on the register of electors for the Victorian Legislative Assembly (state roll) for an address within the municipality and	aged 18 – 69	Automatically	Yes
	aged 70 and over	Automatically	No
People who pay rates on a property within the municipality but who are not on the state roll			
Up to two non-resident owners of rateable property, e.g. the first two named non-resident owners listed on council's rate records or		Automatically	No
Up to two resident owners of rateable property who are not on the state roll (non-Australian citizens) or		On application	No
Up to two occupiers who are ratepayers for a property (e.g. 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 3: The types of voters that make up council voters' rolls.

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

3 i) If the occupier is liable to pay rates as a condition of their lease, but is not listed on 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.

Put another way, for each property:

- an **unlimited** number of residents on the state roll may be enrolled and
- a **maximum of two** ratepayers (not on the state roll) may be enrolled (whether owners, occupiers or corporation representatives).

A person is entitled to be enrolled and vote only **once** for a particular council, regardless of how many entitlements they have (however, they can vote for more than one council if they have an entitlement in each).

Ownership of a single car parking space, boat mooring or small-sized storage unit does not confer an entitlement to vote.

History of changes in Victoria

The mix of the universal (Australian citizens on the state roll) and property voter franchise has existed in Victorian local government since the early 1980s. Previously, only property ratepayers were included on the voters' roll. The expansion of the voter franchise recognised that the scope of council functions had broadened beyond the traditional services made to property only, and that all adult residents living in the municipality, not just those with property interests, should be given the right to have a say in local electoral representation.

Until 2003, a person could vote in each ward of a single council if he or she had an entitlement to vote in that ward. Following concerns that this amounted to a form of plural voting (where some voters had more votes, and therefore more electoral clout, than others) this was replaced by the limitation of one vote per voter at a particular council.

Also in 2003, rules governing the property franchise were tightened, making it clear that, apart from state electors, only those who pay rates could be enrolled. Up to then, occupiers such as business tenants could be enrolled without having to be the ratepayer. In addition, the number of ratepayers per property not on the state roll that could be enrolled was limited to two. Previously an unlimited number could be enrolled.

Key issues

An effective voter franchise ensures that those who should be entitled to have a say in the electoral representation of their local council have the opportunity to do so. Further, the effective participation of voters at elections hinges in large part on the make up of the franchise and the rules governing the involvement of different types of voters. The essential questions to ask in this regard are:

- Who makes up the 'electorate' in the local government context and who should be entitled to be included on the roll to vote at council elections?
- Which voters should automatically be enrolled without application, and which should have the option of 'opting in'?
- Which voters should be compelled to vote and which should have discretion?

WHO IS ELIGIBLE TO BE ENROLLED

Voter eligibility is based on the premise that both **residents**, who live in the municipality and use council services, and **ratepayers** (many who do not necessarily reside there) who use and fund those services, should all have the ability to have a say in their local council's electoral representation.

The voter franchise differs between other states, as shown in Table 4.



Voter eligibility

Who may be included on council roll	NSW	Queensland	South Australia	Western Australia	Tasmania
State roll electors	Yes	Yes	Yes	Yes	Yes
Owners	Yes	No	Yes	Yes	Yes
Occupiers	Yes	No	Yes	Yes	Yes
Corporation nominees	Yes	No	Yes	Yes	Yes

Table 4: Voter franchise in other Australian states and territories.

In Victoria, non-Australian citizens who pay rates may be enrolled. Queensland, New South Wales and Western Australia do not permit inclusion of non-Australian citizens.

AUTOMATIC ENROLMENT AND APPLICATION ENROLMENT

In Victoria, both voters on the state roll (living in the municipality) and non-resident ratepaying owners (living outside the municipality) are automatically enrolled. The remaining categories of voters – business occupiers, corporation nominees and resident owners not on the state roll – must apply to be enrolled.

In all other states that have a mix of the universal and property franchise, state electors only are automatically enrolled. Other eligible voters must apply.

The mix of automatic and non-automatic enrolment at council elections throws up an anomaly in the case of non-residents. A property owner who lives outside the municipality where that property is located is automatically enrolled without application; if that owner is a non-Australian citizen and decides to move into that property, their name will be removed from the roll and they must apply to be re-enrolled.⁴

Giving non-residents the option to apply to be enrolled instead of automatic enrolment could lead to higher voter participation rates (although the total number of enrolled voters would drop, as many would not be expected to re-apply if removed from the roll). It would also lead to more accurate voters' rolls (see the next section, 'The voters' roll', for more detail).

In the case of 'applicant' voters, their participation in elections relies on their willingness to enrol themselves in the first place. The number of applicant voters on council voters' rolls across the state continues to be extremely low (only 0.05 per cent of all voters in 2012) even though some councils may have significant numbers, such as those with large commercial and industrial areas. Low take-up by these voters may also be attributable to a lack of engagement with their local council or a lack of awareness of their right to apply to be enrolled.

COMPULSORY AND NON-COMPULSORY VOTING

Voting in council elections is compulsory for voters on the state roll who have not reached the age of 70. It is not compulsory for anyone aged 70 years and over. This is the same as New South Wales. Victorian local government is the only jurisdiction where voting for people aged 70 and over is optional. In South Australia, Western Australia and Tasmania, all voting is optional, whereas in Queensland everyone must vote.

⁴ The VEC also raises an issue with the different use of the terms 'resident' and 'non-resident' under the Act in relation to voter entitlement. It has asked the Government to note that the terms can cause confusion and uncertainty among voters when considering their voting entitlement and obligations. (VEC April 2013, *VEC Report on Conduct of the 2012 Local Government Elections*, Recommendation 1, p. 8.)

Voter eligibility

The merits of having compulsory voting for some categories of voters and not others is a vexed question. The mandatory requirement for those on the state roll to vote while leaving voting optional for non-resident ratepayers at council elections has been a legislated requirement since the 1980s and was introduced at a time when all voting was by attendance only and voting by many non-residents may have been difficult. Whether this mixed system remains most appropriate for Victorian local government elections nowadays is worthy of further consideration, not least because most elections are now held by postal voting.

It is also difficult to consider voter participation issues solely on the basis of compulsion. As the following tables demonstrate, the effect of polling method may also influence participation rates. This issue is further discussed in the 'polling method' section in Chapter 4.

Tables 5 and 6 detail the voter turnout at the 2012 general elections for all councils, except the City of Melbourne.

Attendance elections (eight councils)

Voter type	Group	Total enrolment	Total 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%
Ratepayers		99,293	9,424	9.5%

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

Postal elections (69 councils)

Voter type	Group	Total enrolment	Total voted	% voted
Voters on the state roll	18-69 yrs	2,381,746	1,840,122	77.3%
	70+ yrs	406,734	309,257	76.0%
Total		2,788,480	2,149,379	77.1%
Ratepayers		394,653	212,724	53.9%

Table 6: Voter turnout at postal elections at the 2012 elections, except the City of Melbourne. (Source: VEC)

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 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.

Voter eligibility

The tables indicate that:

- Compulsory voters made up 74.7 per cent of the roll. Non-compulsory voters comprised 25.3 per cent.
- Total voter turnout across all councils except Melbourne, was 72.3 per cent.
- State roll voters under 70 years old (for whom voting is compulsory) voted in similar levels at both attendance and postal elections.
- State roll voters aged 70 years and over (non-compulsory) voted in significant numbers at postal elections, but less than half participated in attendance elections.
- Ratepayer participation (predominantly non-resident owners) was poor at attendance elections and just over 50 per cent at postal elections.

The voter turnout for all state electors (including those aged 70 and over) at the 2010 Victorian state election was 93 per cent.



Questions

- 1.1 Who should be eligible to vote at council elections? Why?
- 1.2 What do you think about restricting eligibility to those on the state roll?
- 1.3 For those eligible to vote, should voting be compulsory for those not currently compelled to do so? Why?
- 1.4 For those eligible to vote, should all persons not on the state roll be automatically enrolled? Why?

The voters' roll

An accurate voters' roll is fundamental to the probity of elections.

Current arrangements

There are several phases in voters' roll production and exhibition, as shown in Figure 5.

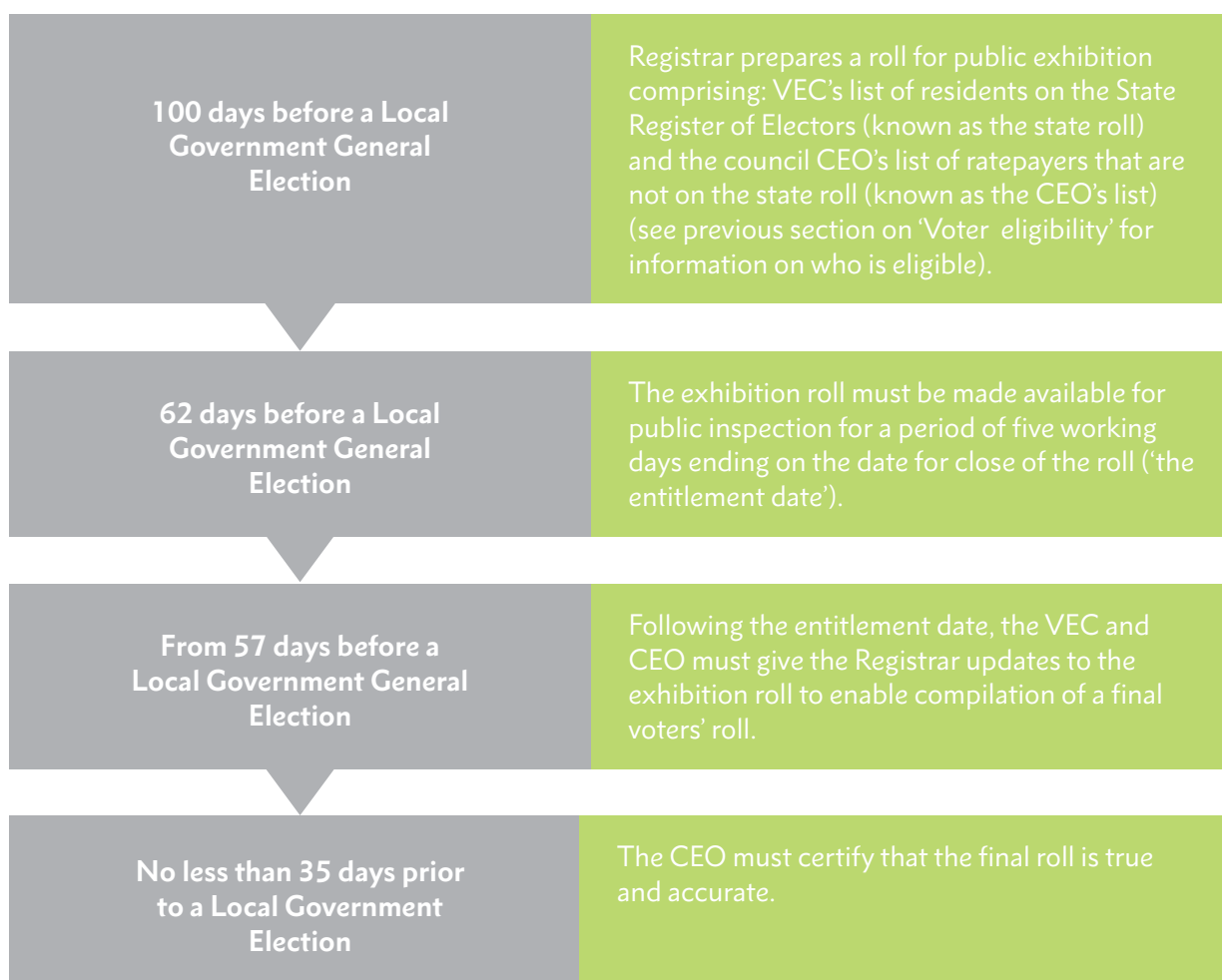


Figure 5: The phases in voters' roll production and exhibition.⁵

⁵ Local Government Act 1989, Sections 21 to 24 (Vic)

THE STATE ROLL

The VEC has the statutory authority for maintaining the state roll, which makes up around 86 per cent of all voters on the council voters' roll. To be included on this roll, a person who is an Australian citizen (or British subject in the three months prior to 26 January 1984), is 18 or over and has lived at his/her address for one month, must apply for enrolment the first time they become eligible and must reapply if their details have changed, such as their name or address. A penalty is applicable for failing to apply or to keep current enrolment details up to date.

As the voter entitlement rules for federal elections are the same as for the Victorian State Roll, the *Electoral Act 2002* (Vic) allows the VEC to work with the Australian Electoral Commission (AEC) in sharing information so that electors who enrol with the AEC are automatically enrolled on the state roll.

The VEC has a purpose built roll management system to manage the enrolment register. The enrolment register has an automatic verification mechanism which identifies possible duplicate records and highlights any anomalies, such as coding errors, data field inconsistencies, or geocoding discrepancies. The VEC conducts regular roll comparisons with the AEC's Victorian enrolment information and any discrepancies between the two rolls are investigated and reported for action.

In addition to these system tools and the standard weekly import of new Victorian enrolments processed at the AEC, the VEC advises that it has a number of other sources that it draws on to maintain electoral records. These sources include:

- Feedback from electors through elector information reports filed at election offices during State and Local Government elections or taken from written notes on the declaration flaps included in postal ballot paper envelopes or as responses to non-voter notices
- Information provided by councils or through the *Victoria Government Gazette* regarding address, boundary and locality changes
- Regular receipt of a data file from Births, Deaths and Marriages to allow the removal of deceased electors from the register of electors

- An internal mapping system that allows the VEC to geocode properties and enrolments attached to those properties.

The VEC also operates a Continuous Roll Update program, which includes a Direct Enrolment program, to encourage individual to maintain accuracy with individual elector records. The Continuous Roll Update program encourages electors to update their enrolment address, or in the case of the Direct Enrolment program, updates the enrolment register automatically.

The VEC advises that all of its procedures are subject to quality checking processes that are built into the systems and identify exceptions during any update process to flag doubt or an inconsistency. The VEC keeps track of anomalies and statistical reports are also run.

THE CEO'S LIST

The council CEO is responsible for maintaining records required to facilitate preparation of the voters' roll. Other than voters on the state roll, there are four categories of voters who are eligible to vote in local government elections:

1. non-resident owners
2. occupier ratepayers
3. corporation nominees and
4. resident owners who are non-Australian citizens.

These categories are explained in more detail in the previous section, 'Voter eligibility'.

CEOs compile a list (commonly referred to as the 'CEO's list') from amongst these four categories. How they are included is discussed below.

Automatic enrolment of non-resident owners

Non-resident owners make up approximately 14 per cent of the roll and are sourced from the council's rate records. It appears that at most councils, if up to the first two owners of a rateable property are listed as having an address outside the municipality for service of rate notices, they will be considered to be non-resident owners and automatically included on the CEO's list.

Ownership details for rating purposes are obtained primarily from notices of acquisition, which must be provided to the council whenever properties are sold. The notice must disclose the new owners' dates of birth and whether or not the purchased property will be their principal place of residence. Disclosure of place of residence enables the council to determine if the person should be included on the roll.

Non-resident owners are under no ongoing obligation to advise where they actually live (including informing the council that they have moved into the municipality subsequently) for purposes of voter enrolment. This means that, while council records accurately list ratepayer contact details they do not necessarily accurately list eligible voters.⁶

Each council receives assistance from the VEC in the lead up to the elections to remove names from the CEO's list which duplicate voters on the state roll. Councils may also take further steps to ensure their CEO's list contains only eligible voters not otherwise on the state roll and make further enquiries to determine individuals' entitlements if they are unclear. It is not clear however whether these roll cleansing processes are consistently undertaken across the sector. Some councils will be able to devote more resources to maintaining accurate voter records than others.

It should also be noted that in New South Wales, South Australia, Tasmania and Western Australia, enrolment of non-resident owners is not automatic, i.e. they have to apply to be enrolled. In Queensland, only state roll electors may vote in council elections.

Other eligible voters must apply to be enrolled

The remainder of eligible voters on the CEO's list (occupier ratepayers, corporation nominees and resident owners who are non-Australian citizens) must apply to be enrolled in order to vote, and must renew their enrolment before each general election.

INSPECTION OF VOTERS' ROLLS

Voters and candidates are given the opportunity to inspect a preliminary version of the voters' roll (called the 'exhibition roll') in the immediate lead up to the entitlement date. This right of inspection was created to enable people to check and if necessary, update their enrolment before the close of the roll. It also enables people to check other peoples' enrolment and potentially object to others' inclusion/exclusion on the roll.

In practice, it appears that little use of this right is made, with very few people visiting their local council to check the exhibition roll. Also, the VEC has expressed concern about the security of hard copy exhibition rolls that are made available at locations chosen by each council and has made a recommendation to Government in relation to regulation of roll availability. In 2012, there were three instances where copies had been removed before they could be withdrawn by staff after the inspection period (each case was reported to the police and the Privacy Commissioner).

No other state makes specific provision for inspection of preliminary voters' lists prior to a final roll being prepared before a council election. Nevertheless voters can check their details on state rolls throughout the country (including Victoria) at any time. Like Victoria, these rolls are used also for council elections and are continually updated.

The final voters' roll is made publicly available from when it is certified to 30 days after election day.⁷ If an eligible voter has been found to have been left off the final roll in error or an ineligible person included, there is provision for the council CEO to amend the certified roll (in 2012, 338 voters were added to the roll in this way and 499 voters were removed). An unenrolled voter also has the ability to cast a 'declaration vote' at the election – if found to be eligible, their vote will be admitted to the count.

⁶ The VEC has recommended that the Victorian Government considers an appropriate mechanism to capture changes to the postal addresses of non-resident ratepayers, who are automatically enrolled on the municipal voters' roll, for the purpose of maintaining the CEO's List. (VEC, April 2013, *VEC Report on Conduct of the 2012 Local Government Elections*, Recommendation 2, p. 11)

⁷ *Local Government Act 1989*, Section 24B (Vic)

The voters' roll

CANDIDATE ACCESS TO THE VOTERS' ROLL

As part of their campaigning, candidates are permitted to receive a copy of the certified voters' roll free of charge. This enables candidates, if they wish, to directly mail voters with campaign leaflets or letters. Some may use the roll to write to voters living outside the municipality who would not otherwise receive campaign material via generic letterbox drops.

Use of the roll is restricted to campaigning, and the candidate must return it to the CEO or destroy it and any copies. A penalty of 120 penalty units applies to the misuse of the roll or failure to return or destroy it.

It is worth noting that candidates at Victorian state elections are entitled to receive a copy of the state roll free of charge. Registered political parties are also entitled to receive the roll on a number of occasions throughout the year.

It should also be noted that the CEO can make a copy of the roll available to any person if the Privacy Commissioner approves its use for a public interest purpose. Misuse of the roll in these circumstances or failure to return or destroy the roll as directed attracts a penalty of 120 penalty units, or 600 penalty units if the offender is a body corporate.⁸

Key issues

The accuracy and integrity of the voters' roll is a key issue.

The ability to compile an accurate roll depends on sourcing reliable information on voters and updating that information when changes occur. In the case of council elections, the complex make up of voters to be included on the roll and the different

ways their data is sourced poses challenges in creating an accurate and up-to-date roll.

Ideally, combining the lists of state roll electors (who live in the municipality) and non-resident owners (who do not) on the final roll should be a simple matter, as each list should not contain the same people. However duplications are common. The VEC advises that this roll-cleansing exercise to establish an accurate list of non-resident owners takes up to 80 per cent of its time in overall roll production before a general election.⁹

The inspection process is an additional means of ensuring that the voters' roll is compiled transparently and helps reduce the risk of fraudulent enrolments and candidate nominations. However, this mechanism is seldom used and cannot be relied on.

Beyond accuracy and integrity issues, some privacy issues have also been identified. Although candidates face significant penalties for use of the roll other than campaigning and must return or destroy the roll at the conclusion of the election, there are difficulties in enforcing penalties for misuse. For example, it would be difficult to track down the source when copies of a roll are made and passed onto others for commercial use.

There may be a need to establish alternative mechanisms for candidates to send out campaign information to voters that do not require the provision of voter details – for example campaign leaflets are passed onto a third party for mailing.

⁸ *Local Government Act 1989*, Section 24C (Vic)

⁹ It is difficult to quantify the extent of the problem faced by councils in maintaining accurate non-resident enrolment. As a guide though, the VEC identified 39,525 records of non-resident owners on CEOs' lists that duplicated state roll records in 2012 – 7.2% of all CEO list records (out of 506,230). Note this was an improvement on the 2008 elections (7.6% of records) and 2005 (25%).

Questions

1.5 How could integrity of the roll be improved?

1.6 Should voter details be made available to candidates for campaigning purposes? Why?

1.7 What would be an easy way for you to check if you are on the electoral roll?





Chapter 2

Candidates

The capacity and confidence of voters to cast a vote for eligible candidates is a central pillar in the integrity of the electoral process. This chapter deals with candidacy requirements and the nomination process and the information voters have on candidates standing for local government election.



Candidacy requirements and disqualifications

Current arrangements

The Act lays out the minimum standards expected of candidates running for local government.

There is only one positively framed legislative requirement determining eligibility: a candidate must be on the electoral roll for the municipality they wish to contest.

There are a significant number of factors that render individuals ineligible to nominate. Individuals are excluded from nominating for election to council if they:

- are a member of an Australian parliament, a ministerial officer, a parliamentary adviser or an electorate officer of a member of an Australian parliament
- are a councillor of another council, including interstate councils, or a member of council staff (unless on leave to stand as a candidate and, if elected, prepared to resign immediately upon successful election)
- are not an Australian citizen (or a British subject who was on an Australian electoral roll at the start of 1984)
- are an undischarged bankrupt or the owner of a property subject to control under the law relating to bankruptcy
- are a person of unsound mind
- are under convictions for behavioural breaches as a councillor or a member of a special committee such as conflict of interest, misuse of position or disclosure of confidential information
- are under convictions for electoral breaches
- are under conviction for a criminal offence that has a maximum possible penalty of five years imprisonment or more
- have had various 'failures of duty'.

To nominate for election to local government, candidates must complete a nomination form, which includes a signed declaration that they:

- are qualified to nominate
- have not nominated for any other position or council election occurring on that day
- are aware that it is an offence under the Act for a person to nominate who is not qualified to be a candidate
- understand that they are obliged to follow the law and be familiar with the contents of the VEC-issued *Candidate Handbook*.¹⁰

Candidates must also make a deposit of \$250, which is redeemable if they receive four per cent of the vote. Nominations must be lodged 32 days prior to election day.

Candidates must nominate in person rather than posting or emailing their nomination. The objective of this recent reform was to reduce the number of frivolous nominations and reduce the likelihood of candidates nominating *en masse* as 'dummy' supporters for another candidate.

ENFORCEMENT OF DISQUALIFICATION CONDITIONS

The onus is on the candidate to ensure they meet the qualification requirements. Candidates risk prosecution and significant penalties including imprisonment if they are found to have made false claims of qualification. In practice, there are few grounds on which the returning officer can validly reject a nomination, despite the lengthy list of disqualifications.

¹⁰ VEC, 2012, *M300 Nomination Form for Local Government Elections* and VEC, 2012, *Candidate Handbook Council Elections 2012 – Postal*, Melbourne.

Candidacy requirements and disqualifications

Questions about the enforcement of conditions for nomination may arise if:

- a candidate falsely claims to be qualified
- a candidate claims an entitlement to be on the roll but is not enrolled
- a complaint is received of a candidate committing an offence that would disqualify them if convicted, but the charge has not been resolved before the election is held.

As highlighted earlier, when nominating for election, candidates must sign a statement that they are enrolled and meet all of the other qualifications. Refusal to sign amounts to disqualification and the returning officer may reject the nomination. In most instances when a disqualifying condition is identified and raised with a nominee, they voluntarily withdraw their candidacy.

Comparison with other jurisdictions

The qualifications to stand as a candidate for election to a Victorian council are broadly similar to most other states and levels of government. Some conditions in other states and territories do not apply in Victoria, for example:

- New South Wales: individuals disqualified from managing a corporation are banned¹¹
- Northern Territory: a person indebted to the council for rates or surcharges who fails to discharge the debt within six months is ineligible to stand for council¹²
- Tasmania: elected councillors are able to concurrently hold a seat in the state parliament.¹³

Some additional disqualifications apply to candidacy for the federal parliament, such as:

- being 'the citizen or subject of a foreign power' (which may present an impediment in cases of dual citizenship)
- being a member of the Australian Defence Force.¹⁴

Other jurisdictions adopt a range of instruments to enforce conditions of qualification and disqualification. All apply the laws of natural justice that guide enforcement in Victoria.

The nomination process is similar for the office of councillor in other Australian states and territories. Nomination for local government is less complex and onerous than nomination to be a member of federal parliament. Deposits at \$250 are far lower than for nomination to the federal parliament, which are \$1000 for the House of Representatives and \$2000 for the Senate. The council nomination form is simpler and no external support from electors is required, unlike independent nomination for the federal parliament, which requires written support of 100 electors on the roll for the contested seat.

Key issues

CANDIDATE REQUIREMENTS

The qualifications and disqualifications for candidacy for council elections in Victoria are in line with other parts of Australia and have been refined over time as community standards evolve. Predominantly, the legislation outlines what is so undesirable as to warrant disqualification, rather than stating positive requirements for qualification.

From time to time, the sector raises concerns over candidate requirements. Some have suggested that the bar be set higher to ensure that only those with sufficient motivation and willingness to contribute to public office should be in the field. Occasionally, mandatory 'qualifications', training or competency levels are mooted as a way to ensure the electorate can choose between well qualified individuals. This would however potentially infringe on an individual's democratic right to stand for election.

¹¹ *Local Government Act 1993*, Section 275 (NSW)

¹² Northern Territory Electoral Commission, 2012, *Candidates Handbook Council Elections*, p. 2.

¹³ Department of Premier and Cabinet Tasmania, 2012, *Proposed Changes to Local Government Electoral Arrangements*, p. 9.

¹⁴ Australian Electoral Commission, 2010, *Electoral Background: Constitutional Disqualifications and Intending Candidates*, p. 4.

ENFORCEMENT OF DISQUALIFICATION CONDITIONS

Effective enforcement is important to the efficient conduct of fair elections. The VEC has recommended to ensure the enforcement of eligibility requirements that “the government considers amending clause 6(3A) of Schedule 2 of the Local Government Act to permit the returning officer to reject a nomination from a person who is not on the voters’ roll for the municipality.”¹⁵

If a complaint is made during the campaign alleging that a candidate has breached one of the disqualification criteria, the matter may be referred for investigation by the Inspectorate, the police or one of the courts.

However a complaint may not be resolved before the election in cases where:

- the Inspectorate or the police are still investigating
- a candidate has been convicted of a disqualifying offence but has appealed the conviction to the Victorian Civil and Administrative Tribunal or a higher court and the appeal is pending.

On very rare occasions, candidates may refuse to withdraw their candidacy (risking prosecution and imprisonment) even when there is a strong case that their candidacy is invalid on the basis of them being ineligible for reason of disqualification. Whilst very rare, this can compromise the outcome of a local election if not removed from the ballot before the election is held, either by being elected or through the flow of their preferences. The Secretariat is only aware of this having occurred once in Victoria in recent times.

¹⁵ VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections*, Recommendation 5

Questions

- 2.1 Who should or should not be eligible to stand for elections? Why?
- 2.2 How do you think verification and enforcement of nomination eligibility can be improved?
- 2.3 Under what conditions should candidates be disqualified from being on the ballot? Who should make such decisions?
- 2.4 Can the nomination process be improved?

Candidate information

It is important that voters in local government elections have sufficient information about candidates on which to make decisions and exercise choice. Getting information out to the electorate on individual candidates is particularly challenging in local government elections which generally do not have the same level of media attention as state and federal elections.

CURRENT LEGISLATIVE PROVISIONS

There is no legislative requirement for candidates to provide the electorate with a candidate statement or platform.

In elections conducted by postal ballot, candidates can elect to provide a statement of up to 150 words¹⁶ and a photograph for inclusion in ballot packs which are mailed to voters by the VEC. Candidates also have the option of including their preference recommendations. Such information is not available at attendance elections.

For attendance elections, the most important means of communicating with voters is 'how to vote' cards, which are handed to voters as they approach voting centres. How to vote cards must be registered with the VEC eight days before the poll. Anyone can register a how to vote card – a candidate, a member of the public or an organisation.

Restrictions on distribution of electoral material apply within 400 metres of a voting centre. Within this zone, electoral material can only be distributed:

- at a newsagent, as part of the newsagent's normal business
- at a candidate's campaign office
- in the form of a poster attached to a vehicle, building, hoarding or structure
- handing out how to vote cards.

Current arrangements

At the 2012 Victorian local government elections, all postal election candidates (1,671) chose to submit a written statement about their candidacy. Over 1,511 indications of preferences were submitted for postal elections (accounting for over 90% of postal candidates assuming no candidate submitted multiple preferences).¹⁷

At the 2012 local government elections, 506 how to vote cards were registered for 271 candidates contesting eight attendance elections.¹⁸ Candidates sometimes find the process of registering how to vote cards challenging and labour intensive. The requirement to register how to vote cards for distribution at early voting centres puts pressure on candidates to finalise preference allocations and complete the registration process quickly. The VEC advises this often leads to candidates registering more than one card to cover a range of different preference allocations.¹⁹ The VEC has recommended that "the government considers removing the requirement for how to vote cards to be registered for distribution at early voting centres."²⁰

With some exceptions, political party affiliations generally do not play an overt part in council elections and most candidates are not endorsed by a political party. Except for the City of Melbourne (where group names are allowed), no information on candidates appears on ballot papers other than their names. Without such automatic 'branding' of candidates (a feature of state and federal elections) or a requirement to disclose affiliations, voters must rely on publicity from candidates or the media to form a judgement about who should get their vote.

¹⁶ 250 words for the City of Melbourne.

¹⁷ These figures exclude the City of Melbourne – see Victorian Electoral Commission 2013, *Report on the Conduct of Local Government Elections 2012*, Melbourne.

¹⁸ VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne.

¹⁹ *ibid*

²⁰ *op cit*, Recommendation 8.

History of changes in Victoria

The shift from attendance to postal elections has probably had the most significant influence on the information on candidates available to voters. Attendance voting was used by all councils until 1995. In 2012, it only represented 10 per cent of council elections.

Comparison with other jurisdictions

New South Wales and Brisbane are the only areas in Australia in which party endorsement of candidates is a feature of council elections. Apart from this, the nature and scale of information on candidates available to voters in other state and territory council elections is broadly consistent with Victoria.

Key issues

MORE INFORMATION ON CANDIDATES

If information on candidates is important to voters exercising informed choice, then the key issue is whether the current arrangements are adequate.

The VEC review of the 2012 elections included a survey in which voters “stated overwhelmingly that there was not enough information provided about candidates both for postal and attendance voting.”²¹

One way of assisting voters to gain more information about candidates would be through a more structured candidate profile. Each candidate would be required to enter qualifications and experience into a standard template. These may include information on candidates’:

- educational qualifications

- committee experience
- volunteering experience
- current and past employment
- policies.

There is a general view that candidates should be required to provide more information about themselves. One contention is that candidates for local government election should be required to disclose political affiliations. Some commentators believe this would assist voters to understand the motivations of the candidates and reduce the likelihood of ‘dummy’ candidates influencing election outcomes. Others argue that it would be an invasion of privacy, not be practical to implement and would not work for candidates with distinct political affiliations but no formal party membership, for example.

A related issue is timely information on campaign donations and their sources, which may also inform voter choice. This is examined in more detail in the following section on donations.

The VEC has also made recommendations related to improving the accessibility of information available on line.²²

²¹ VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne

²² One suggestion by the VEC for attendance elections is for “the government to consider requiring the publication of all registered how to vote cards in relation to a local government election on a website administered by (or on behalf of) the returning officer as soon as practicable after the completion of the period for registration.” This would enable interested voters to analyse preferences online before attendance elections are held. The VEC has also recommended “that the government considers legislation to allow candidates to electronically submit their candidate statements and indication of preferences to the returning officer.” (Recommendations 7 and 6 respectively of VEC Report 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne)

Questions

2.5 What would you like to know about your candidates?

2.6 Should candidates be required to reveal information such as education, committee and volunteer experience, employment, policies and political affiliations? Why?

2.7 Would this be an unwarranted breach of candidates’ privacy or be discriminatory in any way?

2.8 What would be the best way for additional information on candidates to be communicated to you?

Candidate participation

Strongly contested elections can be one sign of the health of the local government sector. However, strongly contested elections in particular locations can be an indication of the practice of using 'dummy' candidates.

The level of participation by candidates in local government elections fluctuates from election to election. There are also very distinct and divergent patterns which emerge in which certain electorates have high numbers of candidates while other electorates attract few or no candidates.

For the 2012 elections, the VEC reported that of 273 potential elections, 245 (90 per cent) were contested and 28 (10 per cent) were uncontested.²³ This is a significant decrease from the 2008 general elections where 50 elections were uncontested out of 297, and one election failed (no candidates stood at a ward election).

In 2012, 2000 active nominations were received for 631 vacancies (a ratio of 3.17 candidates per vacancy) compared to 1953 nominations for 629 positions in 2008 (a ratio of 3.1 candidates per vacancy).

These ratios mask a pattern whereby a small number of elections are uncontested or have a small number of candidates while others have very large fields of candidates.

Those with very large candidate fields included Casey with 85 nominations for 11 vacancies and Melton with 72 nominations for 7 vacancies. Very large fields also correlate strongly with higher rates of informal voting.

Table 7 shows the average number of candidates per vacancy in municipalities that ran elections through attendance voting (2012 figures).

23 There were no 'failed' elections in 2012 unlike in 2008 where there was one failed election which did not attract any candidates at all, with the sitting councillor not wishing to recontest.



Candidate participation

Attendance	Number of candidates	Number of vacancies	Average per vacancy
1 Port Phillip City Council	27	7	3.86
2 Knox City Council	26	9	2.89
3 Moreland City Council	49	11	4.45
4 Yarra City Council	21	9	2.33
5 Glen Eira City Council	33	9	3.67
6 Stonnington City Council	36	9	4.00
7 Greater Dandenong City Council	41	11	3.73
8 Banyule City Council	38	7	5.43
Total	271	72	3.76

Table 7: Ratio of candidates to vacancies in attendance voting councils. (Source: VEC)

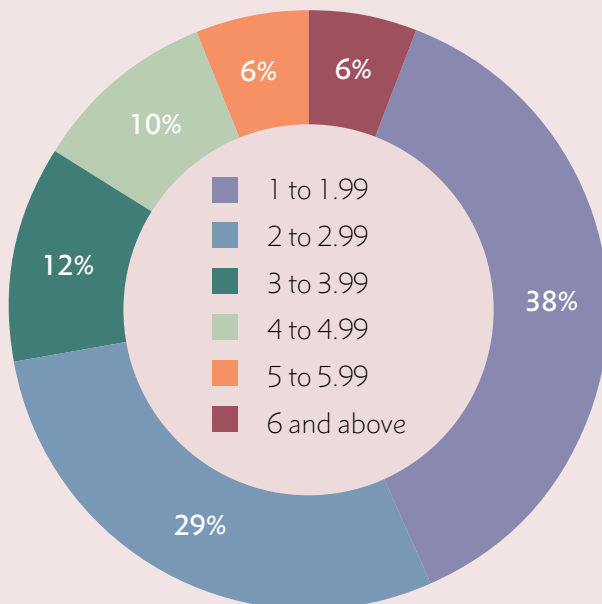


Figure 6 shows the distribution of the candidate to vacancy ratio for municipalities that use postal voting.

Figure 6: Ratio of candidates to vacancies in postal voting councils. (Source: Local Government Electoral Review Secretariat)

The issue of 'dummy' candidates

The issue of 'dummy' candidates was raised with the Inspectorate by a number of candidates following the 2012 elections. These candidates argued that some of their opponents engaged 'dummy' candidates with inducements to source their preferences in order to win the election.

There is no legislative prohibition against the use by candidates of employing 'dummy' candidates to disperse the vote and gain directed preferences against an opponent.

This issue to some extent exists at all levels of government and in all jurisdictions. A number of options to mitigate the risk of large fields of 'dummy' candidates have been posited by different commentators, peak bodies and representative groups. These proposals have included:

- replacing unsubdivided municipalities and multi-member wards with single ward structures to reduce candidate numbers for any given contest²⁴
- replacing postal voting with attendance voting on the grounds that this would increase the threshold effort required to participate (assuming only genuine candidates would invest the required effort to distribute how-to-vote cards)

- requiring candidates to declare their party membership or political allegiance
- replacing proportional and full preferential vote counting systems with optional preferential or first past the post systems
- requiring that candidate statements be more detailed than the current 150 words required for postal elections.

Actions to discourage 'dummy' candidates must take into account that ultimately people who are on the roll have a right to stand for election. In reality many of these proposals have unintended consequences and any reforms need to be carefully considered.

²⁴ Notwithstanding VEC analysis suggests single councillor wards often have higher ratios of candidates per vacancy even though they have fewer candidates overall.

Questions

- 2.9 How significant is the issue of 'dummy' candidates?
- 2.10 How can we promote genuine choice between properly qualified candidates in local government elections?

Donations

There are many reasons for individuals and organisations to make donations to political campaigns. There is controversy over donations because there is a perception that donating is an attempt to purchase influence in decision making.

Current arrangements

The current system in Victoria allows individuals and organisations to donate to candidates to support their campaigning, but balances this with disclosure requirements that reinforce transparency. There is no ceiling or limit to the donations that can be made to local government candidates in Victoria.

In 2012, only 12.5 per cent of all candidates received a disclosable donation. One-third of municipalities had no candidates at all who received a disclosable donation.

Donations feature more strongly in inner urban municipalities. In 2012, in inner metropolitan Melbourne, 18 per cent of candidates received a donation, compared to only 3 per cent of candidates for small rural councils.

Excluding the City of Melbourne, the average value of all donations in municipalities using attendance voting is \$32,914, which is three times higher than the average of \$10,870 for municipalities using postal voting.²⁵

In 2012, disclosable donations totalled \$1.19m across the state, more than half of which was donated for the City of Melbourne campaigns. Excluding the City of Melbourne, the average value of individual donations ranged from \$1,238 for large rural councils to \$2,119 for inner metropolitan councils.

Statistically, incumbency is a stronger predictor of success than the attraction of donations. In 2012, 73 per cent of incumbents were re-elected compared with the election of 14.6 per cent of candidates who received a donation.²⁶

DISCLOSURE REQUIREMENTS

All candidates are required to lodge a return regardless of whether they received disclosable donations. Candidates who do not receive disclosable donations must still lodge returns specifying that they received 'nil donations', meaning donations below the statutory threshold for disclosure.

While all have to lodge a return, candidates are only required to disclose donations of \$500 or more (in cash or in kind). This includes multiple smaller donations from a single source that have an aggregate value of \$500 or more.

25 These figures exclude the City of Melbourne. The figures in this section are based on returns at April 2013.

26 Jim Gifford Consulting, April 2013, *Donations in Local Council Elections: Analysis of donations in the October 2012 Victorian local government elections*.

Donations

Following 2011 reforms by the Minister for Local Government, candidates must now lodge completed campaign donation returns with the council CEO within 40 days of the election day. Within 14 days after that period, the CEO must ensure a summary of all returns is posted on the council's website.²⁷

It is an offence under the Act to fail to submit a campaign donation return. Formal prosecution of 17 candidates was pursued following the 2012 elections. As of August 2013, nine had been dealt with through the courts and the charges proven. Outcomes included a conviction, fines, orders for costs, good behaviour bonds and community work orders.

WHO DISCLOSES?

Donor disclosure allows regulatory authorities to cross-check disclosure returns from donors against disclosure returns from other participants in the political process as an aid to enforcement. For local government elections, Queensland, New South Wales and Western Australia require disclosure by donors as well as candidates. This is also a requirement for federal elections. Reporting disclosure obligations do not apply to donors for local government elections in Victoria, South Australia or Tasmania.²⁸

Comparison with other jurisdictions

No Australian jurisdiction prohibits donations for council elections.

Queensland (for state elections only) and New South Wales (for state and local elections) have recently set an upper limit on the amounts that may be received. In these states, campaign donations are capped at \$5,300 per annum to registered political parties or groups and \$2,200 per annum to candidates or elected members.

New South Wales is the only local government system in Australia to have industry-specific bans on donations, having banned donations from property developers, tobacco companies, liquor or gambling businesses. A further reform has since banned donations from anyone other than an individual on the electoral roll, including corporations, industry organisations, peak industry groups, religious institutions and community organisations. The New South Wales Electoral Matters Parliamentary Committee this year recommended that industry-specific bans on donations be lifted, arguing that these prohibitions are redundant, now that only individual voters can make political donations, which are capped. Whether these same organisations could simply avoid these restrictions by directing funds through enrolled individuals is open to debate.

Like Victoria, the threshold for disclosure of donations for council candidates in South Australia and New South Wales is \$500. In Queensland and South Australia it is \$200.²⁹

In terms of timing, only Western Australia requires local government election candidates to disclose campaign donations almost immediately (within three days of receipt). In New South Wales, local government candidates must supply details of campaign donations and election expenditure within eight weeks after the end of each financial year. In South Australia, candidates must lodge returns within 30 days after the election; in Queensland it is within 15 weeks.

The Commonwealth disclosure scheme only requires federally registered political parties to disclose political donations over \$12,400 [indexed] on an annual basis.

²⁷ *Local Government Legislation Amendment (Miscellaneous) Act 2012* (Vic)

²⁸ Queensland Crime and Misconduct Commission, *The Regulation of Political Donations and Gifts in Queensland: A Comparative Analysis*, December 2012, p. 52.

²⁹ Queensland Crime and Misconduct Commission 2012, *The Regulation of Political Donations and Gifts in Queensland: A comparative analysis*, p. 49.

Key issues

The transparency and regulation of campaign donations comes into focus during local government election campaigns. There are concerns about conflicts of interest and undue influence on decision making. While in the vast majority of council elections campaign donation levels are low, the issue is a matter of important principle for many commentators.

In addition, the issue of donations featured prominently in the media in the 2012 elections, with commentary directed particularly at the Melbourne City Council elections where donation levels are higher.

PLACING A CAP ON DONATIONS

It can be argued that donations are a part of a healthy and modern democracy in which candidates receive financial support to communicate their platform to the electorate. Opponents may argue that the best way to prevent a potential conflict of interest is to ban donations altogether or place a limit on their quantum.

In an opinion piece in *The Age* newspaper in April 2013, J Tham³⁰ argued that, rather than banning donations or excluding selected industries, a cap be set at a low level to reduce the risk of undue influence. It was argued this would mitigate the risk that a single individual or group could exercise a disproportionate influence on an election campaign by making a large donation. Opponents of this view may argue that such a limit does not apply at other levels of government (although it does apply in New South Wales and Queensland) and would infringe on the civil rights of individuals or groups to participate in the democratic process by supporting a campaign.

SPECIFIC INDUSTRY EXCLUSIONS

The New South Wales industry-specific bans have been criticised because they presented definitional challenges in enforcement. They have now been rendered redundant by the subsequent ban by the New South Wales Government on any corporation, peak industry groups, religious institutions and community organisations making a donation.³¹ There is concern that this restriction will also be difficult to enforce.

WHO SHOULD DISCLOSE?

The current policy settings focus on the recipient of the campaign donation. An alternative approach or one that could exist in parallel with the current requirements is a disclosure obligation on the donor.

TIMING OF DONATION DISCLOSURE

The current policy settings do not require disclosure of campaign donations prior to people voting at an election. They instead focus on informing the electorate after the election to ensure transparency in subsequent decision making by elected officials.

Those in favour of pre-election disclosure maintain that there is no problem with campaign donations supporting candidates, as long as voters know which individuals and organisations are supporting each candidate, and at what scale, when they cast their vote. This would constitute a higher level of transparency than currently applies at Victorian state or federal elections.

SEVERITY OF PENALTY FOR NON-DISCLOSURE

At the 2012 local government elections, one in 12 candidates failed to lodge their mandatory campaign donation disclosures on time. After being followed up by the Inspectorate nearly all candidates lodged a return. Past experience suggests that most candidates who fail to lodge a return on time do not receive any donations above the declaration threshold.³²

³⁰ Tham, J 2013, 'Time to cap political cash', *The Age*, 27 February. Dr Joo-Cheong Tham is an associate professor at Melbourne Law School.

³¹ *Election Funding, Expenditure and Disclosures Amendment Bill 2011* (NSW)

³² Jim Gifford Consulting, April 2013, *Donations in Local Council Elections: Analysis of donations in the October 2012 Victorian local government elections*.

Donations

MELBOURNE CITY COUNCIL

The uniform rules relating to donations create two problems that have at this point in time impacted on the City of Melbourne.

First, the disclosure requirements were drafted with individual candidates in mind and it is not clear what the disclosure requirements are for candidates where a running group receives a disclosable donation. Eight groups contested the Melbourne City Council mayoral and councillor elections in 2012 and all but one position was secured by these groups. Only groups received donations in 2012. It is unclear under current legislative provisions whether each individual within the group is required to disclose the full donation received by the group or only a proportion of that donation. Candidates take a conservative approach by disclosing the full quantum of a donation to the group.

The second issue relates to the impact of donations on the capacity of the council to make planning decisions. Earlier this year a planning decision was unable to be determined by councillors because Councillor Ong and the Lord Mayor's team had declared a conflict of interest over donations received from a developer. In September 2013 the Lord Mayor's team was required to abstain from a vote on another decision as a result of a donation received from a company that made a submission to a heritage amendment. At the time of drafting the council was preparing to consider a revised Councillor Code of Conduct aimed at reducing the risk of conflicts arising through meetings between councillors and planning permit applicants.



Questions

- 2.11 Should campaign donations be allowed? Why?
- 2.12 If allowed, should donations be capped or limited in any way? Why?
- 2.13 What disclosure requirements should apply? Why?
- 2.14 Should particular arrangements be made for the City of Melbourne?

