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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.

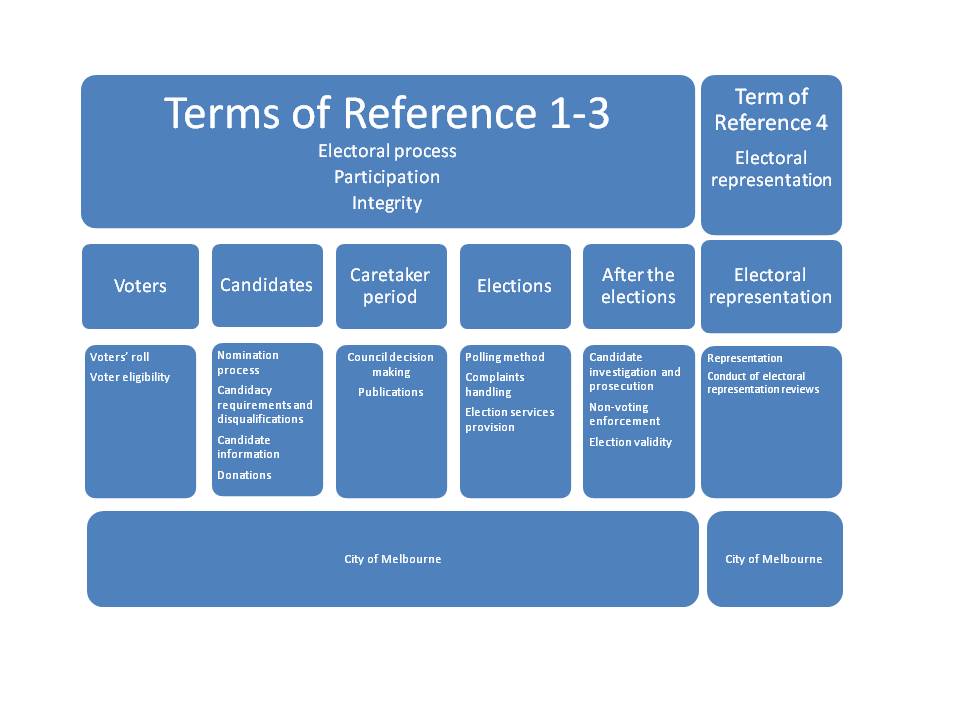
Ms Murphy currently serves on a number of bodies including MAVIC Professional Indemnity and Fidelity Insurance (committee member) and KYM Employment Services (vice-president) and has previously held a range of directorships. Ms Murphy was formerly the president of the Municipal Association of Victoria.

## 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 in 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.



*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]](#footnote-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  750 wards  2200 councillors  Councils were either unsubdivided or consisted of three councillor wards. | Councils ran their own elections annually.  Polling method was by attendance voting.  Investigations were undertaken by the Office of Local Government.  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.*

#### 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.

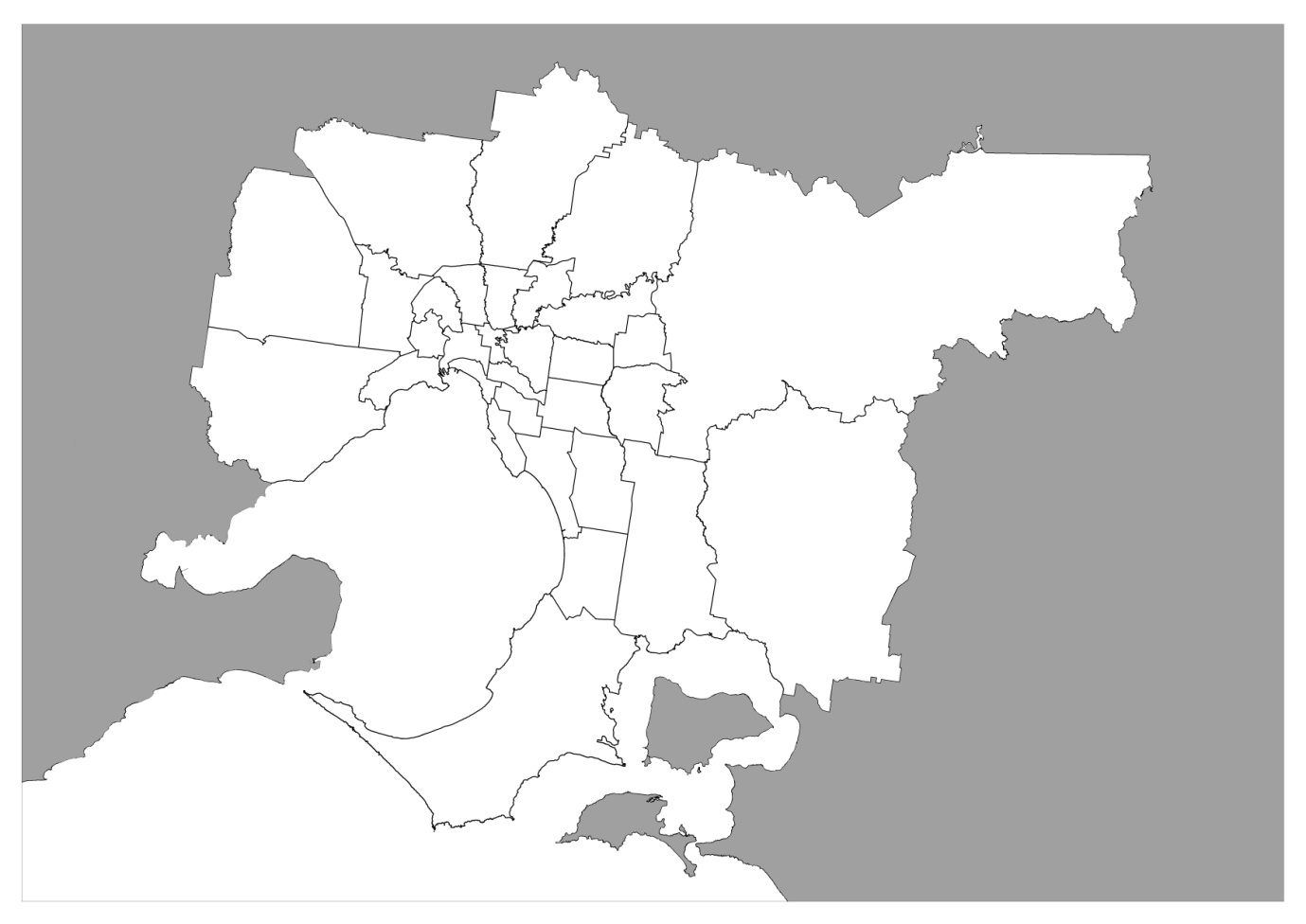
|  |  |
| --- | --- |
| **Electoral representation** | **Conduct of elections and reviews** |
| 79 councils  267 wards  631 councillors  Greater Geelong has (for its current term only) 13 councillors including a directly elected mayor.  22 councils are unsubdivided; 16 have multi-member wards only; 30 have a mixture of single and multi-member wards, and 11 have single-member wards only. | In the absence of competition from other providers, the VEC conducts elections on the fourth Saturday in October every four years.  70 councils have elections by postal voting only, eight have attendance elections (with postal voting by application).  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.  Councillor-voter ratios for each ward should not vary by more than 10% from the voter ratio for the whole municipality. |

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

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**[[2]](#footnote-2)** **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]](#footnote-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.*

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.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **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]](#footnote-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.

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.

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]](#footnote-5)*

#### 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]](#footnote-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]](#footnote-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.

#### 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]](#footnote-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]](#footnote-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.

### 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:

1. are a member of an Australian parliament, a ministerial officer, a parliamentary adviser or an electorate officer of a member of an Australian parliament
2. 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)
3. are not an Australian citizen (or a British subject who was on an Australian electoral roll at the start of 1984)
4. are an undischarged bankrupt or the owner of a property subject to control under the law relating to bankruptcy
5. are a person of unsound mind
6. 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
7. are under convictions for electoral breaches
8. are under conviction for a criminal offence that has a maximum possible penalty of five years imprisonment or more
9. 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:

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

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:

1. New South Wales: individuals disqualified from managing a corporation are banned[[11]](#footnote-11)
2. 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 council[[12]](#footnote-12)
3. Tasmania: elected councillors are able to concurrently hold a seat in the state parliament.[[13]](#footnote-13)

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

1. being ‘the citizen or subject of a foreign power’ (which may present an impediment in cases of dual citizenship)
2. being a member of the Australian Defence Force.[[14]](#footnote-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.

#### 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]](#footnote-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.

### 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 words[[16]](#footnote-16) 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]](#footnote-17)

At the 2012 local government elections, 506 how to vote cards were registered for 271 candidates contesting eight attendance elections.[[18]](#footnote-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]](#footnote-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]](#footnote-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.

### 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]](#footnote-21)

One way of assisting voters to gain more information about candidates would be through a more structured candidate profile. Under this arrangement, 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]](#footnote-22)

#### 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]](#footnote-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 an 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.

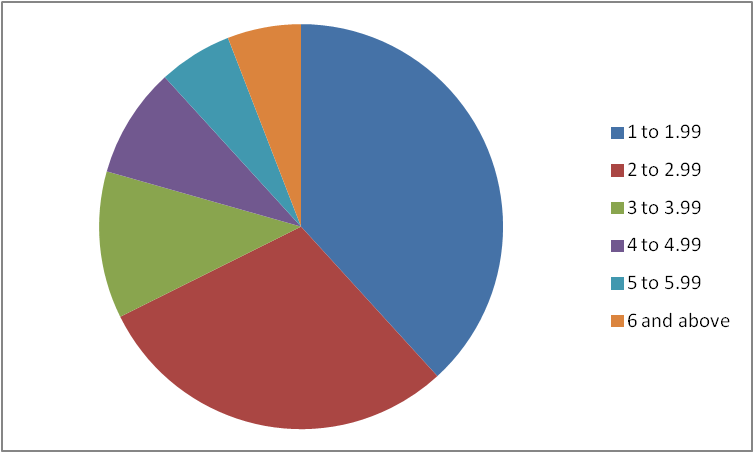
Those with very large candidate fields included Casey with 85 nominations for 11 vacancies and Melton with 72 nominations for 7 vacancies. Very large fields also correlate strongly with higher rates of informal voting.

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Attendance** | **Number** | **Number** | **Average** |
| **of** | **of** | **per** |
| **candidates** | **vacancies** | **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.

**

38%

29%

12%

6%

6%

10%

*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 contest[[24]](#footnote-24)
* 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.

### 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 three 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]](#footnote-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]](#footnote-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.

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]](#footnote-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]](#footnote-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]](#footnote-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.

### 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 Tham[[30]](#footnote-30) 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]](#footnote-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]](#footnote-32)

#### 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

**2.10 Should campaign donations be allowed? Why?**

**2.11 If allowed, should donations be capped or limited in any way? Why?**

**2.12 What disclosure requirements should apply? Why?**

**2.13 Should particular arrangements be made for the City of Melbourne?**

# Chapter 3: Caretaker period

Councils must comply with special arrangements in the lead up to elections, known as the caretaker period. These are intended to ensure that council actions do not interfere with the probity of the election process and to safeguard the authority of the incoming council.

The Act regulates council activity before elections in two ways:

* councils are prohibited from making certain types of decisions
* material produced by councils must not contain matter that will affect voting at the election.

The caretaker period commences 32 days before the election, when nominations close, and ends at 6.00 pm on election day.

### Current arrangements

#### Council activities

During the caretaker period before a general election, but not before a by-election or countback, a council cannot make ‘major policy decisions’, defined as decisions:

(a) relating to the employment or remuneration of a CEO, other than a decision to appoint an acting CEO

(b) to terminate the appointment of a CEO

(c) to enter into a contract the total value exceeding the greater of:

(i) $150,000 for the provision of goods or services or $200,000 for the carrying out of works, or

(ii) one per cent of the council's revenue from rates and charges levied in the preceding financial year

(d) to undertake an entrepreneurial activity, such as participating in the operation of a corporation or acquiring shares, for a sum of more than $100,000 or one per cent of the council's revenue from rates and charges levied in the preceding financial year.[[33]](#footnote-33)

This prohibition also applies to delegated decisions by special committees of the council or council staff.

In addition to (a) and (b) above, at any time before an election a council is prevented from reducing the term of the current CEO’s contract and then renewing the contract which would continue after an election.[[34]](#footnote-34)

A council may apply to the Minister for Local Government for an exemption if the council considers that there are extraordinary circumstances that require a major policy decision to be made during the caretaker period. If the minister is satisfied extraordinary circumstances exist, the minister may grant the exemption subject to conditions/limitations.[[35]](#footnote-35)

#### Publications

During the caretaker period before a general election or a by-election, a council must not print, publish or distribute any advertisement, handbill, pamphlet or notice unless it has been certified, in writing, by the council’s CEO. The CEO’s certification cannot be delegated to anyone else.

The CEO must not intentionally or recklessly certify such material if it contains ‘electoral matter’ unless it only contains information about the election process. A maximum penalty of 60 penalty units applies.

During the caretaker period, a councillor or member of council staff must not intentionally or recklessly print, publish or distribute an advertisement, handbill, pamphlet or notice containing ‘electoral matter’ on behalf of or in the name of:

* the council or
* a councillor using council resources

if the material has not been certified by the CEO. A maximum penalty of 60 penalty units applies.[[36]](#footnote-36)

Under the Act, a council, as well as any other person, must not at any time print, publish or distribute an advertisement, handbill, pamphlet or notice containing ‘electoral matter’ unless the name and address of the person who authorised the material appears at its end.[[37]](#footnote-37)

For the above purposes, ‘electoral matter’ is defined as matter which is intended or likely to affect voting in an election by containing an express or implicit reference to, or comment on:

* the election
* a candidate in the election
* an issue submitted to or otherwise before voters in connection with the election.[[38]](#footnote-38)

Material is considered electoral matter if for example it:

* publicises the strengths or weaknesses of a candidate
* advocates the policies of a council or a candidate
* responds to claims made by a candidate
* publicises the achievements of a council.

The type of material subject to the certification process – ‘advertisement, handbill pamphlet or notice’ – is interpreted broadly as documents produced for communicating with people in the community, including:

* council newsletters
* advertisements and notices
* media releases
* leaflets and brochures
* mail outs to multiple addressees.

The certification process also applies to such material published on the internet.

### History of changes in Victoria

The caretaker framework was introduced in 2003. In 2008, the length of the caretaker period was shortened from 57 days before the election (the entitlement date) to 32 days, following concerns from councils that this period was too long and was impeding council business.

### Comparison with other jurisdictions

New South Wales, South Australia and Queensland have similar caretaker rules which prevent councils from making decisions about the employment of the CEO and entering into contracts beyond certain thresholds.

Victorian councils are not subject to the same caretaker arrangements as state and commonwealth parliaments. Unlike those jurisdictions, where parliament is discontinued once election writs are issued, councils can continue to meet and make decisions right up to the day before election day. This is because councillors, acting as the council, make decisions on a wider range of matters directly affecting the operations and functions of the council than parliaments, which deal largely with enacting legislation. The day-to-day administration of state and federal government is able to continue under departmental arrangements in the lead up to an election.

### Key issues

#### Council activities

The statutory restrictions on council decision making during the caretaker period appear to be understood by the sector and no concerns have been raised over a council decision potentially breaching the Act. However, it is worth considering whether the existing framework is effective in ensuring that a council does not take actions that unreasonably bind the future council or interfere with the election.

##### Thresholds for entering into contracts during caretaker period

The current thresholds that restrict council decision making during the caretaker period are set at a level that is consistent with thresholds that trigger a public tender during the normal course of business.

In nearly all cases, contracts are awarded to give effect to projects that the council has previously committed expenditure to under the annual budget. It could be argued that a council should be free to continue to implement projects and spend money (through awarding contracts) where allocation of funding has been approved in the budget process, particularly on standard operational matters such as roadworks.[[39]](#footnote-39) However it is also arguable that some projects – for example major council building works where there is significant community interest in the outcome – should not be decided on by the outgoing council, when the incoming council must wear the consequences.

##### Should councils be prevented from making other decisions in the lead up to an election?

The Act sets out minimum requirements limiting decision making before elections. While not a statutory requirement, councils are encouraged by the Inspectorate and Local Government Victoria to have caretaker policies that address other matters not covered by the Act, to publicly demonstrate their commitment to probity for their elections, and provide guidance to councillors and staff on appropriate behaviour leading up to the election, which may be for a longer timeframe than the caretaker period.

Such policies can include:

* 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 that don’t promote candidates and speech writing.

Concern has been expressed that, despite policies that may provide otherwise, councillors can continue to pressure staff to participate in political events and decisions during the caretaker period, or make council equipment available for electioneering. It should be noted that, in addition to a penalty applying to the intentional/reckless publication of electoral material by a councillor using council resources, the use of such resources for campaigning may constitute a misuse of position, which is a breach of the Act.[[40]](#footnote-40)

Whether or not councils choose to self-regulate their decisions at election time, there are often complaints that certain decisions should not be made to coincide with the election period. For example, decisions on allocating community grants or ‘ward funds’, where the council approves a ward councillor’s recommendation to spend funds on ward projects.

In the case of planning applications, councils are required to make decisions within statutory timelines. Sometimes the need to make such decisions during the caretaker period is unavoidable. It is interesting to note that in New South Wales, councils are prevented from making a decision on a ‘controversial development application’[[41]](#footnote-41) during the caretaker period in certain circumstances.

#### Council publications

##### Purpose of framework and subsequent reforms

In 2003 restrictions were introduced on council publications during the caretaker period. This was in response to ongoing concerns that some councils were using public resources to circulate publications, such as newsletters and brochures, that either inadvertently or deliberately promoted individual councillors who were also running as candidates at the election, or commented on council activities that had become election issues. No penalty applied for a breach of this provision at that time.

Complaints were subsequently made that despite the new framework, councils were allegedly continuing to produce electoral material in breach of the Act. At the 2008 election, the Municipal Electoral Tribunal found that one council had contravened the Act by publishing a newsletter during the caretaker period promoting its plan for a local activity centre, a high profile issue around the time of the election.

In response, the legislation was amended in 2010 to require each council’s CEO to vet and certify certain types of council publications during the caretaker period before they could be printed, published or distributed. Further, penalties were created for a CEO who deliberately certified material affecting an election, and for a councillor or staff member who deliberately caused to be distributed uncertified electoral material.

The purpose of these new requirements was to ensure that a high level of formal responsibility was taken over council communications at election time to prevent inappropriate material being circulated, which would adversely affect the probity of the election.

##### Issues at the 2012 elections

Following the recent general elections, some councils were confused about the types of documents that required certification in order to comply with the Act. Some argued that the legislation is too broad and unnecessarily captures documents as requiring certification, such as statutory notices (e.g. rate notices, animal registrations).

There have also been views expressed that certifying large numbers of documents is resource-intensive and negatively impacts on the council’s ability to effectively communicate with the local community.

It could be argued that the requirement for the CEO to vet and certify all council documents is unnecessary in the first place, as the offences framework for intentional production of electoral material during the caretaker period sufficiently regulates council behaviour. The additional requirement for certification may be an unreasonable regulatory burden on councils.

Some councils have queried the application of section 55 of the Act to council publications outside the caretaker period. Section 55 requires councils and others to include an authorisation at the end of any of their publications that contain electoral matter, at any time, not just during the caretaker period. Councils have argued that it is impractical to include such authorisation on every document that contains information on council activities and projects, many of which ultimately become election issues. They add that such disclosure, which ensures that readers know who has written the material, is also unnecessary, given the obvious source of the relevant document.

### Questions

**3.1 Should your council be permitted to make decisions, subject to the Act’s thresholds, during the caretaker period? Why?**

**If yes, which types of decisions should they be allowed to make? Why?**

**3.2 Who should be responsible for enforcing any restrictions?**

# Chapter 4: Elections

## Polling method

Local council elections may be conducted using postal voting or by voting at a voting centre on election day (attendance voting). Under the Act, councils decide which polling method to use.[[42]](#footnote-42)

Before 1995, attendance voting was used for all local government elections. By the mid-1990s, only one-third of councils were using attendance voting.

No rural councils have used attendance voting for some time. In 2012, eight out of 78 council elections used attendance voting and these were all in Melbourne: Banyule, Glen Eira, Greater Dandenong, Knox, Moreland, Port Phillip, Stonnington and Yarra.

### Attendance voting

#### Current arrangements

For attendance elections, eligible voters receive an ‘Easyvote letter’ from the Victorian Electoral Commission, telling them:

* who is required to vote (and who is exempt)
* when and where to vote
* how to vote.

At the voting centre:

* the voter’s enrolment is confirmed
* the voter is given a ballot paper
* the voter is asked to cast their vote and place it in the secure ballot box.

Voters are marked off the roll electronically.

Where attendance voting is the adopted method for a council election, limited postal voting is also permitted. Postal voting packs are sent to:

* all ‘general postal voters’ who have registered to vote by post at Victorian State elections
* anyone who has specifically requested a postal vote.

A council can also allow early voting (or pre-poll voting) from the close of nominations up until the day before election day.

Table 8 shows the proportion of voters for each voting method at 2012 attendance elections.

|  |  |  |
| --- | --- | --- |
| Pre-poll postal vote | Pre-poll early voting centre | Election day attendance vote |
| 6.8% | 20.6% | 72.6% |

*Table 8: Proportion of voters using different voting methods – attendance elections.*[[43]](#footnote-43)

#### Comparison with other jurisdictions

Federal and state elections are all conducted by attendance voting.

Table 9 summarises voting methods for local government elections in other states.

|  |  |
| --- | --- |
| **Jurisdiction** | **Method** |
| Victoria | postal and attendance |
| Queensland | postal and attendance |
| Northern Territory | postal and attendance |
| South Australia | postal[[44]](#footnote-44) |
| Tasmania | postal |
| Western Australia | postal |
| New South Wales | attendance |

*Table 9: Voting method for local government elections in Australian jurisdictions.*

#### Levels of participation

The participation rate for Victorian council attendance elections in 2012 was 63.6 per cent, compared to 72.5 per cent for postal elections. Since 2003, attendance elections for Victorian councils have consistently produced lower participation rates than postal elections with the gap ranging from 2.9 per cent to 19.5 per cent in any one election period. The gap in 2012 was 8.9 per cent.[[45]](#footnote-45)

This participation gap appears to be largely accounted for by lower participation by non-resident voters and to a lesser extent by voters aged 70 and over, who are far less likely to cast a vote if they are required to attend in person. Voting is not compulsory for either of these groups.

Of ‘CEO’s List’ voters, mostly non-resident property owners (refer to Chapter 1 for more information on voters’ rolls), only 9.5 per cent chose to cast a vote at attendance elections compared to 53.9 per cent at postal elections in 2012.

Of voters aged 70 and over, 46.5 per cent voted at attendance elections and 76.0 per cent at postal elections in 2012 (see Tables 5 and 6 on page 20 for further details).

The difference in the participation rate between attendance and postal elections was a negligible 0.7 per cent for all other voters (for whom voting is compulsory).

In addition, in 2012, vote informality was higher for attendance elections (10.1 per cent) than for postal elections (4.8 per cent).

Overall, attendance voting consistently delivers lower participation and formality rates, which contributes to a participation gap of 15 per cent on average[[46]](#footnote-46) for the 2008 and 2012 council elections.

On average, nine more candidates contested attendance elections (34 per municipality) than postal elections (25 per municipality) in 2012. This runs counter to the common argument that postal voting encourages the participation of more ‘dummy’ candidates.

#### Features of attendance voting

Some aspects of attendance voting include its familiarity to voters, because it is used for federal and state elections. Voting in person could foster a stronger sense of participation in local democracy. It has also been argued that, by adopting the method used for federal and state elections, attendance voting raises the status of local government elections.

Attendance voting has a lower rate of participation by voters for whom voting is not compulsory: non-residents and people aged 70, who may have mobility difficulties. While attendance elections do allow postal voting by application and around 7 per cent of voters lodge a postal vote, few voters who are not required to vote appear to take up this option.

Attendance elections are also significantly more expensive, particularly if required in rural and regional areas where voters are more dispersed.

### Postal voting

While postal voting is thought of as an exception for state and federal elections, it has become the standard method of voting for most council elections.

While postal voting is now the default method for conducting council elections, this has not always been the case. Attendance voting was the system used for all local government elections prior to 1995.

Following the council amalgamations of the early 1990s, legislative reforms introduced the option of exclusive use of postal voting. This was taken up by two- thirds of councils in elections in 1995, 1996 and 1997. Since 2003, 87 to 90 per cent of councils have adopted it. In 2012, 70 of 78 local government elections were conducted exclusively by postal voting.

#### Current arrangements

During a postal election the returning officer sends each voter:

* 150-word candidate statements (250 words for the City of Melbourne) and indications of preferences for the particular ward or municipal district
* a ballot paper for postal voting
* a postal vote declaration envelope
* a prepaid envelope for return of the ballot paper
* instructions on how to vote correctly
* notice of how and when the ballot paper must be returned
* any other material that the returning officer thinks is appropriate
* where requested by councils, a multilingual leaflet is also included in the ballot pack.

Declaration envelopes containing completed ballot papers must be returned and received by the returning officer by 6.00pm on the day before election day.

#### Features of postal voting

Some aspects of postal voting are that:

* it consistently delivers higher participation and formality rates and results in higher effective participation – in the order of 15 per cent for the 2008 and 2012 elections
* it is more convenient for voters, giving them ready access to information to inform their vote and more time to consider preferences
* formality rates are higher for postal voters
* a postal election generally costs less than an attendance election because it is much less labour intensive.

Critics of postal voting argue that:

* it presents a risk that voters may regard postal information packs as junk mail or that the system is insecure and open to abuse
* it diminishes the importance of local government through an electoral system which demands less ‘active’ democratic participation
* it may lower the bar for ‘dummy’ candidates, who need do little more than issue a statement of up to 150 words and a small deposit to nominate. While this may be an issue, as we have seen, in 2012 nine fewer candidates contested postal elections on average (25 per municipality) than attendance elections (34 per municipality)
* a small proportion of voters told the VEC after the 2012 elections that they failed to cast their postal vote in time because they believed that they would have the opportunity to attend a polling place to vote on election day.

### Key issues

Polling methods for council elections raise several questions to consider:

* Does it matter that the system is not uniform; that elections may be conducted by postal voting or attendance voting?
* Does it matter that it is councillors who decide whether the election will be held using postal voting or attendance voting?
* Should maximising democratic participation be the over-riding determinant of the polling method? Does one method, postal voting or attendance voting, deliver higher and/or more meaningful participation?

#### Lack of uniformity in current arrangements

Local government elections are unique in providing for either attendance or postal voting. Other levels of government have a single system – attendance voting.

It may be that having two polling methods confuses voters about their obligations for council elections. On the other hand, there have been few calls to change existing arrangements in recent years. Those who support attendance voting for council elections argue that it works well for their communities and allows a vibrant expression of local democratic participation.

If a uniform system was adopted, this raises the question of which polling methods to adopt. Uniform attendance voting would bring council elections into line with state and federal elections and may raise the status and visibility of local government. Postal voting would remain available as an exception. Uniform postal voting would bring the remaining eight councils using attendance voting into line with the 70 councils using postal voting. This may raise formal participation rates, especially for voters for whom voting is not compulsory.

#### Sitting councillors deciding the polling method

This arrangement potentially leaves councils open to criticism that councillors may be unduly influenced by personal political considerations when deciding which method to use. In contrast, the arrangement for determining matters such as the number of councillors per municipality or ward structures are guided by independent reviews conducted by the VEC, which inform a final decision by the Minister for Local Government.

#### Maximising voter participation

Participation in local government elections is low compared to state and federal elections. For instance, in federal and state elections the turnout is 85 per cent and 93 per cent respectively. For federal elections, it should be noted that the 2013 turnout was 8 per cent lower than the 2010 turnout.

#### Assisting more voters at attendance elections to participate

Voters in local council elections that use attendance voting may apply to vote by post. Unlike in Commonwealth or New South Wales elections, they are unable to make this request online. During the early voting period for the 2012 elections, the VEC received several requests from attendance council voters who were interstate or overseas and wanted to participate in the election. However, they did not have access to a fax and there was not enough time for them to vote by post.

The VEC has recommended that, “the Government amends Regulation 44 (4) of the *Local Government (Electoral) Regulations 2005* to allow voters to **electronically** lodge a postal voting application in relation to voting at an attendance election.”[[47]](#footnote-47) Given the lower participation rate for attendance elections, there may be merit in simple reforms that increase opportunities for voters to participate.

The VEC has also suggested a technical amendment to the Act that would assist more sight-impaired voters to participate in attendance elections. Under this reform, the government would amend the regulations to allow requests to be made verbally.[[48]](#footnote-48)

### Questions

**4.1 Which is the best way for people to cast their vote: attendance or postal? Why?**

**4.2 Should the polling method for all councils be uniform?**

**If so, what should it be and why?**

**4.3 How can more eligible voters be encouraged to vote?**

**4.4 Why do voters vote informally?**

**4.5 What can be done to reduce informal voting?**

## Complaints handling

Responding effectively to complaints is vital to maintaining the integrity of council elections. Unlawful conduct at council elections and poor candidate behaviour (real or perceived) has the potential to undermine the public’s acceptance of the electoral system and the reputation of the local government sector.

Candidates are very active in the month leading up to a council election. During this short but intense period, candidates typically undertake a range of tasks including, but not limited to:

* networking with potential candidates and others to determine the level of support for their candidacy
* discussing possible preference deals
* planning their campaigns
* nominating
* finalising their candidate statements and indication of preferences
* dealing with the returning officer and other election officials
* organising how to vote card preferencing, printing and distribution (at attendance elections)
* circulating campaign material
* organising volunteers to help, including handing out how to vote cards at attendance elections.

Emotions can run high before the election. Sometimes there is friction between candidates as they compete and seek advantage to improve their chances of election. The robust exchange of political views and opinions during elections is an expected part of the democratic process. However, there is a requirement that they abide by electoral laws and there is a general community expectation that a level of respect be shown to other participants.

Complaints about election misconduct range from relatively minor and transient, such as minor altercations between candidates and their assistants, to serious criminal offences such as bribery, tampering with ballot papers and property damage. To maintain a level of confidence in elections it is important that the system:

* deals with complaints fully and within acceptable timeframes
* corrects inappropriate behaviour as early as possible
* delivers procedural fairness to all parties
* does not deter people with genuine complaints with unnecessary obstacles or red tape.

### Current arrangements

Responsibility for resolving complaints rests with several agencies. Table 10 provides an overview of the organisations with probity oversight for local government elections.

|  |  |
| --- | --- |
| **Organisation** | **Oversight** |
| Victorian Electoral Commission | * Appoints the returning officer if contracted by a council * Manages administration of the election * Electoral Commissioner: complaints about the running of the election, including the actions of the returning officer or election staff. |
| Local Government Investigations and Compliance Inspectorate | * Investigates and prosecutes breaches of the *Local Government Act 1989*, including electoral offences:   + misleading, deceptive and/or unauthorised election material   + unlawful nominations or making false declarations   + distribution of unauthorised how to vote cards   + giving or receiving bribes. |
| Council | * Enforces local laws, such as placing campaign notices and placards on council buildings and in parks * Oversees councillor Codes of Conduct, which regulate:   + councillor conduct before an election   + use of council resources and equipment. |
| Police | * Investigates criminal matters such as assault, vandalism and property damage. |
| Supreme Court | * Serves injunctions restraining someone from producing or distributing misleading, deceptive or unauthorised electoral material. |
| Municipal Electoral Tribunal | * Reviews validity of an election * The tribunal’s authority includes the power to: * Declare an elected candidate ‘unelected’ * Declare an unelected candidate ‘elected’ * Declare an election void * Dismiss/uphold an application in whole or part * Order a recount if justified. * The tribunal reports to the Minister for Local Government on alleged breaches of the Act. |
| Victorian Civil and Administrative Tribunal | * Reviews decisions of a Municipal Electoral Tribunal on application. |

*Table 10: Overview of organisations with probity oversight for local government elections.*

### Key issues

The Act does not cover how to deal with local government election complaints in the first instance. The VEC has developed its own complaints handling procedure, where:

1. candidates and other parties are asked to forward their complaint in writing to the returning officer
2. depending on the nature of the complaint, the VEC refers it to the relevant authority, in particular the Inspectorate
3. the VEC informs the complainant and the subject of the complaint in writing of any action it has taken. In some cases, it may divulge who made the complaint.

Encouraging people to contact the VEC in the first instance does not prevent someone from directly contacting the agency who would ultimately handle the complaint. At the 2012 elections, just over a quarter of all complainants went directly to the Inspectorate rather than the VEC.

Many complaints do not amount to an electoral breach and no sanction is available. For example, allegations of misleading and deceptive election material distribution are not able to be prosecuted unless the material misleads in the casting of votes. In its candidate handbook, the VEC suggests that ‘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’.[[49]](#footnote-49) Lack of knowledge of the rules may lead to unnecessary complaints.

A single ‘entry point’ advisory line could help complainants by giving them preliminary information on whether it would be worthwhile proceeding with a formal complaint. This could prevent potentially frivolous complaints from receiving attention ahead of ones involving a breach of the Act. This service could also direct people to the right agency to handle their issue.

The 2012 local government general elections saw significantly more complaints compared to the previous elections in 2008 and 2005. It is not entirely clear why this occurred – it may raise the question whether election behaviour is getting worse or whether it is a symptom of a wider culture of complaint making in our society, where complainants prefer to seek punitive outcomes instead of resolving issues themselves. Whether the existing complaints handling framework might be a factor in encouraging more complaints at council elections is open to discussion. (Refer to Chapter 5, ‘Candidate investigation and prosecution’ for further discussion on this topic.)

### Questions

**4.6 How can the complaints handling process be improved?**

**4.7 How can the number of complaints be reduced?**

## Election services provision

### Legislative framework

The conduct of local government elections in Victoria is governed by the:

* *Local Government Act 1989*
* *City of Melbourne Act 2001*
* *City of Greater Geelong Act 1993*
* *Infringements Act 2006*
* *Local Government (Electoral) Regulations 2005*
* *City of Melbourne (Electoral) Regulations 2012*.

The provisions of the Act provide for the following responsibilities in the conduct of elections and related electoral functions:

The **returning officer** for the election must be one of the following:

* the CEO
* a council staff member appointed by the CEO
* a person appointed by an election commission where the council has appointed that electoral commission to conduct the election
* a person appointed by another council where that council has been appointed to conduct the election.

The **registrar**, who compiles the voters’ rolls, must be either:

* the CEO, or
* an officer appointed by the electoral commission, where the council has engaged the electoral commission to prepare the voters’ rolls.

The **prosecution officer**, who deals with persons who have failed to vote, must be one of the following:

* the CEO or the CEO’s appointee
* a person appointed by an electoral commission, where that commission is responsible for prosecutions for failing to vote.

The **reviewer**, who conducts an electoral representation review for a municipality, must be the VEC.

Until the 1990s, the municipal clerk was the returning officer and council officers usually staffed polling booths and counted votes. In the 1990s, the VEC and the AEC shared the role of conducting elections, with the AEC conducting around one third of elections and the VEC around two thirds.

In 2001, the AEC decided not to compete with the VEC for contracts to conduct Victorian local government elections. Since then, all council elections have been conducted by the VEC under contract to the individual council.

Amendments to the Act in 2003 extended the statutory involvement of electoral commissions (in effect the VEC) in council electoral processes so that:

* the voters’ rolls can also be compiled by a registrar appointed by the electoral commission, where previously it was the responsibility of the CEO only. This change gave a statutory basis to what had, in effect, become standard practice
* the prosecution officer for non-voters could be appointed by the electoral commission
* responsibility for the conduct of electoral representation reviews, to consider the appropriate electoral structure for a council, was transferred from the council to an electoral commission.

(Refer to Chapter 6 for a more detailed discussion on electoral representation reviews.)

The shift to the engagement of electoral commissions to provide election services is a nation-wide trend and is a response to the increasing complexity and scale of elections. The amalgamation of councils in Victoria in the 1990s created larger organisations covering larger areas. Changes to the Act allowed elections to be conducted under contract by other entities particularly election commissions.

The increasing community expectation for transparency and impartiality has also driven the shift towards engaging an independent external provider to conduct elections.

Despite this shift, councils in Victoria are still required under the Act to contract a provider through the competitive tendering process that applies to the purchase of services from external providers of more than $150,000. In recognition of the local government preference for contracting an electoral commission and the VEC being the only provider prepared to offer the service, the Victorian Government exempted all councils from the requirement to tender for the 2012 general elections.

Some councils did not utilise this exemption in contracting the VEC because:

* the total cost did not exceed $150,000
* councils had already appointed an agent to conduct the tendering process on their behalf as part of an aggregated procurement approach.

### Current arrangements

The conduct of local government elections involves several core services including:

* the preparation and provision of voters’ rolls
* the duties of the returning officer
* public notices and publicity
* candidate processes
* polling and vote counting
* non-voting enforcement
* election records processes.

The discussion of the current arrangements and practices are based on the approach taken by the VEC in conducting the 2012 local government general elections[[50]](#footnote-50).

#### Council consultation

In October 2011, the VEC conducted eight information and consultation sessions for councils to present the proposed service plan and the timelines that would need to be met. Of the 79 councils due to hold elections, 77 were represented at these sessions. The proposed service plan[[51]](#footnote-51) was discussed separately with councils who were unable to attend.

In December 2011, the finalised service plan, with estimated costs, was distributed to councils.

#### Contract management

A contract manager was appointed in each municipality to ensure that elections were conducted in accordance with the legislation and the terms of the contract. At the end of the elections, the contract manager prepared a report, including recommendations for future elections. The contract manager worked closely with the VEC’s communication team to manage the advertising and communications. The communication team coordinated the development and placement of advertising, wrote and distributed media releases, and prepared election information for the VEC’s website.

#### Advertising and communication

The VEC undertook local and statewide voter information campaigns to:

* increase voters’ awareness of their rights and obligations
* maximise voter turnout
* minimise the informal vote
* meet statutory requirements.

The VEC also provided:

* advertising services
* media relations
* election information and assistance on the VEC’s website
* an overflow service to respond to calls made to election offices, when all lines in an office were busy.

Multilingual translations and an interpreter service are additional services that can be provided. For metropolitan councils, the advertising campaign was extended to include ethnic press and radio. Advertisements focused on enrolment and voting opportunities for potential voters from non-English speaking backgrounds. On request, the ‘notice of entitlement date’ and ‘notice of election’ advertisements included the registration requirement for voters who wished to have their ballot papers provided in braille or large print format, in line with the *Charter of Human Rights and Responsibilities Act 2006*.

The VEC liaised with Vision Australia and Blind Citizens Australia to provide information via three major communication pieces (email, Braille and CD formats) about the elections and the VEC’s ‘opt-in’ program for Braille or large print ballot papers. To complement the information provided to those registered on databases, a radio advertising campaign ran on 3AW and Vision Australia Radio during August. Print advertisements were run in *The Age*, *Herald Sun* and *Geelong Advertiser*. A total of 182 people registered for the program – 36 for a braille ballot pack and 146 for a large print ballot pack.

#### Voter notice (EasyVote letter — all attendance elections)

As required by legislation, a notice was sent to each voter as a reminder to vote. The notice provided:

* ward-specific information about the times and places where the voter may vote on election day or at an early voting centre
* information on postal voting
* an electorate map showing ward boundaries
* a telephone number for the council’s election office
* a National Relay Service enquiry number (for people who are deaf, hearing impaired and/or speech impaired)
* the VEC’s website address
* telephone numbers for the multi-language interpreting service.

#### Uncontested election leaflet (subdivided councils only)

If a ward election was uncontested, a leaflet was mailed to affected voters informing them that that they were not required to vote. The leaflet also provided the name of the candidate/s elected unopposed. This mail out reduced the potential for confusion among voters who were aware of the election but did not receive an EasyVote letter, as they were not required to vote.

#### Website

The VEC website provided comprehensive information about the elections including information at a council level about:

* enrolment
* inspecting and objecting to errors in voters lists
* nominating for elections
* early and postal voting (attendance)
* redirection of ballot packs (postal)
* replacement ballot packs (postal)
* details of how and when to vote on election day
* election results
* links to translated electoral information.

#### Returning officer, deputy returning officer and staff

Beyond the required appointment of returning officers, the VEC recruited additional senior election officials to act as deputy returning officers. Both groups underwent at least eight days of training and 40 hours of home study prior to their appointment. A team of support officers were appointed to support returning officers during the election period and advise on legislative, procedural and technical matters.

#### Election office

The VEC set up election offices in two configurations – stand-alone and hub/satellite offices. Each configuration involved different equipment, staffing, hardware and software requirements, and ultimately, different costs. Election offices operated from 9.00am to 5.00pm on weekdays. In some regional areas, the VEC shared return ballot paper envelope scanning and phone enquiry facilities among neighbouring election offices. The office was used by returning officers to meet with candidates, receive nominations and candidates’ statements and issue in-person replacement votes during the last week of voting. Returning officers in municipalities that offered attendance voting also utilised the election offices as early voting venues.

#### Computerised election management system

A computerised election management system was developed by the VEC and provided to returning officers. The system contained details of each election and the voters’ rolls. Returning officers could enter information related to:

* nominations
* candidate statements (postal elections)
* how to vote cards (attendance elections)
* early votes and postal votes
* results.

The system was integrated with the VEC’s office system and was used to:

* produce the artwork for printing ballot papers, candidate statements and other products
* publish information directly onto the VEC’s website.

#### Telephone enquiry service

Returning officers were provided with local telephone services to handle enquiries during the election period. The service operated during standard office hours. Telephone enquiry staff were located in the election offices and had access to ‘look-up’ tools containing key details for the elections. The telephone services at the election offices were linked to the VEC’s phone system and a dedicated team of operators at the VEC answered any overflow calls from election offices.

#### Interpreting and multilingual information service

The VITS Language Link telephone interpreting and multi-language information service operated throughout the election period. State-wide press advertising included interpreting service telephone numbers. For the election period, 4,695 calls were made to the VITS Language Link service. Of these, 2,847 callers obtained the information required from the pre-recorded message in their language while 1,848 required the assistance of an interpreter.

#### Candidate information session

Returning officers conducted at least one information session for candidates prior to the close of nominations. The information sessions covered:

* the election timeline
* election procedures and rules, with an emphasis on election advertising.

Returning officers also gave prospective candidates a kit containing a handbook and all the forms relevant to their candidacy.

#### Nominations

Prospective candidates were able to complete their nomination form online and then print it. The completed form contained a unique identifier for lodgement with returning officers. This met the legislative requirement for a candidate to lodge a signed hard-copy nomination form with the returning officer more efficiently. The returning officers published all nominations received in the election office daily. The VEC undertook further quality assurance before publishing the nominations on the VEC’s website twice a day.

#### Draw for ballot paper position

Ballot draws were conducted electronically with the order of names on the ballot paper determined by a computerised single random draw. The electronic application had been independently audited to ensure the result was random. The results were published on the VEC’s website the night that nominations closed.

#### Candidate statements and indication of preferences (postal elections)

Prospective candidates were able to complete their personal statements and indication of preferences online and print their statement for lodgement with returning officers.

#### How to vote cards (attendance elections)

The Victorian Electoral Commissioner was made available to all returning officers appointed for attendance elections to advise on how to vote card matters. Information on the requirements for how to vote card registration was contained in the *Candidate Handbook*[[52]](#footnote-52).

#### Refund of nomination deposits

Candidates who received 4 per cent or more of the formal vote, or who were elected, had their nomination deposit refunded after the declaration of the election. The VEC refunded these candidates and sent cheques for deposits forfeited by candidates to councils.

#### Ballot material

Ballot material was prepared by VEC employees. The VEC established a Service Level Agreement with Australia Post for the provision of postal facilities and services for the 2012 council elections and coordinated the printing and mailing process. The VEC also established a unique reply paid number for each ward in a municipality. Ballot papers for attendance elections were printed with a background security screen using a different colour for each ward. Ballot papers were specially designed to meet security and confidentiality requirements. A leaflet containing voting instructions in 20 languages other than English was included in the ballot pack on the request of councils.

*The Local Government (Electoral) Regulations 2005* allow a voter to apply to have their ballot material redirected to an address other than their entitlement address, which the VEC would then arrange. Replacement ballot packs were also delivered in response to lost or spoilt ballot materials or non-receipt of the ballot pack. Returning officers were able to monitor replacement ballot materials via the VEC’s election management system to ensure that no voter had more than one ballot paper admitted to the count.

The VEC ran a joint radio and print campaign with Crime Stoppers Victoria to encourage the reporting of any observed theft of ballot material or knowledge of fraudulent behaviour with regard to postal voting. Specific arrangements were made regarding the City of Melbourne’s elections.

The voter pack sent to each voter on the voters roll comprised:

* a postal vote declaration envelope
* the candidate statements and indications of preferences for the particular ward or municipal district
* a ballot paper for postal voting
* a prepaid envelope for the return of the ballot paper
* instructions about how to vote correctly
* notice of how and when the ballot paper must be returned
* any other material that the returning officer thought was appropriate.

Voters in some councils also received a multilingual leaflet at the request of those councils. Sensitivity to mail delivery patterns is critical in maintaining high participation in postal elections.[[53]](#footnote-53)

#### Voting centres (for attendance elections only)

1. The VEC prepared a proposed list of voting centres for each attendance election based on the knowledge and experience gained from previous state, federal and council elections.
2. The list was provided to councils for feedback.
3. Returning officers made the final decision on the appointment of voting centres.

173 voting centres were established for attendance elections and 22 early voting centres were established for early voting.

The VEC organised voting centre furniture, where required, and voting equipment including customised cardboard voting centre equipment, such as voting screens, directional signs and ballot boxes.

The VEC operated voting centres on polling day. The VEC marked voters off the roll electronically, which simultaneously updated the rolls at all the other voting centres in the municipality. Hard copy rolls were provided as a back up in case a connection at a voting centre failed.

#### Vote counting

Computer counts were conducted at 65 venues for five attendance elections and 62 postal elections. Twenty-six manual counting venues were established. Preferences on each ballot paper were entered into the VEC’s computer count application by experienced data entry operators. Once all ballot papers had been entered and as authorised by the returning officer, a result was calculated. For elections involving single vacancies, the returning officer conducted a manual count at the election office or at another venue within the municipality. Results were displayed on the VEC website after all counts for a particular council were finished.

Legislation requires that the service provider have the counting facilities to manage the complexities of the various counting systems, including manual counts for preference distributions and computer counts for proportional representation. For practical reasons, the VEC has recommended that the government support changes to the *Local Government (Electoral) Regulations 2005* to make it easier to conduct vote counting outside of the municipal district. This would reflect updated computerised counting applications.[[54]](#footnote-54)

#### Management of complaints

The VEC provided information on the management of complaints in the candidate handbook, including the responsibilities of the returning officer and the Inspectorate.[[55]](#footnote-55) Complaints handling is covered in more detail in the previous section of this chapter.

#### Election report and storage of material

As required by the Act, the VEC provided all councils that had elections with a report on the conduct of the elections. After the declaration of elections, the returning officers packed ballot papers and other election materials into sealed security boxes. The boxes were delivered to CEOs for storage for four years. Where computer counts were conducted, a CD of ballot paper data was provided to CEOs for safekeeping until such time as it may be required for a count back.

#### Municipal Electoral Tribunal enquiries and Victorian Civil and Administrative Tribunal reviews

Section 45 of the Act allows a candidate, or a party of 10 voters, to dispute the validity of a local government election through an application to a Municipal Electoral Tribunal (MET). MET decisions are subject to review by the Victorian Civil and Administrative Tribunal (VCAT). Though not all cases impugn the VEC or returning officer, the VEC is named as a respondent in all applications. Where there is no claim against the VEC, the VEC generally requests to be removed as a party to the application at the Directions Hearing. The VEC may be invited by VCAT to remain *amicus curiae* (a ‘friend of the court’). The VEC or returning officer is also subject to subpoena.

The costs involved are currently incurred by the VEC. Where an application alleges that the VEC or returning officer was responsible for an error or an irregularity that affected the outcome of the election and the MET finds the VEC or returning officer was at fault, the VEC pays the costs associated with the MET. However, if the MET finds there was no fault by the VEC or returning officer, the VEC passes the costs associated with the MET to the council.

#### Insurance

Councils have previously required election service contractors to maintain professional indemnity insurance. Given the relatively low likelihood of claims and the maximum size of possible claims, the VEC decided after consultation with the Municipal Association of Victoria to discontinue the insurance for the 2012 elections. In the event that a re-election is required as a result of an error or action by the VEC or the returning officer, the VEC committed to meet the cost of a new election.

#### Cost structure

Despite its monopolistic position, the VEC has provided its services under a marginal cost recovery model. There is no evidence that any other potential service provider would be prepared to provide services under a similar cost model that would allow for a more competitive market.

The VEC allocates its marginal cost in three ways[[56]](#footnote-56):

1. Direct cost

* The cost is calculated on a price per unit (such as per voter) or a quote from a supplier.
* The cost applies specifically to individual councils.

1. Apportioned cost (state-wide)

* The cost is apportioned across Victoria by the number of councils and/or the number of voters.

1. Apportioned cost (hub/satellite)

* When a hub and satellite approach is used for the provision of services, the cost of the hub is shared by all component councils based on the number of voters.

Some factors may require the VEC to subsequently vary the tendered cost including:

* number of voters
* voter turnout
* number of candidates
* number of uncontested elections
* movement in the collective pay scale for public service employees
* unanticipated rate changes within existing suppliers.

The costs are subject to independent audit.

The VEC is able to absorb some of the ‘fixed’ costs, as those cost are already being incurred as part of the VEC’s delivery of electoral services for the Victorian State Parliament, Victorian Government and certain statutory elections. These costs include:

* core staff payroll
* core system development such as the election management and vote counting systems
* ongoing support for maintaining the municipal voters roll
* recruitment and training of election officials
* equipment for election activity
* VEC head office and warehouse facilities.

This competitive advantage offered by the VEC has enabled election cost to be kept at a relatively low level.

### Comparison with other jurisdictions

Election service provision in other states reflects the shift discussed previously towards independent electoral commissions as the primary provider.

|  |  |
| --- | --- |
| **State** | **Who can conduct elections** |
| New South Wales | Council General Manager or State Electoral Commissioner[[57]](#footnote-57) |
| Queensland | State Electoral Commission[[58]](#footnote-58) |
| South Australia | State Electoral Commissioner[[59]](#footnote-59) |
| Western Australia | Council CEO or State Electoral Commissioner or any other person (if Electoral Commissioner agrees)[[60]](#footnote-60) |
| Tasmania | State Electoral Commissioner[[61]](#footnote-61) |

*Table 11: Who can conduct elections in other states.*

### Key issues

Elections are essentially about selecting the individuals who will make decisions on their constituents’ behalf and for the public good. Given Victoria’s democratic traditions and values, the Panel’s working premise is that voters expect that an electoral system enables the will of the majority to be reflected accurately, transparently and fairly in the result.

The legislative framework plays a critical role in achieving these outcomes and will be a major focus of the review.

The current practice discussion above illustrates the complexity of how elections are now conducted and the capacity that potential service providers must have to ensure high levels of performance and results that are not in dispute. This in turn has implications on cost. As a general proposition, consideration of changes to the current system would need to have regard to maintenance of independence and accountability, efficiency, expertise and innovation and these are discussed below.

#### Independence and accountability

The trend towards independent entities conducting elections is clear. It is an approach which has been increasingly embraced by other jurisdictions. There is scope to consider if there are sufficient grounds to change the legislative framework so that the Victorian Government formalises the current practice in the sector and provides the VEC with a statutory role to conduct local government elections.

#### Efficiency

Conducting all 79 elections at once provides economies of scale in operations. If there is interest in capturing those economies then consideration needs to be given to considering formalising a single supplier model.

Electoral commissions have an inherent competitive advantage to the provision of election services. Much of the fixed capacity that is required of a service provider already exists within electoral commissions, arising from their statutory role conducting elections for other levels of government. Their statutory responsibilities also drive ongoing capacity building and innovation that further reinforces their competitive advantage. It would be increasingly difficult for other entities to compete, even if provider opportunities were expanded to include non-council and non-electoral commission providers.

These factors have created a largely monopolistic market for Victorian councils to procure election services. The costs have been kept relatively low because the VEC has chosen to adopt a marginal cost recovery model. Councils would be exposed to higher costs in the future if the VEC chose to adopt a different cost model.

#### Expertise

The competency and capacity of the election service provider to organise the elements of a well run election and respond to procedural issues is critical. Additional costs that would be incurred in subsequent appeals and litigation could also be avoided if disputes and complaints are managed effectively and in a timely manner.

#### Innovation

It is not apparent that the lack of competition in service provision has stymied innovation in the conduct of local government elections. There are examples where the application of relevant technologies has resulted in more efficient electoral procedures and practices and a better voting experience for Victorians, such as the introduction electronic vote counting and date-of-birth verifications in postal elections. Some of the innovations were adopted after having been applied in elections for other levels of government.

#### Service provision contracts between the VEC and councils

Councils are required to put election services out to tender notwithstanding there is not a competitive market for election services provision. Administratively this is managed by the minister providing an exemption from the procurement requirements of the Act on the basis of monopoly service provision. There is a question whether the Government should formally enshrine the VEC’s role in local government service provision. This approach would offer planning certainty for both parties. Some may argue however that it may also reduce the negotiating power of councils as clients in respect of their securing particular and tailored services that meet their council’s needs.

### Questions

**4.8 Should all local government elections be conducted by the VEC? Why?**

**4.9 How can election costs be contained?**

# Chapter 5: After the elections

## Candidate investigation and prosecution

The 2012 elections were described in the media as being fiercely contested, with more complaints about candidate conduct than previous elections. Enforcing candidate compliance in accordance with the Act when contesting elections is a challenging and important responsibility. It is fundamental to maintaining the confidence of voters and the integrity of the elections.

### Current legislative requirements

The activities shown in Table 12 are prohibited at council elections under the Act. Many are similar to electoral offences applying in other states and the Commonwealth.

The penalty amounts listed applied at the 2012 elections. They have increased slightly since then.

|  |  |  |
| --- | --- | --- |
| **Section of Act** | **Offence** | **Maximum Penalty** |
| 52 | Unlawful nomination | $33,801.60 or imprisonment 2 years |
| 53 | Canvassing within 6 metres of a voting centre | $1,408.40 |
| 54(1) | Interfering with a person’s political rights, duties | $16,900.80 or imprisonment 1 year |
| 54(2) | Making public demonstration | $140.84 |
| 54(5) | Interfering with voter in marking their ballot paper | $16,900.80 or imprisonment 1 year |
| 55 | Producing electoral material that does not contain details of the material’s author | $1,408.40 (person) $7,042.00  (body corp.) |
| 55A | Misleading/deceiving a voter in the casting of their vote | $8,450.40 or imprisonment 1 year (person) $42,252.00 (body corp.) |
| 55B | Failing to provide certain header information in newspaper articles containing electoral matter | $1,408.40 (person) $7,042.00  (body corp.) |
| 55C | Failing to provide details of author in newspaper articles containing electoral matter | $1,408.40 (person) $7,042.00  (body corp.) |
| 55D(1) | Certifying electoral material during caretaker period by CEO | $8,450.40 |
| 55D(2) | Producing electoral material during caretaker period by councillors/council staff | $8,450.40 |
| 56 | Producing/distributing unregistered how to vote cards at an attendance election | $8,450.40 |
| 57 | Publishing false/defamatory statements *(this provision was repealed shortly after the 2012 election)* | $1,408.40 (person) $7,042.00  (body corp.) |
| 58 | Tampering with ballot papers, voting more than once | $33,801.60 or imprisonment 2 years |
| 58A | Interfering with postal ballot packs at postal elections | $33,801.60 or imprisonment 2 years |
| 59 | Giving or receiving bribes in relation to the election | $84,504.00 or imprisonment 5 years |
| 60 | Infringing secrecy at election by election official, police | $16,900.80 or imprisonment 1 year |
| 61 | Unlawful behaviour by election officials | $8,450.40 or imprisonment 6 months |
| 238A | Providing false written declarations relating to the election | $16,900.80 |

*Table 12: Activities prohibited at council elections under the Act.*

The Inspectorate was established in 2009 as the integrity agency for local government in Victoria. The Inspectorate is responsible for investigating complaints about possible breaches of the Act. During elections, the Inspectorate works closely with the VEC. The Inspectorate and VEC’s responsibilities in the electoral process work in this way:

* The Inspectorate is responsible for complaints relating to candidates, campaigns, councils, advertisers and voters stemming from the election, including possible breaches of the Act.
* The VEC conducts elections on behalf of councils, and is responsible for any complaints related to procedural matters and the management of the election. The VEC does not have the authority to investigate matters relating to the Act.

The Inspectorate advises all complainants to report incidences of criminal behaviour to Victoria Police. The responsibilities of different organisations for handling complaints are discussed in more detail in the Chapter 4 sections, ‘Complaints handling’ and ‘Election services provision’.

When it comes to challenging the outcome of an election, the responsible authority is the Municipal Electoral Tribunal (MET), a form of ‘court of disputed returns’ for council elections in Victoria. Section 45 of the Act allows a candidate, or a group of 10 voters, to lodge an application for an inquiry by a MET into the election. Applications must be lodged within 14 days of the declaration of the result of an election.

### Current arrangements

From 1 September 2012 to 31 December 2012, the Inspectorate received 456 complaints relating to the 2012 local government elections. Approximately 70 per cent (325) of these complaints were initially made to the VEC, with 131 complaints made directly to the Inspectorate. Of the complaints to the VEC, 60 per cent came from candidates, and 40 per cent from voters.

Of the 456 complaints it received, the Inspectorate assessed 383 separate issues or allegations for investigation during the election period. The Inspectorate did not investigate issues or allegations that:

* did not constitute *prima facie* breaches of the Act
* did not fall under the jurisdiction of the Inspectorate, such as:
  + alleged breaches of local laws (complainant advised to refer to council)
  + complaints about VEC employees (complainant advised to refer to VEC)
  + criminal matters under the *Crimes Act* *1958* (complainant advised to refer to Victoria Police).

Table 13 compares the issues the Inspectorate investigated in 2012 with the number of issues investigated in 2008, suggesting a 72 per cent increase in complaints.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Issue** | **2008** | | **2012** | |
| **no.** | **%** | **no.** | **%** |
| False and misleading electoral material | 61 | 28% | 112 | 30% |
| Lack of proper authorisation of electoral material | 32 | 14% | 93 | 24% |
| Eligibility of candidates | 23 | 10% | 12 | 3% |
| Defamatory material/comments | 12 | 5% | 55 | 14% |
| Candidate conduct | 19 | 9% | 32 | 8% |
| Conduct of voting process | 11 | 5% | 21 | 6% |
| Other | 65 | 29% | 58 | 15% |
| **Total** | **223** | **100%** | **383** | **100%** |

*Table 13: Issues investigated in the 2008 and 2012 elections.*

Of the 376 matters for which an investigation had been completed by late August 2013,[[62]](#footnote-62) 70 per cent of complaints/issues did not constitute a breach of the Act. A further 13 per cent warranted only a warning because in many instances, offences of failing to properly authorise electoral material were made out of ignorance and the proper authorisation was subsequently given. The investigation outcomes are shown in Table 14.

|  |  |  |
| --- | --- | --- |
| **Outcome** | **Number** | **%** |
| No breach – no further action taken | 188 | 50% |
| No breach – advice provided | 75 | 20% |
| Breach – formal warning issued | 49 | 13% |
| Breach – criminal investigation initiated | 32 | 9% |
| Breach – voluntary compliance requested | 1 | Less than 1% |
| Breach – no further action taken | 2 | Less than 1% |
| Referred externally to relevant agency | 22 | 6% |
| Noted for intelligence purposes – other | 7 | 2% |

*Table 14: Outcomes of investigations by the Inspectorate for the 2012 elections.*

Five applications for MET hearings were lodged following the 2012 local government elections, compared with 12 applications for METs after the 2008 elections.[[63]](#footnote-63)

These applications related to the elections of the following councils:

1. Manningham – allegation that a candidate was not qualified to stand for election. The allegation was sustained. The candidate was convicted in the Ringwood Magistrates Court and was fined $15,000 and ordered to pay $9,900 to the Inspectorate. The conviction also meant that the candidate was automatically disqualified from becoming a councillor for seven years.
2. Port Phillip – allegation that the election was invalid because a candidate distributed election material contrary to the authorisation provisions of the Act. The MET dismissed this application.
3. Swan Hill – allegation of improper conduct by the successful candidate. The MET dismissed this matter but referred the applicant’s allegation of defamation to the Minister for Local Government pursuant to (the now repealed) section 57 of the Act.
4. Macedon Ranges Shire Council – allegation of improper vote counting processes and inclusion of suspect votes in the count. This matter was dismissed by the MET.
5. Moreland City Council – allegation of forged and falsified votes. This matter was still before the MET at the time of publication.

### History of changes in Victoria

In 2009, the *Local Government (Offences and Penalties) Act* significantly increased penalties for several electoral offences to strengthen deterrence.

### Key issues

#### Increase in allegations of candidate misconduct

During the 2012 elections, candidates and voters made several complaints alleging candidate misconduct, ranging from smear campaigns to sabotage and criminal activity.

The majority of complaints alleged that candidates had conducted themselves dishonestly and inconsistently with the principles of a fair and transparent election. Most of these allegations were dealt with under the provisions of the Act related to election material, false and misleading statements and defamatory statements. It is worth noting that while the Act specifies the requirements and principles that councillors must adopt whilst in office, there is no code of conduct for candidates.

There were also 31 complaints alleging more serious, even criminal behaviour, during election campaigns and/or at polling booths. These included:

* alleged physical and/or verbal altercations between candidates
* allegations of criminal damage as a result of candidates defacing or removing other candidates’ election material/advertising from where it had been originally placed
* intervention orders against other candidates, which at least two candidates sought.

Elections in Australia allow for robust debate and expression of opinion. During the campaign, candidates are able to refute views expressed by others in the public domain, as long as they do not breach the law. Not all candidates may be aware that, as a candidate for public office, their conduct and character may be scrutinised. All candidates deserve to contest elections without being subjected to intimidation or misrepresentation.

Seventy per cent of investigations were found to not constitute a breach of the law, and few prosecutions resulted. This raises some important questions.

Is the large number of complaints due to:

* Naivety among some candidates about the normal rough and tumble of local politics?
* Ignorance among some candidates about their compliance responsibilities?
* More policing of behaviour (as a consequence of the creation of the Inspectorate) detecting more poor conduct (in the same way apparently rising crime rates are attributed to an increase in police numbers)?
* Deteriorating behaviour requiring more rigorous enforcement?
* A lack of teeth in the enforcement regime?

The panel’s analysis of what drove the increase in complaints in 2012 may inform whether existing enforcement arrangements are considered adequate or require strengthening.

#### Councillor conduct: misuse of position

The Act intends that all candidates should have equal access to support and information during an election period. Therefore, sitting councillors who stand for re-election cannot use their current position to gain access to information or resources that would not be available to a non-sitting candidate. At the 2012 elections, the Inspectorate received 10 allegations of sitting councillors misusing their positions to advance their election campaigns. Of the 10 complaints, four were subject to criminal investigation by the Inspectorate. Of these:

* one criminal investigation was still ongoing at the time of publication
* two did not constitute breaches
* one was referred to the relevant council.

On this basis it could be argued that most sitting councillors generally behave reasonably and lawfully while conducting their campaigns. This may be a consequence of councillors having better information and understanding of the requirements and expectations of conduct in a public domain. Notwithstanding the generally sound behaviour of councillors contesting the election, some of the examples of poor behaviour at the recent elections were of concern.

#### Social media

The 2012 elections saw an increasing number of candidates and voters using social media to express views or make representations. The information gathered by the Inspectorate suggests that amendments to the Act may be required to clearly define the requirements for using social media during elections.

#### Adequacy of penalties

While a large number of penalties for electoral offences were increased in 2009, the deterrent for some high volume offences may still be inadequate. At the 2012 elections, the maximum penalty for an offence relating to unauthorised election material, under section 55 of the Act was $1,408 for an individual, and $7,042 for a body corporate.

While many cases may constitute clear prima facie breaches of the Act, in most instances, the Inspectorate does not consider it appropriate to prosecute because:

* the cost of any investigation and prosecution would outweigh the maximum penalty
* compliance with the act can be achieved through alternative means
* it would not be in the public interest to pursue a prosecution on a matter that is too trivial to affect the outcome of an election.

#### Privacy of voters

Candidates are given a copy of the voters’ roll for their municipality when they nominate and are required to declare that they will use the details in the roll exclusively for electioneering and destroy or return all copies at the end of the election period. In 2009, the penalty for failing to use the roll only for the permitted purpose or failing to destroy it was increased six-fold. This recognised the privileged position of candidates in being given private details of voters and the consequential risks to voter privacy. However, while the penalty for failing to treat the voters’ roll properly is severe, the likelihood of detection remains low given that return or destruction of rolls is not carefully monitored. Given the ease with which documents may be copied it may be a difficult provision to enforce.

#### Relationship between enforcement agencies

Refer to the Chapter 4 section, ‘Complaints handling’ for more detail.

Enforcement of electoral breaches is challenging and involves a number of enforcement agencies: the VEC, the Inspectorate, the MET, the Victoria Police, the Victorian Civil and Administrative Tribunal and other courts. Some candidates have expressed a view that the network of enforcement agencies is complex, difficult to navigate or lacking transparency. Others have expressed frustration at the lack of prosecution of perceived grievances and complaints raised during the election and the amount of time it takes to resolve them.[[64]](#footnote-64)

### Questions

**5.1 Are the electoral offences specified in the Act sufficient? If not, what other offences should be included?**

**5.2 Can investigations and prosecutions be conducted more effectively? If yes, how?**

## Non-voting enforcement

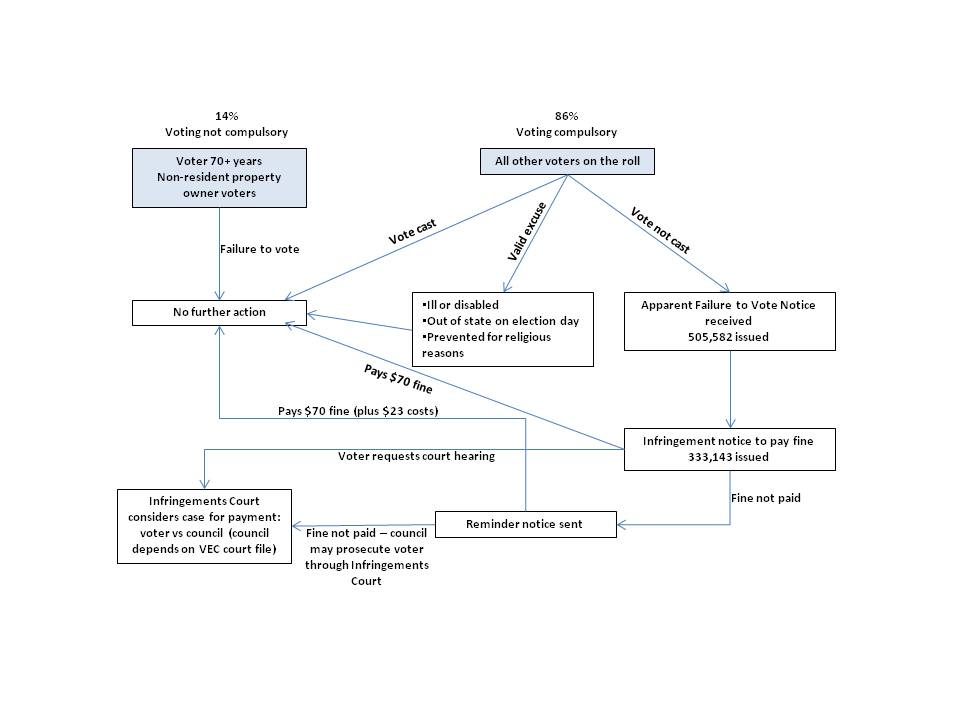
### Current legislative requirements

Compulsory voting for council elections is enforced in Victoria. Residents under 70 who are enrolled to vote and fail to do so are subject to being fined. The current fine is $72 (at the 2012 elections, it was $70).[[65]](#footnote-65) The CEO of each council is required to appoint a prosecution officer to enforce compulsory voting.[[66]](#footnote-66)

Voters whose voting entitlement is linked to non-resident property ownership (around 14 per cent of voters) are not compelled to vote and, like people aged 70 years and over, are not subject to prosecution.

### Current arrangements

Most councils engage the VEC to appoint a prosecution officer to enforce compulsory voting – 74 of 78 councils conducting elections in 2012 did so. The VEC did not enforce compulsory voting for the Borough of Queenscliffe, Golden Plains Shire Council, Pyrenees Shire Council and Swan Hill Rural City Council. Compulsory voting was not required for Ararat Rural City Council as the general election was uncontested. Figure 7 shows how non-voting was enforced for the 2012 elections.



*Figure 7: Non-voting enforcement for the 2012 elections.*

After the 2012 elections, the VEC posted 505,582 Apparent Failure to Vote notices for the 74 councils for which they undertook enforcement. This is an increase of around 100,000 on the number of notices issued for the 2008 elections. The Apparent Failure to Vote notices resulted in 333,143 infringement notices being issued.[[67]](#footnote-67)

More than $9 million in fines was remitted from the VEC to councils who engaged it for compulsory voting enforcement following the 2012 elections. These funds became consolidated revenue and made a significant contribution to remitting the cost of conducting the elections, a cost that is borne by councils.

Where voters fail to pay the resulting fine, the VEC hands a court file over to the relevant council for it to decide whether to take court action.

### History of changes in Victoria

The appointment of the VEC to oversee most of the enforcement of compulsory voting for council elections is a relatively recent development. Councils largely conducted their own enforcement of compulsory voting until the late 1990s when the VEC increasingly assumed the role of election service provider.

### Comparison with other jurisdictions

New South Wales, Queensland and the Northern Territory, where voting for council elections is compulsory, also have enforcement processes. Tasmania, South Australia and Western Australia, where voting for council elections is voluntary, do not have enforcement processes.

### Key issues

Almost one in four voters who responded to the VEC’s survey of voters after the 2012 elections indicated that the fear of being fined motivated them to vote. Enforcement is a vital element in ensuring the integrity of compulsory voting for council elections in Victoria and for maintaining high rates of participation in local democracy. It is in the interests of justice and equity that all voters who are required to vote and fail to do so are effectively prosecuted.

The VEC’s process for prosecuting failures to vote appears to be professional and rigorous. The panel has less information on:

* the extent to which non-voters fail to pay the infringement notice
* the extent to which they are followed up and taken to court.

Legal action is expensive and a balance needs to be struck between the cost of pursuing non-voting and the need to maintain the integrity of compulsory voting.

### Question

**5.3 Should compulsory voting be strongly enforced? Why?**

## Election validity

In some limited circumstances, an election result can be overturned and a different candidate declared elected, or the election itself declared void.

### Current arrangements

A candidate at an election or any group of at least 10 voters who dispute the validity of the election may apply for an inquiry into the election by a Municipal Electoral Tribunal (MET). The application must

* be in writing
* contain the grounds on which the inquiry into the conduct or validity of the election is sought
* be lodged with the principal registrar of the Magistrate’s Court within 14 days of the declaration of the result of the election.[[68]](#footnote-68)

A MET comprises one magistrate or acting magistrate who is appointed by the Attorney General.[[69]](#footnote-69)

The powers of a MET include:

* declaring that any person declared elected was not duly elected
* declaring any candidate duly elected who was not declared elected
* declaring an election void
* ordering a recount.[[70]](#footnote-70)

If a MET uncovers evidence of breaches of the Act in the course of its deliberations, it must report these to the minister.[[71]](#footnote-71)

A MET decision can be appealed at the Victorian Civil and Administrative Tribunal..[[72]](#footnote-72)

The grounds for disputing the validity of an election are very narrow. Election validity is not affected by defects and irregularities if the election was conducted in accordance with the principles of the Act and the irregularity, failure or mistake did not affect the result of the election.[[73]](#footnote-73)

### Key issues

The Act is silent on what grounds a MET can declare an election void. The Common Law is therefore applied, which consists of two criteria:

1. *There was no real election at all* – an election will only be declared void if it can be shown that the voters did not have a fair and free opportunity of electing the candidate that the majority might prefer.

2. *The election was not really conducted under the requirements of the relevant legislation* – an election may be declared void if a majority of voters may have been prevented from voting by reason of breaches of the relevant legislation. It is not enough to say mistakes were made in carrying out the election under the relevant laws. What must be proved is that the election was not carried out under those laws.

Often candidates and voters will make application to have an election voided on the basis that a breach of the Act has occurred. Such a breach will not however, in itself, void an election or require the exercise of any other power of the MET.

After the 2012 elections, five applications were made to the MET, a decrease from 12 applications made at the 2008 elections. Details of these applications are contained in Chapter 5, ‘Candidate investigation and prosecution’.

At a hearing in 2012 involving an alleged disqualified candidate, the MET established that the candidate was in fact disqualified and ordered a recount of votes in the relevant ward with the candidate’s votes excluded. The recount did not change the result and the election was not voided, however the MET expressed concern that there was no provision in the Act to forcibly remove that candidate from the ballot paper before the election, given it was well known that he may have been disqualified at that time (refer to Chapter 2, ‘Candidacy requirements and disqualifications’ for further discussion on this topic).

The MET also advised that there may have been a breach of the Act in two cases – distribution of unauthorised how to vote cards (section 56 of the Act) and false and defamatory statements made about the conduct of a candidate (section 57). The Minister in both cases referred the matter to the Inspectorate for consideration.

The VEC is often named as a respondent in applications to a MET although it will seek to be removed if the matter does not involve activity by the VEC or the returning officer, instead appearing as *amicus curiae* (a ‘friend of the court’).

Recommendation 5 in the *VEC’s Report on Conduct of the 2012 Local Government Elections* asked that consideration be given to allow the returning officer (or the election service provider) to also be able to make application to the MET for an inquiry if necessary. Presumably this would occur in circumstances where the VEC has discovered an irregularity in some aspect of the election, for example a problem with a count. It says it currently must rely on a candidate or voters to make an application in all cases.

The VEC can make such application in its own right to the Court of Disputed Returns at a state election.

It is noted that the right of review of a MET decision on a council election to the Victorian Civil and Administrative Tribunal 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.

### Question

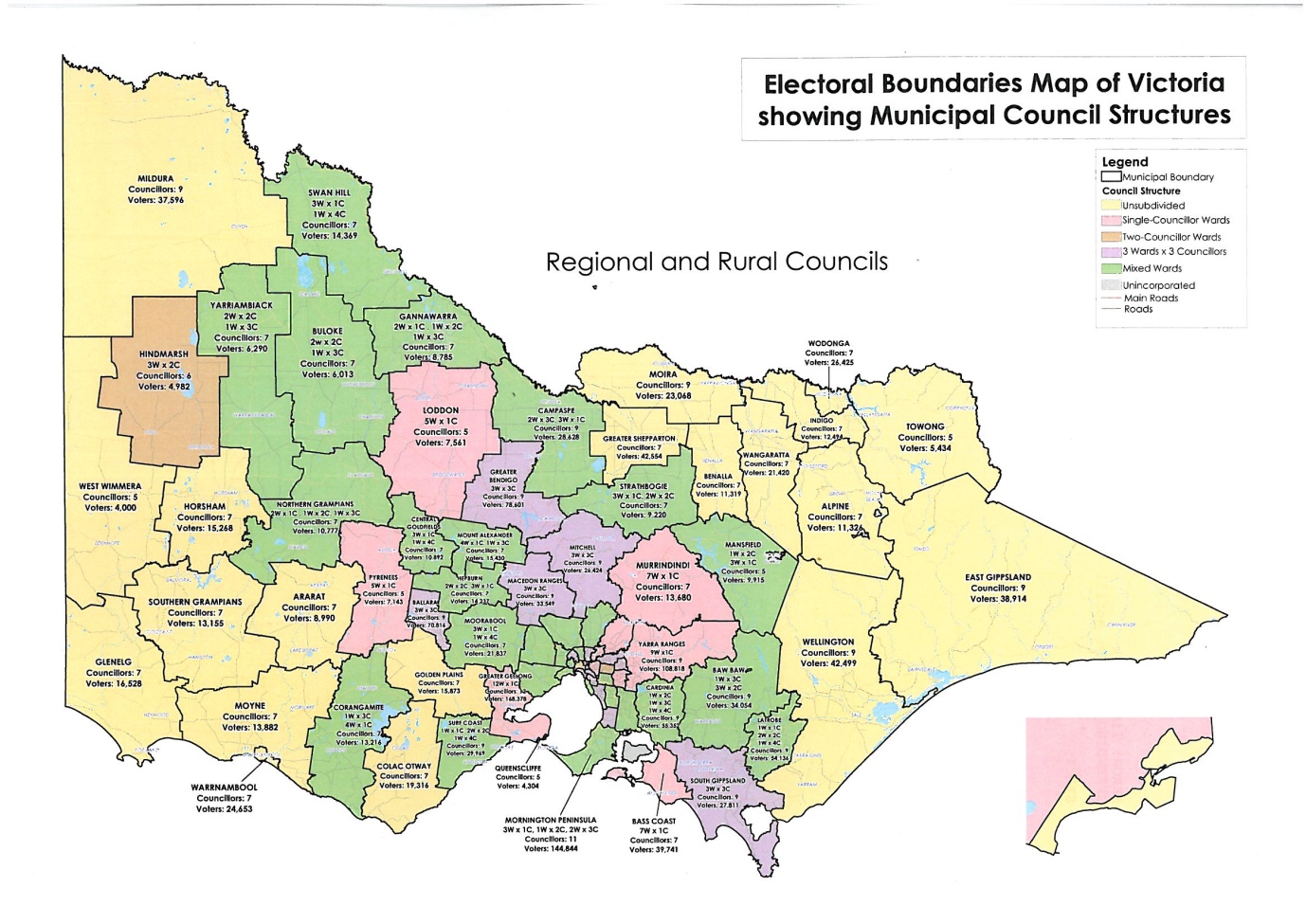
**5.4 Can the current way of resolving election result disputes be improved? If so, how?**

# Chapter 6: Electoral representation

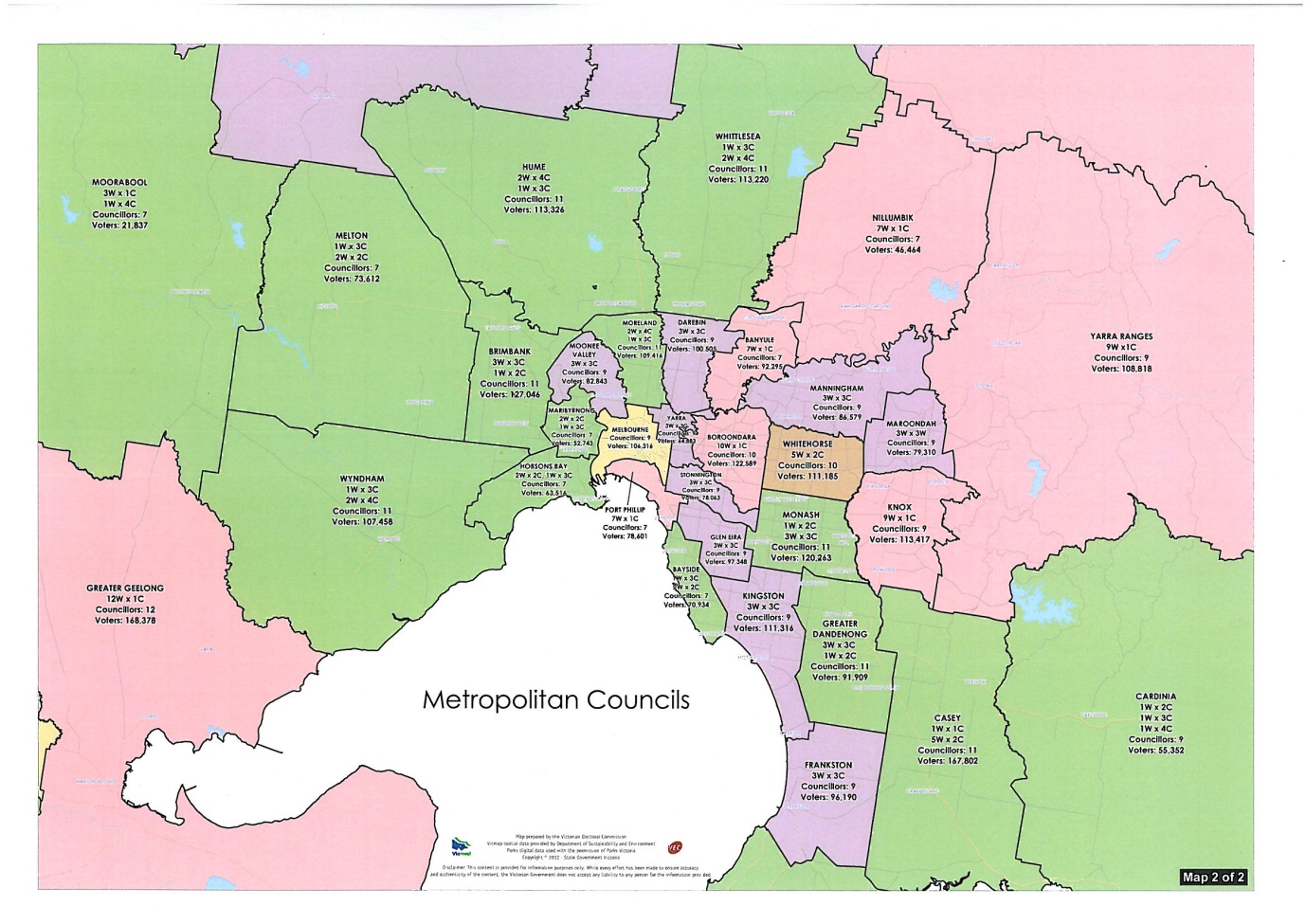
## Representation

This chapter deals with Term of Reference 4. Issues of representation will be the subject of consultation during the public hearings phase and further consultations in the preparation of the Stage Two report due to be submitted to the Minister in April 2014. This chapter is divided into two sections, first with a discussion of representation including councillor numbers, electoral structures and vote counting systems and second with a discussion of the system of periodic electoral review.

Significant policy questions relate to the design of the current electoral system. As noted in the foreword, the electoral system that operates in any jurisdiction must be fair, transparent and encourage participation, but there is no perfect solution to meet these principles. The current approach results in a patchwork of different electoral structures across the state, as indicated in Figures 8 and 9. Some municipalities are divided into wards, others are unsubdivided where the councillors are elected from across the municipality. For those that are divided into wards each ward can either have a single councillor or a number of councillors which is then known as a ‘multi-member ward’. Other municipalities contain a mixture of single member and multi-member wards.



*Figure 8: Electoral structures in regional Victoria. (Source: VEC)*

**

*Figure 9: Electoral structures in metropolitan Melbourne. (Source: VEC)*

### Defining ‘representation’ in local government

Representation has different meanings to different people. With these different meanings come different expectations of elected representatives. There are no legislated criteria for the determination of representation at the local level other than the maintenance through periodic reviews of ‘fair and equitable representation for voters’.

The VEC does not express a view on whether there should be a preferred model of electoral representation for local government, but notes three models put forward by Neil Burdess and Kevin O’Toole.[[74]](#footnote-74)

Each of these reflects different concepts of representation. These different concepts are important to the discussion in this chapter on electoral structures and whether they meet the particular needs and expectations of the electorate.

**Interest representation**

Elected representatives are seen as the personal advocates of their constituents. Voters expect their representatives to pursue the constituents’ particular interests and hold them responsible for activities that hinder their interests. The ‘interest’ view of representation works best in constituencies that are small enough for councillors to make personal contact with a significant proportion of the electorate.

**Corporate representation**

The representative body (i.e. the council) is seen as authorised to act for the electorate as a whole and to deliberate and make decisions on behalf of the voters. This is seen more in levels of government with political parties, where a party as a team seeks authorisation from voters across electorates for a policy framework.

**Mirror representation**

Mirror representation seeks to create a representative body whose composition reflects the makeup of the constituents. That is, groups are represented on the council in the same proportion as the electorate. Mirror representation is closely associated with proportional representation, the basic principle being that the distribution of opinion in the elected body should correspond with the distribution of opinion among those who elected it.

### Councillor numbers

Councillor numbers can impact on both the workload of councillors in representing their electorate and in how voters perceive to be represented in the local council.

Under section 5B of the Act, councils must consist of between five and 12 councillors. The legislation also specifies the ratios of councillors to voters must not vary by more than 10 per cent between wards within a subdivided municipality.

Councillor numbers for each council must be reviewed at least every three council terms, i.e. every 12 years, as part of electoral representation reviews conducted by the VEC under the Act. These reviews consider and recommend councillor numbers and electoral structures for each council so as to provide fair and equitable representation to voters, including whether the municipality should be divided into wards.[[75]](#footnote-75)

In 1995, around the time of the local government amalgamations, the maximum number was decreased from 15 to 12. These changes were justified on the basis that the role of councillors should shift from localised to municipal wide issues and high level strategic policy rather than managerial or operational detail.

In 2003, the responsibility for setting councillor numbers and electoral structures moved from councils to the electoral commission under contract with the council. The move to independent formalised reviews responded to concerns that councils were open to criticism from the community that their decisions on electoral representation were based on local agendas rather than objective criteria.

In 2010, the VEC was made the statutory provider of electoral representation reviews.

#### Changes to councillor numbers over time

Table 15 shows the current spread of councillor numbers in councils across the state compared to councillor numbers in 2003, just prior to the introduction of the independent electoral representation review process.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Number of councils by councillor numbers** | | | | | | | |
|  | ***Councillor numbers*** | | | | | | | |
|  | ***5*** | ***6*** | ***7*** | ***8*** | ***9*** | ***10*** | ***11*** | ***12*** |
| 2003 | 7 | 3 | 31 | 4 | 26 | 5 | 2 | 1 |
| 2012 | 6 | 1 | 34 | 0 | 26 | 2 | 9 | 1 |
| Change | -1 | -2 | +3 | -4 | 0 | -3 | +7 | 0 |

Note: These figures do not include the Lord Mayor and Deputy Lord Mayor of the City of Melbourne, or the Mayor of Greater Geelong City Council.

*Table 15: Spread of councillor numbers in councils across Victoria – 2003 compared to 2012.*

Two trends have emerged in relation to changes in councillor numbers:

* there has been a significant move from even to odd numbers
* a number of councils have moved up to 11 councillors. Some of these are on the fringe of the Melbourne metropolitan area and have experienced strong population growth in recent years.

Otherwise there has been little change across the sector. Forty-one councils have had no change in councillor numbers; most others have seen changes of one or two councillors only.

#### Councillor-voter ratios

The councillor to voter ratio is the number of councillors representing voters in any one municipality. There is a wide variation in councillor-voter ratios across Victoria, which is predominantly a reflection of the differences in voter population per council across Victoria, particularly between rural and metropolitan municipalities. Table 16 gives a snapshot of ratios at the lowest and highest ends.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Area (km²)** | **Voters (at 2012 general election)** | **Number of councillors** | **Number of voters per councillor** |
| **Councils with lowest councillor-voter ratio** | | | | |
| West Wimmera Shire | 9,018 | 4,018 | 5 | 804 |
| Hindmarsh Shire | 7,521 | 5,051 | 6 | 842 |
| Buloke Shire | 7,998 | 5,996 | 7 | 852 |
| Queenscliffe Borough | 11 | 4,268 | 5 | 854 |
| Yarriambiack Shire | 7,324 | 6,254 | 7 | 893 |
| Towong Shire | 6,661 | 5,486 | 5 | 1,097 |
| **Councils with highest councillor-voter ratio** | | | | |
| Casey City | 397 | 169,519 | 11 | 15,410 |
| Greater Geelong City | 1,279 | 170,408 | 12 | 14,201 |
| Mornington Peninsula Shire | 726 | 145,378 | 11 | 13,216 |
| Knox City | 114 | 113,783 | 9 | 12,643 |
| Kingston City | 92 | 112,137 | 9 | 12,460 |
| Yarra Ranges Shire | 2,466 | 108,942 | 9 | 12,105 |

*Table 16: Snapshot of councillor-voter ratios in Victoria – highest and lowest.*

#### Key issues

##### Criteria for determining councillor numbers

There is no criteria set out in legislation in regards to councillor to voter ratios other than the requirement that councillor numbers and electoral structures must provide ‘fair and equitable representation’ and that in a subdivided municipality councillor to voter ratios must not vary by more than 10% between wards within that municipality. In the absence of further criteria, the VEC is guided by councillor numbers in similar sized municipalities of similar categories across the state subject to any special circumstances that may warrant different numbers in individual cases. As part of this, the VEC considers three major factors:[[76]](#footnote-76)

* Population diversity – The larger the municipality’s population is, the more likely it is to be diverse, in nature of the community and in issues of representation, so requiring more councillors.
* Councillors’ workloads – These are affected by voter numbers, type of municipality, geographic size, topography, issues surrounding population growth, social diversity and high and low needs groups.
* Prevention of tied votes – to prevent the likelihood of tied votes at council meetings, where the mayor gets a second vote if half an even number of councillors are present, the VEC generally recommends an uneven number of councillors. This approach renders redundant the statutory provision of having up to 12 councillors.

In maintaining consistency of councillor numbers for similar sized councils, the VEC uses the Table 17 as a guide, but stresses that special factors at a particular council may justify a greater or lesser number.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Expected number of councillors** | **Range of voters** | | | |
| **Metropolitan** | **Metropolitan/rural fringe** | **Regional with urban areas** | **Rural** |
| 5 | - | - | - | < 8,000 |
| 7 | < 70,000 | < 70,000 | < 45,000 | 8,000 – 22,000 |
| 9 | 70,000 – 110,000 | 70,000 – 110,000 | 45,000 – 80,000 | > 22,000 |
| 10-12 | > 110,000 | > 110,000 | > 100,000 | - |

*Table 17: Guide for determining councillor numbers. (Source: VEC)[[77]](#footnote-77)*

##### Councillor number limits

Some councils (such as Casey, Hume, Whittlesea and Wyndham) are experiencing rapidly increasing populations with very high councillor-voter ratios. All are expected to remain high growth in the medium term. This raises concerns over councillor workloads and potential under-representation of voters. The VEC has observed that by the next round of electoral representation reviews, there are likely to be more municipalities bumping against the legislated ceiling, raising concerns that their voters will be under-represented as compared to voters in other municipalities. The VEC recommends that the maximum number of councillors be increased.

There is also an issue whether the minimum number of councillors allowed (five) may be too low, given the increasing complexity of councillor roles and a higher propensity for a council with small numbers to become dysfunctional in the event a small number of councillors do not work together well.

As a comparison, local governments in other states have the following legislated councillor ranges.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| New South Wales | Queensland (Brisbane) | Western Australia | South Australia | Tasmania | Northern Territory |
| 5–15 | 5–16  (27) | 6–15 | 6–16 | 7–12 | 6–14 |

*Table 18: Legislated councillor ranges in other states and territories.*[[78]](#footnote-78)

### Questions

**6.1 What do you think is the most important factor in effective representation?**

**6.2 Does your council have the right number of councillors? Why?**

### Ward structures

Electoral structure refers to whether the council is unsubdivided or divided into wards. The electoral structure of a municipality is determined by the minister on the basis of a recommendation from the VEC.

The way a council’s electoral structure is configured plays a decisive role in how councillors are able to represent the local community and how citizens engage with those they have elected.

#### History of changes in Victoria

The system of wards has been a feature of local government in Victoria since the establishment of councils in the mid-1800s. Most of this time, councils have been permitted to choose to be unsubdivided or retain a system of wards (known as ridings in rural areas).

Electoral structures changed little throughout the 20th century until the enactment of the Act. Prior to the Act’s commencement, councils could only be either undsubdivided or consist of several three-member wards. Annual elections were held with one councillor position from each ward up for election, or in the case of unsubdivided municipalities, a third of all councillor positions.

Table 19 shows that by 2003, over half of all councils had selected single-member wards only as their preferred electoral structure, most predominantly in metropolitan areas. Just under a 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 had increased fourfold since before the council amalgamations.

Further legislative reforms in 2003 created a formal cycle of electoral representation reviews to be conducted independently of councils by an electoral commission. The VEC was made sole reviewer in 2010.

Between 2004 and 2008, the VEC conducted reviews for all councils, except the City of Melbourne and the Surf Coast Shire (Surf Coast underwent an electoral review in 2003 under substantially the same arrangements as the current framework). Between 2009 and 2012, 27 of those councils underwent a second review.

Table 19 details changes to council electoral structures between 2003 (before the framework for independent reviews was introduced) and 2012.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | ***Unsubdivided council*** | ***Multi-member wards*** | ***Single and multi-member wards*** | ***Single wards*** |
| 2003 | 13 | 12 | 11 | 43 |
| 2012 | 22 | 16 | 30 | 11 |
| Change | +9 | +4 | +19 | -32 |

*Table 19: Electoral structures 2003–2012.*

As the table shows, the most significant change to council structures has been the move away from single member wards in favour of mixed wards and unsubdivided councils.

Table 20 outlines the different types of council electoral structures that exist in other states.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Single-member wards** | **Multi-member wards** | **Combination single & multi-member wards** | **Unsubdivided** | **Mayor directly elected by whole municipality** |
| Queensland | Yes | No | No | Yes | Yes (all councils) |
| New South Wales | No | Yes (each ward has equal number of councillors) | No | Yes | Yes (some councils) |
| South Australia | No | Yes (some councils have different councillor numbers in each ward) | No | Yes | Yes (some councils) |
| Western Australia | Yes | Yes | Yes | Yes | Yes (some councils) |
| Tasmania | No | No | No | Yes | Yes (all councils) |

*Table 20: Council electoral structures in other Australian states.*

#### Current arrangements

Councils may consist of:

* councillors representing the municipal district as a whole, i.e., an unsubdivided municipality, and
* councillors representing wards within the municipal district, which may be either single-member, multi-member or a combination of both.[[79]](#footnote-79)

Councillors in single-member wards are elected using the ‘preferential’ method of vote counting. Councillors in unsubdivided municipalities and multi-member wards are elected under ‘proportional representation’ vote counting.[[80]](#footnote-80)

In a single-member ward, a casual vacancy is filled by a by-election. In a multi-member ward or unsubdivided council, such a vacancy is filled by a countback using votes cast at the previous election.[[81]](#footnote-81)

Each municipality’s electoral structure and councillor numbers are reviewed at least every 12 years by the VEC.

If a ward structure is recommended rather than an unsubdivided municipality, the councillor-voter ratio for individual councillors should not exceed 10 per cent of the councillor-voter ratio for the whole municipality.[[82]](#footnote-82)

#### History of changes in Victoria

Prior to 2003, there were minimal legal requirements for the review of electoral representation and there were complaints about councillors reviewing their own electoral boundaries. Further:

* There was no effective provision for reviews where the councillors were elected at large (without wards).
* In municipalities with wards, councils were required to undertake a review every six years (then two council terms) to decide whether the existing boundaries were fair and equitable.
* Little guidance was provided about the process or principles for amending boundaries.

In 2003, the Act was amended to require an electoral commission to conduct reviews for all councils every eight years, the same year council terms were changed to four years. The new legislation specified two rounds of public consultation and provided for decision guidelines to be prescribed in regulations. In 2005, proposed regulations were not adopted following opposition from the local government sector.

In 2010, after every council had undergone an independent review by the VEC, the Act was amended to extend the minimum time between reviews to 12 years. The sector is still in transition to 12 year reviews, and the last eight-yearly reviews for some councils will be completed before the next round of elections in 2016.

#### Key issues

##### Criteria for setting electoral structures

As with councillor numbers, the Act provides no specific criteria or other guidance on what factors should be considered when determining structures (other than the requirement that they be ‘fair and equitable’ and that variations in councillor-voter ratios are limited).

In the absence of legislated criteria, the VEC has established its own parameters when considering electoral structures in reviews:

*‘Electoral structures should take into account communities of interest where practicable. This assists councillors to be effective representatives of the people in their particular community.*

*Communities of interest are groups of people who share a range of common concerns or aspirations. They are different from ‘interest groups’ or ‘pressure groups’, which identify on a limited number of issues.*

*Communities of interest may occur where people are linked with each other geographically (e.g. people who work in similar industries or mutually dependent industries. Communities of interest may also appear where people share a number of special needs because of similar circumstances, such as new immigrants (who may have little English, and require assistance with housing and finding employment), particular ethnic groups, retired people and the unemployed’.[[83]](#footnote-83)*

The VEC says it is also guided by pragmatic considerations such as creating readily identifiable and practically sized ward boundaries. It also advises that the statutory requirement for individual councillor-voter ratios to remain within ten per cent of the ratio for the whole municipality plays a significant part in setting a structure that will last until the next review in 12 years. Larger multi-member wards tend to last longer without having to adjust ward boundaries than single-member wards, particularly when different areas within a municipality are experiencing uneven growth. This may be why many councils have moved from single-member to multi-member ward structures over the last ten years.

##### Comparing the different electoral structures

The VEC has provided a view on positive and less positive features of each type of electoral structure. This is included in Table 21.[[84]](#footnote-84)

| **Positive features** | **Less positive features** |
| --- | --- |
| *Unsubdivided structure* | |
| * Promotes the concept of the municipality wide focus with councillors being elected by and concerned for the municipality as a whole rather than parochial interests. * Gives residents and ratepayers a choice of councillors to approach with their concerns * Each voter has the chance to express a preference for every candidate for the council election. * Removes the need to define internal ward boundaries. * Results in simple, less expensive voters’ roll for elections compared with separate voters rolls for individual wards. | * May lead to significant communities of interest and points of view being unrepresented. * May lead to councillors being relatively inaccessible for residents of parts the municipality. * May lead to confusion of responsibilities and duplication of effort on the part of councillors. * May be difficult for voters to assess the performances of individual councillors. * Large numbers of candidates might be confusing for voters. * Large numbers of candidates may increase the risk of dummy candidates running. |
| *Single-member wards* | |
| * Councillors are more likely to be truly local representatives, easily accessible to residents and aware of local issues. * Major geographical communities of interest are likely to be represented. * Less likely that one particular point of view or sectional interest will dominate the council. | * Councillors may be elected on minor or parochial issues of lack of perspective of what policies benefit the municipality as a whole. * Ward boundaries may divide communities of interest and may be difficult to define. * Voters may have restricted choice of candidates in elections for individual wards. * Small populations in each ward may make ward boundaries more susceptible to change caused by demographic shifts. |
| *Multi-member wards* | |
| * The structure supports the accommodation of a whole community of interest such as a sizeable town or group of suburbs within the ward. * Focus on issues may be broader than for single councillor wards (though councillors may be more locally focused than in an unsubdivided municipality). * Voters have a choice of councillor to approach. * Councillors may share workloads more effectively. * Ward boundaries are likely to be easy to identify and less susceptible to change as a result of population growth or decline than for single councillor wards. | * Very local issues may be overwritten. * Groups may form within the council based on multi-councillor wards leading to possible division between councillors. * In very large wards councillors may not be accessible for residents in parts of the ward. * Duplication or gaps may occur if councillors do not communicate or share their workloads effectively. * It may be easier for candidates to be elected as part of a voting ticket than as individuals. * Large numbers of candidates may increase the risk of dummy candidates running. |
| *Combination of single and multi-member wards* | |
| * A large community of interest can be included within a multi-councillor ward and a smaller community of interest can be included within a single councillor ward. * The structure accommodates differences in population across a municipality and allow small communities to be separately represented. * Clear ward boundaries are more likely. | * Voters in single councillor wards may expect that their councillors will be more influential than their numbers suggest. |

*Table 21: Strengths and weaknesses of each type of electoral structure available to Victorian councils (Source: VEC)*

With regard to the combined model of single and multi-member wards, some argue that the level of representation by different councillors across the municipality is inherently different, as not all are elected under the same system of vote counting (councillors in single-member wards are elected under the ‘preferential’ system of vote counting; councillors in multi-member wards are elected under ‘proportional representation’ – each system requires different numbers of votes to be elected).

### Questions

**6.3 Does the electoral structure in your council give you effective representation? Why?**

**6.4 Should there be a uniform structure for all 79 councils? Why?**

**If so, what should it be? Why?**

#### Vote counting systems – preferential and proportional representation

Candidates in local government elections are elected under one of two vote counting systems, depending on the electoral structure of the particular council.

In **single-member wards**, votes are counted under the ‘full preferential’ system (also known as ‘majority preferential’). Under this system:

* all candidates must be given a preference by the voter for the vote to be counted
* all first preference votes are counted for each candidate. If a candidate receives an ‘absolute majority’ of formal first preference votes, i.e. 50 per cent of votes plus one, that candidate is elected
* if no candidate has an absolute majority, the candidate with the fewest first preference votes is excluded and the second preference votes from their ballot papers are transferred to the other candidates at full value
* if still no candidate has an absolute majority, the next candidate with fewest first preference votes is excluded and their second preference votes are transferred at full value
* this process continues until one candidate obtains an absolute majority and is declared elected
* a by-election is required when an extraordinary vacancy occurs and where the preferential system was used at the previous election.

The full preferential system is used for the House of Representatives at the federal level, the lower houses in Victoria, South Australia, Western Australia and the Northern Territory, and in many local government elections where a single member is to be elected. It is designed to ensure that the elected candidate is acceptable to a majority of people who cast a valid vote.

In **multi-member wards** and **unsubdivided** councils, the proportional representation system of vote counting is used to elect councillors. Under this system:

* All candidates must be given a preference by the voter.
* All first preference votes are counted for each candidate.
* To be elected, a candidate must receive a ‘quota’, which is calculated by dividing the total number of formal ballot papers by one more than the number of candidates to be elected, and adding one to the result.

**Example**

Where four councillors are to be elected from 5,000 formal votes:

The quota = 5,000 + 1 = 1,001

(4+1)

* Each elected candidate's surplus votes (if any) are transferred to the remaining candidates according to the preferences on the ballot papers. Because it is not possible to tell which votes elected the candidate and which are surplus, all the elected candidate's votes are transferred, but at a value less than one.
* The value of the transferred votes is worked out by dividing the surplus by the total number of ballot papers for the candidate. Each ballot paper transferred to another candidate has this value.

**Example**

If Candidate X receives 1,600 votes when the quota is 1,001, that candidate is elected and their surplus votes total 599. Their transfer value is:

599 = 0.374

1,600

On transfer of Candidate X’s votes, their 1,600 ballot papers give 405 ballot papers to Candidate Y.

Candidate Y therefore receives 151 votes (405 x 0.374).

* Any candidate who has gained the quota once the surplus votes have been transferred is elected.
* If there are still vacancies to fill once the surplus votes have been distributed, the candidate with the lowest number of votes is excluded and their ballot papers are then transferred to the remaining candidates (at the value they were received) according to the preferences on them.
* A ‘countback’ is conducted to fill councillor extraordinary vacancies where proportional representation vote counting was used at the previous election. Votes cast for the vacating councillor at the previous election are redistributed to remaining candidates, rather than a by-election being required.

A council with a mix of single and multi-member wards will use both vote counting systems depending on the individual ward structure.

Proportional representation aims to produce ‘proportional’ election results, where councillors are elected in proportion to the votes cast. It is used in the Senate and in the upper houses of New South Wales, Victoria, South Australia and Western Australia.

##### Other vote counting systems

There are a number of variations of the proportional representation system used in liberal democracies throughout the world. Australia and a small number of other countries use the ‘single transferable vote’ system, which places emphasis on votes cast for individual candidates. Western Europe generally uses other systems, which operate on the assumption that party lists are important to the electoral process – these however may not be suited to Victorian local government elections where political parties do not play a significant role.

Within Australia there are variations on how votes are counted. Tasmania – where no single-member wards currently exist in local government – uses the ‘Hare-Clark’ variation of proportional representation in its state and local government elections. A feature of this system is the requirement that the order of candidates on individual ballot papers is randomly selected (commonly known as the ‘Robson rotation’ system), which effectively renders ticket voting and candidate preferencing obsolete. This system also has no ‘above the line’ voting (which occurs in the Senate and other state upper house elections), thus removing party control over how votes are distributed.

There are also variations within Australia on how many boxes need to be filled on ballot papers by voters. Western Australia uses ‘first past the post’ counting in local government elections. Voters place an indication against only one candidate – preferences are not required. In Queensland state and single-member local government ward elections, ‘option preferential voting’ is used. Voters may mark numbers against as many candidates’ names on ballot papers as they like.

Both ‘first past the post’ and optional preferential voting have advantages in that voting is simplified and informality is reduced, however both can result in candidates being elected with very little support across the whole electorate.

Having two systems to elect councillors may confuse candidates (but not necessarily be of concern to voters). Under a uniform vote counting system, all councillors would be elected by either preferential or proportional representation systems. This may have particular relevance to those councils with both single and multi-member wards where both preferential and proportional representation is mandated, and councillors are elected under different voting rules and with differing levels of support.

##### Filling extraordinary vacancies

The countback system is a recognised system of filling vacancies under proportional representation. It uses the votes cast at the general election to ascertain which of the remaining candidates was most supported by the voters who voted for the vacating councillor. It is used in Victorian and Tasmanian local government, but not in New South Wales or South Australian local government, where proportional representation is used.

Previously elected councillors are excluded from the countback. If a vacancy cannot be filled by countback – for example there are no remaining unelected candidates – a by-election is conducted.

Countbacks have three distinct advantages:

* they enable the proportionality of representation achieved at the general election to be retained
* they allow a vacancy to be filled in a few weeks (avoiding a delay of about three months in the case of a by-election) and
* are significantly less expensive to conduct than a new election.

Concerns have been raised that countbacks are based on dated nominations and votes, and that as people may have changed their views in the intervening period, they should be given a fresh vote. Other concerns centre on the justifiability of automatically electing a sole remaining candidate without a count. That candidate may have received very few votes in the first place, and there is no reason to think that the voters who elected the departing councillor would support the remaining candidate as a replacement.

### Questions

**6.5 Is the vote counting method important to how electorates are represented? Why?**

**6.6 Which system do you think offers the best means of ensuring effective representation? Why?**

## Conduct of electoral representation reviews

### Current arrangements

Victorian councils are required to undergo regular reviews of their electoral representation. The purposes of a review are to consider:

* how many councillors should be elected to represent the municipality
* whether the municipality should be subdivided into wards
* how many councillors should be elected for each ward
* where any ward boundaries should be located.

A full review is required for each municipality at least in every third council term; that is, every 12 years.

Electoral representation reviews are undertaken by the VEC as an independent body. In addition, if the numbers of voters within any ward at a council vary by more than 10 per cent from the average between the regular full reviews, the VEC conducts a subdivision review to alter the ward boundaries.

The Act only allows the electoral structure and internal electoral boundaries of a council to be altered by an Order in Council on the advice of the Minister for Local Government. Since the VEC began undertaking independent reviews in 2003, ministers have always implemented the recommendations arising from reviews.

The VEC frequently employs people with local government experience to be on its review panel. The review process has two stages.

*Stage 1 – Preliminary submissions and report*

* Public notice is given inviting preliminary submissions.

*(The VEC conducts information sessions and publishes guidance material.)*

* Submitters have at least 28 days to lodge preliminary submissions.
* Preliminary submissions are considered by the VEC.
* A preliminary report is prepared with preferred and alternative options.

*Stage 2 – Final submissions and report*

* Public notice is given inviting final submissions in response to the preliminary report.
* Submitters have at least 28 days to lodge final submissions.
* The VEC holds public meetings where submitters may speak to their submissions.
* The VEC considers final submissions and prepares a final report and recommendations.
* The final report is published and provided to both the council and the minister.

### Comparison with other jurisdictions

Parliamentary electoral boundaries are reviewed by an independent body. In Victoria, these reviews are undertaken by the Electoral Boundaries Commission, which is composed of the Chief Judge of the County Court, the Victorian Electoral Commissioner and the Surveyor General. The Electoral Boundaries Commission undertakes reviews at least after every two general elections. It is supported by the VEC and it follows a two-stage submission process.

Arrangements for local government electoral reviews vary from state to state:

* In New South Wales, changes to the overall electoral structure of a council or to the way the mayor is elected are subject to local referendums. Councils themselves are responsible for reviewing their ward boundaries and ensure they do not vary by more than 10 per cent.
* In Queensland, reviews of electoral structures and internal electoral boundaries are undertaken by the Local Government Electoral Change Commission, of which the Queensland Electoral Commissioner is the Commissioner.
* In Western Australia, a local government advisory board assesses proposals to change council electoral structures or ward boundaries. The board comprises five members including at least one council CEO, one officer from the government department and two members selected from a list submitted by the local government association.
* In South Australia, councils conduct their own reviews, but a final report must be approved by the Electoral Commissioner before it can be given effect. In addition, any proposal to change how the mayor is elected (by councillors or by voters) requires a poll of voters.

### Key issues

It is important that the review of electoral arrangements is undertaken in a way that ensures the validity of democratic processes and provides assurance to the community. The process should involve people and institutions with suitable qualifications and experience to ensure strong recommendations that support effective representation.

Critical issues for the conduct of electoral representation reviews include:

* the timing of reviews
* who conducts reviews, and
* what review process is followed.

#### Timing of reviews

Since 2003, the Act has differentiated between electoral representation reviews and subdivision reviews. A subdivision review only considers whether the existing ward boundaries should be adjusted.

Full representation reviews are now required to be conducted in every third term of each council. The ability to have full reviews on a 12-yearly basis is made possible by the conduct of subdivision reviews, which are conducted on a needs basis whenever the number of voters in a ward differs from the average by more than 10 per cent.

Councils are generally happy to retain their existing structure and, in the past, some have been critical of the VEC for recommending changes. In contrast, some individuals and community groups who are unhappy with their council have eagerly awaited the opportunity to participate in a review. Arguably, the advantages of regular reviews may be the opportunity for communities to have a say in the structure of their municipal government, while a disadvantage may be possible disruption to the effective operation of the council as a cohesive organisation.

#### Who should conduct reviews

The existing legislation requires the VEC to conduct reviews. The advantages of this are that:

* the VEC is an independent body that is accountable to the Victorian Parliament
* the VEC has no vested interest in who wins a council election and has considerable expertise in electoral matters
* the VEC already exists and has an ongoing function in the Victorian governmental environment, meaning that a special body does not need to be established for the purpose.

The downside from the perspective of some councils is that:

* the VEC does not have particular knowledge of the local community, which may be important for developing the best options
* while the VEC may have expertise in electoral matters, it does not have expertise in governance, which may be important in ensuring that a system of representation will produce an effective governing body.

As noted above, each state has its own arrangements. Other alternatives, that might be considered for Victoria include:

* appointing a dedicated panel to undertake each cycle of reviews, somewhat like the Electoral Boundaries Commission, with the VEC providing a support role
* having different processes for determining electoral structures and setting ward boundaries, with a body separate from the VEC to review structures.

#### Review process

The existing review process was modelled on that used for reviewing parliamentary electoral boundaries and involves two rounds of consultation with a draft proposal prepared in between. This is not the only possible arrangement, although it resembles some other consultation processes used in local government.

Some concerns have been expressed that the preferred option prepared by the VEC after undertaking preliminary consultation becomes a fixed objective from which the VEC is unwilling to deviate. While actual experience may not accord with this, the fact that this is a common perception is itself a matter for concern. It is important that there is public confidence in the process.

It has been noted that the terminology used in the Act, referring to the draft proposal as the ‘preferred model’, may contribute to this. Another consideration may be that the reviewer presents a number of options to the community for consideration without having a single or preferred model.

### Questions

**6.7 Who should conduct reviews on how you are represented?**

**6.8 What should reviewers take into account?**

**6.9 What should determine when a review should be undertaken? Why?**

# Chapter 7: City of Melbourne

The City of Melbourne has an area of 37.6 square kilometres and a resident population of over 100,000 people. Unlike other councils, Melbourne is Victoria’s capital city and is the centre of government, business, culture and tourism for Victoria. Around 800,000 people use it as a place to live, work, conduct business or visit each day. More broadly, the capital city is the centre of economic growth in the state and plays a unique role in servicing the larger metropolitan region and its population.

Melbourne has its own Act, the *City of Melbourne Act 2001*, which includes additional objectives for the council, reflecting its capital city status.[[85]](#footnote-85)

The Melbourne Act also provides for the council to have certain electoral arrangements, which are different from other Victorian councils as follows:

* The council has a broad voter franchise in which larger numbers of commercial tenants and corporation representatives are included on the voters’ roll, as well as residents enrolled from the state roll.
* Voting is compulsory for all voters, even for people who applied for enrolment. The exception is voters aged 70 or over.
* The Lord Mayor and Deputy Lord Mayor are elected as a team by all Melbourne voters using preferential voting.
* The other councillors are currently elected at large by all Melbourne voters using the proportional representation system.
* Candidates may nominate in groups and voters may vote for those groups ‘above the line’ on the senate-style ballot paper.
* Melbourne is not subject to a regular cycle of reviews of its electoral structure as with other councils.

Each of these unique features is discussed in detail in this chapter.

The number of people on Melbourne’s rolls has increased markedly over the past 15 years. Total enrolments in 1996 were 42,996, compared to 108,434 persons for the 2012 council elections.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | 1996 election | | 2012 election | |
|  | Voters |  | Voters |  |
| Residents\* | 19,453 | 45% | 43,784 | 40% |
| Business occupiers | 3,685 | 9% | 3,940 | 4% |
| Non-resident owners | 5,924 | 14% | 40,911 | 38% |
| Company representatives | 13,934 | 32% | 19,799 | 18% |

*\*Our data indicates that for 2012, 43,692 were on the state roll; 91 residents not on the state roll applied for enrolment.*

*Table 22: Types of voters in 1996 and 2012 City of Melbourne elections. (Source: City of Melbourne)*

## Voter eligibility

The City of Melbourne voter entitlements have been largely unchanged since the mid-1990s when specific legislation was passed to give Melbourne a different franchise from other municipalities.

Current differences between the City of Melbourne and other Victorian councils are:

* Companies in Melbourne may appoint up to two voting representatives, compared to a single representative in other councils.
* The City of Melbourne deems company office bearers to be enrolled when a company does not appoint its own representatives.
* In Melbourne, up to two owners and two occupiers may be enrolled per property, whereas in other municipalities the maximum is either two owners or two occupiers.
* In Melbourne, non-resident occupiers are automatically enrolled, but at other councils they are only enrolled if they lodge an application and only if the owners consent.
* In Melbourne, resident occupiers who are not on the state roll may apply to be enrolled. In other municipalities, only residents from the state roll can be enrolled.
* Occupiers who do not pay rates may be enrolled. At other councils, only ratepayers can be included on the voters’ roll.
* Voting is compulsory for all enrolled voters at Melbourne, but it is only compulsory for residents on the state roll in other municipalities.

The current voter franchise was established with the objective of ensuring greater diversity of participation for the capital city. It was also designed noting that businesses contributed the major portion of municipal rates while at the time only having a small proportion of the voting power. The most significant changes made at that time were to increase the number of voting representatives for companies from one to two persons and to provide for the council to automatically enrol company representatives (company secretaries or directors) when a company did not appoint its own representatives.

The company franchise for Melbourne was modified in 2003 to limit company appointed representatives to company secretaries and directors.

### Key issues

It is important to consider whether the City of Melbourne should apply the same franchise as other Victorian councils or whether Melbourne’s unique characteristics support a different franchise. From past public debates, there are clearly some strong views either way.

The following is an outline of issues raised with respect to the different types of voters making up the Melbourne voters’ roll which may guide further consideration of whether the council’s voter franchise best supports democratic representation.

#### Non-resident owners

Between 1996 and 2012, the number of non-resident owners on the City of Melbourne voters’ roll increased from under 6,000 to almost 41,000. This increase may be due in part to non-residents investing in many of the new apartments in the city including in Docklands.

This trend reflects a real change in property ownership in the city. A proportion of non-resident owners are likely to be overseas investors, many of whom cannot easily be identified as such because they engage local agents to manage their property interests in Melbourne.

This issue does not arise because of any unusual legislation in Melbourne. The same rights for non-residents apply elsewhere in Victoria. The only difference is the predominance of non-resident owners on the roll, reflecting patterns of property ownership.

#### Resident occupiers

Some concerns have been expressed about resident occupiers who were not on the state roll for the City of Melbourne. There were 91 such residents enrolled in the 2012 election and 99 in the 2008 election. These residents can be non-Australian citizens living in Melbourne (including international students) or people who occupy an apartment in the city on weekdays only. Particular attention was given to this matter during the 2012 election, when several hundred apparently fraudulent enrolment forms were lodged for resident occupiers.

Concern has been expressed that resident occupiers not on the state roll may not have an ongoing connection with the city because they do not pay rates or may not be Australian citizens. Of course, not all residents on the state roll are ratepayers but they do need to be citizens. Other Victorian councils do not accept enrolments from resident occupiers who are not ratepayers. Sydney and Perth require occupiers to be on the relevant state or federal roll to be entitled to vote in council elections, whereas Adelaide allows resident occupiers to vote if they have been residents for at least one month prior to their application.

#### Corporation representatives

The arrangement that allows corporations that own or occupy rateable property in Melbourne to appoint two of their office bearers as voters has been questioned from time to time. This usually reflects a view that it gives too much electoral weight to the business community. In other states, the limit is usually one representative per company. However in Hobart a person may have two votes if they have both a personal entitlement as well as being a company representative.

The initial rationale for allowing two company representatives was to provide greater representation for the business community, which contributed most of the council’s rates. At the time, it was noted that a company is not a person and might be more appropriately compared to a family or household, which may have more than two voters.

The significance of this provision has diminished over time. Since the mid-1990s, there has been a substantial reduction in the proportion of voters who are company representatives. Company representatives were 32 per cent of voters in 1996 and only 18 per cent in 2012. This drop is partly a result of legislation limiting the entitlement to directors and company secretaries and partly because of the rise of single director companies. It is also affected by expansions of the municipal boundaries to include residential areas in Docklands and part of Kensington.

#### Company deeming

Along with allowing companies to appoint two voting representatives, the legislation was also amended in the mid-1990s to require the council to deem representatives appointed when a company failed to make its own appointments. In 2012, there were 6,267 company representatives appointed by corporations and 13,532 deemed enrolled by the council.

The deeming process is complicated. The council identifies which companies own or occupy property, using rate records and surveys. It then obtains details of all those companies from the Australian Securities and Investments Commission (ASIC). It writes to all companies inviting them to nominate their own representatives. Where companies don’t make appointments, the council uses the ASIC records to enrol company secretaries and directors if they are eligible. Often deeming cannot occur because the only eligible people are already on the roll in another capacity or representing another company.

This arrangement is unusual and some concerns have been expressed about it. Some of these concerns may derive from a view that companies should have less influence in council elections.

#### Compiling the voters’ roll

The complex voter franchise at the City of Melbourne means that the council is required to devote additional time and resources to compiling an accurate voters' roll. The mandatory automatic enrolment of non-resident occupiers (shop tenants) requires the council to collect information from these voters, whether by surveys or site visits throughout the Melbourne CBD. The enrolling of corporation representatives from applications or via ASIC (see 'Company deeming' above) is also administratively complex and time consuming.

Because the council's CEO's List – the list of all voters other than state roll electors – makes up the majority of its voters' roll (60 per cent of the roll in 2012 compared to 14 per cent for other councils), it is the only council in Victoria to compile the final voters' roll as the 'registrar' using its CEO's list and the list of state roll electors provided by the VEC. All other councils appoint the VEC as registrar to compile their final roll.

#### Voter turnout

Despite voting being compulsory for all voters on the Melbourne roll (except those aged 70 or over) overall participation at that council’s 2012 council elections was only just over 60 per cent (compared to a turnout of over 72 per cent at postal elections at other councils). Participation in Melbourne was 64 per cent for state roll voters under 70, 77 per cent for state roll voters 70 and over, and 58 per cent for other voters on the CEO’s List (non-resident owners, occupiers, corporation representatives).

At the 2008 City of Melbourne elections, the total voter turnout was just over 62 per cent.

#### Comparisons with other capital cities

Generally, other Australian capital cities do not have different voting entitlements from the rest of the councils in their state. Sydney and Adelaide have their own separate electoral legislation. In Sydney’s case, entitlements are substantially the same as other councils. Adelaide varies only to the extent that a wider range of non-resident voters are enrolled without application.

### Questions

**7.1 Should Melbourne have the same franchise as other councils or is it distinctive enough to warrant different arrangements? Why?**

**7.2 Should there be restrictions on the enrolment of resident occupiers in Melbourne City Council? Why?**

**If so, what are they?**

**7.3 Should corporations continue to be allowed to appoint two voting representatives in Melbourne? Why?**

**7.4 Should the deeming arrangement for company representatives continue at Melbourne? Why?**

## Electoral representation

### Current arrangements

The current electoral structure of the City of Melbourne provides for 11 councillors to be elected as follows:

* The Lord Mayor and Deputy Lord Mayor are elected as a team by all Melbourne voters using preferential voting. This is a unique arrangement.
* Nine councillors are elected at large by all Melbourne voters using the proportional representation system and a senate-style ballot paper.

Like other Victorian councils, the City of Melbourne elections are held every four years and all councillors are elected for four-year terms.

Unlike other councils, Melbourne is not required by law to undergo regular reviews of its electoral structure by the VEC. However the Minister for Local Government requested the VEC conduct a review before the 2012 elections, which resulted in an increase in the number of ordinary councillors from seven to nine.

### History of changes in Victoria

The City of Melbourne’s electoral representation often receives more public attention than other councils and has been the subject of several distinct changes in recent times.

* Prior to municipal restructuring in the mid-1990s, the council was divided into seven wards, with each ward electing three representatives. Elections were every three years and the voting system used a non-proportional counting method that could allow a group gaining a majority of votes in a ward to win all three positions. The Lord Mayor was elected by the councillors annually.
* From 1996 to 2001, the council comprised nine members. Five were elected at large by proportional representation and four were elected to represent four single-member wards. During this time the mayor was elected by the councillors for the full three-year term of the council.
* From 2001 council terms were extended to four years. The council was restructured to have separate elections for a leadership team and for ordinary councillors. A team, comprising the Lord Mayor and Deputy Lord Mayor, nominate and are elected together for the entire four-year term of the council. Until 2012 seven councillors were elected at large.
* Since 2012, nine councillors in addition to the leadership team represented the city and are elected at large from across the municipality.

### Comparison with other capital cities

Other Australian capital cities have different systems, but with some similarities:

* The City of Brisbane is by far the largest municipality in Australia, with over half a million voters. The Lord Mayor is directly elected by all voters and 26 councillors are elected to represent 26 single-member wards.
* The City of Sydney is a similar size to Melbourne has a directly elected Lord Mayor and nine councillors elected by proportional representation.
* The City of Perth has a directly elected Lord Mayor and eight councillors. The Lord Mayor is elected every four years. Half the councillors are elected every two years and serve four-year terms.
* The City of Adelaide has a Lord Mayor elected at large and 11 councillors. Five of the councillors are elected at large by proportional representation and six are elected to represent three two-member wards by proportional representation.
* The City of Hobart has a directly elected Lord Mayor and a directly elected Deputy Lord Mayor. They are elected concurrently on separate ballot papers. Hobart also has 12 councillors elected at large.

### Key issues

In considering the electoral structure for the City of Melbourne, there are some specific aspects that might be considered. These are:

* election of the leadership team
* electoral structure for councillors
* grouping of candidates.

#### Leadership team

The current arrangement for electing the Lord Mayor and Deputy Lord Mayor was introduced in 2001. At the time the new framework sought to address a period of internal instability at the council that was characterised by internal disputation about leadership.

Electing a Lord Mayor’s team is designed to ensure at least one strong supporter for the Lord Mayor and someone who can undertake the mayoral duties consistently when the Lord Mayor is absent or unavailable.

#### Structure for the election of councillors

Melbourne has undergone several significant changes in its internal electoral structures. Much of the reason for these changes has been a shift in emphasis from strong local representation to city-wide governance. The reforms in the mid-1990s introduced district-wide election of some councillors for the first time. In 2001, wards were completely abolished in favour of district-wide election for all councillors. This pattern has been seen in other capital cities. With the exception of Brisbane, all other state capital city councils now elect some or all councillors at large from the entire municipality.

The question of whether the City of Melbourne should be subdivided into wards again was considered extensively by the VEC in its review of the council’s representation in 2012. The VEC concluded that, on balance, the current unsubdivided structure is the most suitable one for the City of Melbourne.[[86]](#footnote-86)

#### Grouping of candidates

Candidates may form groups at City of Melbourne elections and their group name is formally listed on the ballot paper. The grouping of candidates has an effect not only on the resultant electoral make up of the council but also the participation of candidates and voters at the election. This topic is discussed further in the next section, ‘Candidates’.

### Questions

**7.5 What do you think would be the preferred electoral structure for the City of Melbourne?**

## Candidates

### Current arrangements

City of Melbourne elections have been actively contested over many years. Including candidates for mayoral positions, the total number of candidates at the last four elections is as follows:

* 2001 – 135 candidates
* 2004 – 107 candidates
* 2008 – 54 candidates
* 2012 – 58 candidates.

Melbourne has two unique arrangements for people nominating as a candidate. Firstly, candidates nominate in pairs for the election of a leadership team comprising the Lord Mayor and the Deputy Lord Mayor. Secondly, candidates for councillor positions may form groups and lodge group tickets, which most do.

### Key issues

The issues on candidacy discussed in Chapter 2 are relevant to Melbourne. Specific issues of note for Melbourne include:

* separate election of the leadership team
* effects of candidate grouping.

Refer to Chapter 2 for a discussion of donations for City of Melbourne elections.

#### Leadership team

A characteristic of the leadership team nomination process is that candidates cannot nominate for a councillor position if they nominate for either Lord Mayor or Deputy Lord Mayor. This practice of limiting people to a single nomination in elections is common (for example candidates for federal or state elections cannot nominate for positions in both upper and lower houses).

This means that candidates are required to choose in advance whether they wish to take on either a leadership or a councillor role.

#### Grouping of candidates

The ballot paper for councillor elections at the City of Melbourne is similar in style to those used for the Australian Senate and the Victorian Legislative Council. While the grouping of candidates is a common feature in local government elections across the state, this process is only formalised in City of Melbourne elections.

The distinguishing features of this style of ballot paper are:

* it supports the grouping of candidates
* it allows voters to choose to follow the preference recommendations of their preferred party or group by putting a number ‘1’ in a box above the list of candidates from that group. This is referred to as ‘above the line voting’.

The use of a senate-style ballot paper for electing ordinary councillors in the City of Melbourne means that most candidates form groups. Groups are listed together on the ballot paper and can lodge a group ticket, which people follow by voting above the line for the particular group.

The number of candidates on the ballot paper for district positions in past City of Melbourne elections is shown in the Table 23. It is noteworthy that the introduction of the grouping of candidates shows an increase in the contestation of elections.

|  |  |  |  |
| --- | --- | --- | --- |
| Election year | Type of ballot | Vacancies | Candidates |
| 1996 | Ungrouped | 5 | 13 |
| 1999 | Ungrouped | 5 | 23 |
| 2001 | Grouped | 7 | 97 |
| 2004 | Grouped | 7 | 65 |
| 2008 | Grouped | 7 | 32 |
| 2012 | Grouped | 9 | 40 |

*Table 23: Number of candidates on the ballot paper for councillor positions in City of Melbourne elections.[[87]](#footnote-87)*

It is interesting to note that the ability for groups to be listed on the ballot paper might lay a platform for the ready involvement of political parties at Melbourne elections.

However, unlike Sydney, where several major parties nominate as groups, this has largely not occurred at Melbourne with only the Greens party having a history of nominating in the council’s elections.

The grouping system can impact on the participation of candidates in a number of ways:

* There is a potential advantage for candidates in that it facilitates campaigning as a group and under a group name. This may reduce campaign costs for each candidate in the group.
* There is however a clear disincentive to candidates to run unless they are part of a group. Candidates who are ungrouped have very little chance of getting elected. In the past three general elections at Melbourne, no ungrouped candidate has obtained more than 0.2 per cent of the votes. This is primarily because individual candidates are not listed above the line on the ballot paper and most voters vote above the line.

Candidates may be forced to find other candidates and form alliances in order to form groups for inclusion on the ballot paper. Unlike political parties, these alliances may be temporary.

Candidate groupings also can affect the involvement and choice of voters:

* Listing of groups on the ballot paper helps voters identify the party/group alignments of individual candidates, particularly when there is a large field of candidates.
* It makes voting much easier for voters who are content to follow the ticket of their preferred party/group.
* It is a familiar system for Australian voters.
* It can result in larger ballot papers because of increased numbers of candidates, as active candidates encourage supporters to nominate so that they can form a group.
* Voters can be discouraged from selecting their own preference order (below the line) because they consider it too complicated.

It is also of note that some voters who vote for groups would have an expectation that their group, if receiving a sufficient number of votes, would win a significant portion of the councillor positions. However this has not been borne out in recent Melbourne elections. In 2008 all seven councillor positions were filled by the first named candidate only listed on the ballot paper from seven different groups. In 2012, one group had three councillors elected; another had two and the remaining four positions were filled by single candidates from four other groups. In this regard, the proportional representation system of counting votes plays an important factor in ensuring that a diversity of candidates are elected and that single groups do not win a significant number of seats.

It should also be noted though that seven of the ten groups who nominated for the councillor election also ran candidates for the leadership team. While it is unlikely for all members of a group to be elected in a councillor election, there is still a possibility for that group to be significantly represented on the council if their leadership team is elected as well. (In 2012 the group Team Doyle won three out of nine councillor positions and also the leadership team – a total of five out of 11 representatives).

### Questions

**7.6 Should lord mayoral candidates continue to be prohibited from nominating for concurrent councillor elections? Why?**

**7.7 Has the distinctive Melbourne model of grouping candidates and above the line voting improved representation?**

**7.8 Has the direct election of the leadership team led to more stability in council?**

# How to get involved

The panel invites all Victorians to get involved in the review by making a public submission and/or participating in the formal public hearings.

## Public submissions

Everyone is welcome to make a submission to the review, in a way that best suits them.

You can respond to any or all of the questions in the discussion paper or you can write about another issue that you think is covered by the Terms of Reference.

Public submissions can be:

* written on paper and posted to the panel
* emailed to the panel
* made on our website by filling out a simple online form.

If you prefer to fill out a structured submission template, the secretariat can post or email you the template.

Submissions close on Tuesday 5 November (Melbourne Cup Day).

Please post your submissions to:

Kendrea Pope

Head of Secretariat

Local Government Electoral Review

GPO Box 2392

Melbourne VIC 3001

**Contact the Local Government Electoral Review Secretariat:**

Visit www.localgovernment.vic.gov.au

Email lg.electoralreview@dtpli.vic.gov.au

Call 1300 736 075

## Public hearings

Everyone is welcome to attend the formal public hearings.

You can request to speak at a formal public hearing in your local area:

* at www.localgovernment.vic.gov.au or
* email or call the secretariat for a ‘request to be heard’ form

### Public hearings

|  |  |  |  |
| --- | --- | --- | --- |
| Melbourne CBD | Thursday 3 October 2013 | Royal Australasian College of Surgeons, 250-290 Spring Street, East Melbourne | 10.30am – 2pm |
| Geelong | Monday 7 October 2013 | Geelong West Town Hall, 153 Pakington Street, Geelong West | 4pm – 7.15pm |
| Horsham | Tuesday 8 October 2013 | Horsham Rural City Council Civic Centre, Roberts Avenue, Horsham | 4pm – 7.15pm |
| Ballarat | Wednesday 9 October 2013 | Ballarat Town Hall, 225 Sturt Street, Ballarat | 4pm – 7.15pm |
| Bendigo | Thursday 10 October 2013 | Bendigo Town Hall, Lyttleton Terrace, Bendigo | 4pm – 7.15pm |
| Sunshine | Friday 11 October 2013 | Brimbank City Council Offices,  6-18 Alexander Avenue, Sunshine | 4pm – 7.15pm |
| Melbourne CBD | Monday 14 October 2013 | Melbourne Town Hall, Swanston Street, Melbourne | 10.30am – 1.45pm |
| Wantirna South | Tuesday 15 October 2013 | Knox Civic Centre, 511 Burwood Highway, Wantirna South | 1.30pm – 4.45pm |
| South Morang | Wednesday 16 October 2013 | Whittlesea Civic Centre, 25 Ferres Boulevard, South Morang | 4pm – 7.15pm |
| Shepparton | Thursday 17 October 2013 | Greater Shepparton City Council Offices, 90 Welsford Street, Shepparton | 4pm – 7.15pm |
| Mildura | Thursday 17 October 2013 | Deakin Ave Service Centre, 76-84 Deakin Avenue, Mildura | 4pm – 7.15pm |
| Wodonga | Friday 18 October 2013 | Wodonga City Council Offices, 104 Hovell Street, Wodonga | 12.30pm – 3.45pm |
| Traralgon | Monday 21 October 2013 | Latrobe City Council Service Centre, 34-38 Kay Street, Traralgon | 3pm – 6.30pm |

**Contact the Local Government Electoral Review Secretariat:**

Visit www.localgovernment.vic.gov.au

Email lg.electoralreview@dtpli.vic.gov.au

Call 1300 736 075

# Questions for consideration

## Chapter 1 – Voters

### Voter eligibility

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

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

### Candidacy requirements and disqualifications

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

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

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

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?

## Chapter 3 – Caretaker period

3.1 Should your council be permitted to make decisions, subject to the Act’s thresholds, during the caretaker period? Why?

If yes, which types of decisions should they be allowed to make? Why?

3.2 Who should be responsible for enforcing any restrictions?

## Chapter 4 – Elections

### Polling method

4.1 Which is the best way for people to cast their vote: attendance or postal? Why?

4.2 Should the polling method for all councils be uniform?

If so, what should it be and why?

4.3 How can more eligible voters be encouraged to vote?

4.4 Why do voters vote informally?

4.5 What can be done to reduce informal voting?

### Complaints handling

4.6 How can the complaints handling process be improved?

4.7 How can the number of complaints be reduced?

### Election services provision

4.8 Should all local government elections be conducted by the VEC? Why?

4.9 How can election costs be contained?

## Chapter 5 – After the elections

### Candidate investigation and prosecution

5.1 Are the electoral offences specified in the Act sufficient? If not, what other offences should be included?

5.2 Can investigations and prosecutions be conducted more effectively? If yes, how?

### Non-voting enforcement

5.3 Should compulsory voting be strongly enforced? Why?

### Election validity

5.4 Can the current way of resolving election result disputes be improved? If so, how?

## Chapter 6 – Electoral representation

### Representation

6.1 What do you think is the most important factor in effective representation?

6.2 Does your council have the right number of councillors? Why?

6.3 Does the electoral structure in your council give you effective representation? Why?

6.4 Should there be a uniform structure for all 79 councils? Why?

If so, what should it be? Why?

6.5 Is the vote counting method important to how electorates are represented? Why?

6.6 Which system do you think offers the best means of ensuring effective representation? Why?

### Conduct of electoral representation reviews

6.7 Who should conduct reviews on how you are represented?

6.8 What should reviewers take into account?

6.9 What should determine when a review should be undertaken? Why?

## Chapter 7 – City of Melbourne

### Voter eligibility

7.1 Should Melbourne have the same franchise as other councils or is it distinctive enough to warrant different arrangements? Why?

7.2 Should there be restrictions on the enrolment of resident occupiers in Melbourne City Council? Why?

If so, what are they?

7.3 Should corporations continue to be allowed to appoint two voting representatives in Melbourne? Why?

7.4 Should the deeming arrangement for company representatives continue at Melbourne? Why?

### Electoral representation

7.5 What do you think would be the preferred electoral structure for the City of Melbourne?

### Candidates

7.6 Should lord mayoral candidates continue to be prohibited from nominating for concurrent councillor elections? Why?

7.7 Has the distinctive Melbourne model of grouping candidates and above the line voting improved representation?

7.8 Has the direct election of the leadership team led to more stability in council?

# Glossary of key terms

*Local Government Act 1989* is referred to throughout the discussion paper as ‘the Act’.

Other legislation is referred to by name.

AEC Australian Electoral Commission

CEO Chief Executive Officer

MET Municipal Electoral Tribunal

Proportional representation A broad term describing a group of electoral systems used to elect candidates in multi-member electorates. In this system, candidates are elected in proportion to the number of votes they receive.

State State of Victoria

The Inspectorate Local Government Investigations and Compliance Inspectorate

VCAT Victorian Civil and Administrative Tribunal

VEC Victorian Electoral Commission

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1. The exception to this was the City of Melbourne – its electoral structure remained separately prescribed under the *City of Melbourne Act 2001.* [↑](#footnote-ref-1)
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. [↑](#footnote-ref-2)
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. [↑](#footnote-ref-3)
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.) [↑](#footnote-ref-4)
5. *Local Government Act 1989*, Sections 21 to 24 (Vic) [↑](#footnote-ref-5)
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) [↑](#footnote-ref-6)
7. *Local Government Act 1989,* Section 24B (Vic) [↑](#footnote-ref-7)
8. *Local Government Act 1989,* Section 24C (Vic) [↑](#footnote-ref-8)
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%). [↑](#footnote-ref-9)
10. VEC, 2012, *M300 Nomination Form for Local Government Elections* and VEC, 2012, *Candidate Handbook Council Elections 2012 – Postal*, Melbourne. [↑](#footnote-ref-10)
11. *Local Government Act 1993,* Section 275 (NSW) [↑](#footnote-ref-11)
12. Northern Territory Electoral Commission*,* 2012*, Candidates Handbook Council Elections,* p. 2*.* [↑](#footnote-ref-12)
13. Department of Premier and Cabinet Tasmania, 2012, *Proposed Changes to Local Government Electoral Arrangements*,p. 9. [↑](#footnote-ref-13)
14. Australian Electoral Commission, 2010, *Electoral Backgrounder: Constitutional Disqualifications and Intending Candidates*, p. 4. [↑](#footnote-ref-14)
15. VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections*, Recommendation 5 [↑](#footnote-ref-15)
16. 250 words for the City of Melbourne [↑](#footnote-ref-16)
17. These figures exclude the City of Melbourne – see Victorian Electoral Commission 2013, *Report on the Conduct of Local Government Elections 2012*, Melbourne. [↑](#footnote-ref-17)
18. VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections,* Melbourne. [↑](#footnote-ref-18)
19. *ibid*  [↑](#footnote-ref-19)
20. *op cit*, Recommendation 8. [↑](#footnote-ref-20)
21. VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections,* Melbourne. [↑](#footnote-ref-21)
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) [↑](#footnote-ref-22)
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. [↑](#footnote-ref-23)
24. Notwithstanding VEC analysis suggests single councillor wards often have higher ratios of candidates per vacancy even though they have fewer candidates overall. [↑](#footnote-ref-24)
25. These figures exclude the City of Melbourne. The figures in this section are based on returns at April 2013. [↑](#footnote-ref-25)
26. Jim Gifford Consulting, April 2013, *Donations in Local Council Elections: Analysis of donations in the October 2012 Victorian local government elections.* [↑](#footnote-ref-26)
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29. Queensland Crime and Misconduct Commission 2012, *The Regulation of Political Donations and Gifts in Queensland: A comparative analysis*, p. 49. [↑](#footnote-ref-29)
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. [↑](#footnote-ref-30)
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32. Jim Gifford Consulting, April 2013, *Donations in Local Council Elections: Analysis of donations in the October 2012 Victorian local government elections.* [↑](#footnote-ref-32)
33. *The Local Government Act 1989*, Section 93A (Vic) [↑](#footnote-ref-33)
34. *op cit*, Section 94(7)(c) [↑](#footnote-ref-34)
35. *op cit,* Section 93A(2) & (3) [↑](#footnote-ref-35)
36. *op cit*, Section 55D (Vic) [↑](#footnote-ref-36)
37. *op cit*, Section 55 [↑](#footnote-ref-37)
38. *op cit*, Section 3(1A) & (1B) [↑](#footnote-ref-38)
39. In South Australia, there is no prohibition on a council entering into contracts for road construction or maintenance or drainage works during the caretaker period. [↑](#footnote-ref-39)
40. *The Local Government Act 1989,* Section 76D (Vic) [↑](#footnote-ref-40)
41. *Local Government (General) Regulation 2005*, r.393B (NSW), defined as a development application for which at least 25 objections have been received. [↑](#footnote-ref-41)
42. *Local Government Act 1989*, Section 41A (Vic) [↑](#footnote-ref-42)
43. VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections,* Melbourne. [↑](#footnote-ref-43)
44. In 1999, the move from attendance voting to postal voting in South Australia (where voting for council elections is voluntary) “resulted in an immediate increase in voter turnout to record levels for South Australia at 40.1% in the elections conducted in 2000.” – Russell, Bill 2004, *Voting Obligation and Voter Turnout – Discussion Paper prepared for Local Government Association of South Australia*, p.1. [↑](#footnote-ref-44)
45. These numbers exclude the City of Melbourne Leadership Team and the City of Greater Geelong mayoral elections. [↑](#footnote-ref-45)
46. VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections,* Melbourne. [↑](#footnote-ref-46)
47. VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections,* Melbourne, Recommendation 10. [↑](#footnote-ref-47)
48. *op cit*, Recommendation 11. [↑](#footnote-ref-48)
49. VEC, 2012, *Candidate Handbook Council Elections 2012 – Postal*, p. 23. [↑](#footnote-ref-49)
50. VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections*. [↑](#footnote-ref-50)
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59. *Local Government (Elections) Act 1999*, Sections 9 & 10 (SA) [↑](#footnote-ref-59)
60. *Local Government Act 1995*, Section 4.20 (WA) [↑](#footnote-ref-60)
61. *Local Government Act 1993*, Section 264 (Tas) [↑](#footnote-ref-61)
62. Seven matters were still outstanding at the time of writing. [↑](#footnote-ref-62)
63. 2012 data from the Inspectorate, 2008 data from VEC *Report of local government electoral activity 2008-09 Part I Report of the conduct of the 2008 local government elections* (October 2009), p. 58. [↑](#footnote-ref-63)
64. The Victorian Local Governance Association has indicated its members have raised concerns about “whether investigations occur so long after the fact that the effect of any penalties or actions on the overall conduct and perception of the elections is negligible.” Victorian Local Governance Association, 2013, *VLGA Issues paper – Strengthening democracy: Improving local government elections*, p.6. [↑](#footnote-ref-64)
65. For federal elections the fine is $20. AEC, 2013, *Voting within Australia – Frequently Asked Questions* <http://www.aec.gov.au/FAQs/Voting­\_Australia.htm> [↑](#footnote-ref-65)
66. *Local Government Act 1989,* Section 40 (Vic) [↑](#footnote-ref-66)
67. VEC, April 2013, *Report on Conduct of the 2012 Local Government Elections*, Melbourne. [↑](#footnote-ref-67)
68. *Local Government Act 1989,* Section 45 (Vic) [↑](#footnote-ref-68)
69. *op cit,* Section 44 [↑](#footnote-ref-69)
70. *op cit,* Section 46 [↑](#footnote-ref-70)
71. *op cit,* Sections 47 [↑](#footnote-ref-71)
72. *op cit,* Sections 48 [↑](#footnote-ref-72)
73. *op cit,* Section 51 [↑](#footnote-ref-73)
74. Burdess, N, & O’Toole, K 2004, *Elections and Representation in Local Government: A Victorian Case Study*, pp. 66-78. [↑](#footnote-ref-74)
75. *Local Government Act 1989*, Section 219F (Vic) [↑](#footnote-ref-75)
76. VEC, 2013, *Report of local government electoral representation reviews and subdivision reviews conducted by the VEC in 2011 and 2012*, p. 15. [↑](#footnote-ref-76)
77. VEC, Report of local government electoral representation reviews and subdivision reviews conducted by the VEC in 2011 and 2012, p. 16. [↑](#footnote-ref-77)
78. State legislation [↑](#footnote-ref-78)
79. *Local Government Act 1989*, Section 5B(2) (Vic) [↑](#footnote-ref-79)
80. *op cit,* Schedule 3 Parts 3 and 4A [↑](#footnote-ref-80)
81. *op cit*, Sections 37A and 38 [↑](#footnote-ref-81)
82. *Local Government Act 1989*, Section 219D [↑](#footnote-ref-82)
83. VEC, 2013, *Report of local government electoral representation reviews and subdivision reviews conducted by the VEC in 2011 and 2012*, p. 18. [↑](#footnote-ref-83)
84. VEC, October 2009, *Report of local government electoral representation reviews conducted by the VEC between 2004 and 2008*. [↑](#footnote-ref-84)
85. Additional objectives:

    (1) The Council has the following objectives—

    (a) to ensure a proper balance within its community between economic, social, environmental and cultural considerations within the context of the City of Melbourne's unique capital city responsibilities;

    (b) to develop and implement strategic directions and policies for the City of Melbourne in collaboration with the Government of the State to ensure alignment with that Government's strategic directions and policies for the City of Melbourne as the capital city of the State of Victoria;

    (c) to co-ordinate with the State and Commonwealth Governments in the planning and delivery of services in the City of Melbourne in which those governments have an interest;

    (d) to work in conjunction with the Government of the State on projects which that Government or the Council determines are significant to Melbourne.

    *(Section 7(1) City of Melbourne Act 2001)* [↑](#footnote-ref-85)
86. VEC, March 2012, *Final Report - Electoral Representation Review of Melbourne City Council* <https://www.vec.vic.gov.au/reviews/melbournerr.html>. [↑](#footnote-ref-86)
87. Melbourne City Council 1996, *1996 Election: Post-Election Review.* [↑](#footnote-ref-87)