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Our ref: D18/8426

Local Government Act Review Secretariat
C/o Local Government Victoria
Po Box 500
Melbourne Vic 3002

16 March 2018

Dear Sir or Madam

Submission on the Local Government Bill, Exposure Draft

The Victorian Electoral Commission (**VEC**) provides this submission in response to the Local Government Bill, Exposure Draft (**draft Bill**).

Although the VEC sees many positive elements to the draft Bill, there are particular concerns about aspects of the Bill that undermine fundamental principles of electoral and representation systems. In particular, the proposed restriction on representation models and the removal of independent oversight from some electoral and representation processes.

The VEC identifies that the removal of regular scheduled triggers for the conduct of local government electoral representation reviews and the removal of the VEC as an independent reviewer is an erosion of the impartial conduct of this critical activity. Further an “electoral representation advisory panel” established by Government-of-the-day, which is “directed by Government in respect of the [electoral structure] review”, does not meet the basic test of neutrality, as one principle of an ethical and professional electoral system, and potentially opens the process to actual or perceived political bias.

Independent representation reviews are a necessary and positive feature of an electoral system. The specific triggers currently prescribed in the *Local Government Act 1989* enable a consistent and independent approach for initiating reviews. Of note, the *Local Government (Democratic Reform) Act 2003* established a process for regular and independent electoral representation reviews for all councils to be conducted by an electoral commission,¹ which was part of a major commitment by the then Bracks Government to strengthen local democracy.² These changes brought the same level of independence to local government electoral boundaries as continue to apply to the other tiers of government.

¹ Local Government (Democratic Reform) Bill – Explanatory Memorandum, clause 32.

² Media release from the Minister for Local Government, 10 December 2003.

Further, the proposed restriction on representation models will weaken the ability to capture the optimum model for a particular council to provide fair and equitable representation. For example, under the proposed arrangements in the draft Bill and if 11 councillors are retained for Greater Geelong City Council, the City of Greater Geelong would only have an unsubdivided structure or a structure comprising 11 single councillor wards available to it. Both options are at odds with models proposed by both the VEC and the Greater Geelong Citizens' Jury in the lead up to the 2017 Greater Geelong City Council general election.

As to ward boundary reviews the draft Bill provides discretion in engaging the VEC to conduct the reviews, with the potential therefore to proscribe any VEC involvement. This, with the intention to establish an electoral representation advisory panel, is a significant departure from the regular and independent process that has existed in Victoria since 2003.

Since 2003 the VEC has undertaken 129 electoral representation reviews and 16 subdivision reviews, and has built considerable experience and expertise in this area. At the outset, in the absence of prescriptive criteria, the VEC developed a set of principles and a practical methodology for applying these principles to particular municipalities to achieve fair and equitable representation. Importantly, a consistent state-wide approach was taken by the VEC regarding councillor numbers and communities of interest have always received due consideration. Extensive community consultation has occurred as part of each review, supported by sophisticated purpose-built mapping software, current electoral enrolment data, field research and strong public messaging campaigns. An electoral representation advisory panel, if it is offered, will not bring the same independence and experience to the process or have ready access to enrolment data, modelling tools, and resources.

I turn now to the proposed changes to the countback process used to fill extraordinary vacancies in multi-councillor wards and unsubdivided municipalities. There is a view that all votes counted in the original election should be included in the countback process. This is at odds with the basic principle of countback, which is that a group of voters have elected a councillor and that if that councillor vacates their position, that group of voters is left without a representative. Consequently, only that group of voters has the right to fill the vacancy. This view is also consistent with that of the Proportional Representation Society of Australia.³

The draft Bill also provides Government with the prerogative to direct the VEC to vary accounts issued in relation to the VEC's election and compulsory voting enforcement expenses. This is directly at odds with the *Electoral Act 2002*, which clearly states that the Commission, as a statutory officer of Parliament, is not subject to the direction or control of the Minister in respect of the performance of its responsibilities and functions and the exercise of its powers.

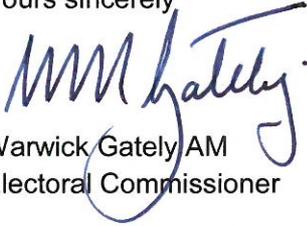
This said, the VEC values its partnership with the local government sector and is particularly conscious of rising election costs. The VEC applies a marginal cost recovery model for its elections and only recovers direct costs. The VEC engages an independent auditor to review its methodology for identifying and apportioning local government election costs prior to each round of elections. Electoral service agreements and quotes are then established with each council well in advance of the elections, and invoices are prepared in line with each electoral service agreement after the elections. Invoices are issued at a number of milestones that are pre-determined with councils and documented in their electoral service agreement; after the election and after the enforcement of compulsory voting. Where there are ongoing court costs, further invoices may also be issued. The VEC's costing methodology is both transparent and reasonable, and the VEC is supportive of further oversight of this process if

³ <http://www.prsa.org.au/countbac.htm>

necessary, but believes it would be more appropriate for this to take place well in advance of the election, while the costing arrangement is being developed and not when invoices are being issued after the election.

Detailed comments against specific clauses in the draft Bill are also provided and should be read in conjunction with this covering letter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Warwick Gately', written over the printed name below.

Warwick Gately AM
Electoral Commissioner

Encl.

Submission Template

Local Government Bill – Exposure Draft

Name	Warwick Gately AM
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If you work in an organisation or council, please provide the following information:

Organisation or council name	Victorian Electoral Commission
Position	Electoral Commissioner
Are you providing this submission on behalf of the organisation or council?	Organisation

Key information about making a submission

What feedback should I provide on the exposure draft bill?

Following an extensive consultation process that considered the policy issues that underpin the Local Government Act, we are now seeking feedback on the Local Government Exposure Draft Bill to inform the final draft legislation before the Government reviews it to present to the Victorian Parliament. We strongly encourage you to read the explanatory document (*A New Local Government Act for Victoria*) to assist you to navigate the draft legislation.

What is the closing date for submissions?

The closing date for submissions is **5:00 pm, Friday 23 February 2018**. Given that the draft bill is subject to parliamentary timeframes, submissions received after this date will be considered at the Government's discretion.

How do I make a submission?

Submissions can be made in three ways:

- **Online** by uploading your submission to the www.yourcouncilyourcommunity.vic.gov.au website
- **Emailing** your submission to local.government@delwp.vic.gov.au
- **Posting** your submission to:
Local Government Act Review Secretariat
C/o Local Government Victoria,
PO Box 500, Melbourne VIC 3002

How do I complete this template?

To complete this template:

- (1) Locate the part of the Draft Bill you wish to comment on.
- (2) Insert the clause number, your level of support for the clause, the proposed change and any other comments into the table.

Can I provide a submission in another format?

It is strongly preferred for submissions to be made by completing this template. However, if another format suits your needs or the requirements of your organisation you are welcome to use another format.

Will submissions be made publicly available?

Written submissions and the name of the author will be published on the www.yourcouncilyourcommunity.vic.gov.au website unless confidentiality is requested and the Executive Director of Local Government Victoria grants it, or if it is determined your submission should remain confidential. Submissions that are defamatory or offensive will not be published.

Please contact the Local Government Act Review Secretariat if you have any questions on (03) 9948 8518 or local.government@delwp.vic.gov.au

Part 1: Preliminary

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
3(1)	Do not support (as currently drafted)	'Election manager' refers to a specific office and officeholder. Accordingly, in the definition of <i>election manager</i> , change 'the VEC' under (a) to 'the Victorian Electoral Commissioner'. No change is required to 'the VEC' under (b).	No further comments.
3(2) and 3(3)	Neutral	The separation of <i>electoral matter</i> definitions from the general definitions in the current Act has caused confusion and is often overlooked by those unfamiliar with it. The VEC recommends incorporating the definition and scoping of <i>electoral matter</i> , currently in clauses 3(2) and 3(3), into the general definitions.	No further comments.
3(7)	Neutral	The VEC notes that <i>ward</i> is defined in sub-clause 3(1) of the draft Bill, however an expanded definition to suit unsubdivided municipalities is separately defined in sub-clause 3(7) of the draft Bill. The VEC recommends these definitions be combined under sub-clause 3(1).	No further comments.

Do you have any overall comments on Part 1 of the Exposure Draft Bill?

No further comments.

Part 2: Councils

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
12(3)	Neutral	No changes proposed.	<p>The VEC notes that the number of councillors for each council is to be determined in accordance with criteria prescribed by the regulations.</p> <p>Without visibility of the Regulations, it is not clear how this will be determined or what the trigger for review will be. The VEC notes that it holds enrolment information and would be in a position to monitor changes in elector numbers.</p>
12(4)	Do not support	<p>The VEC recommends reconsideration of the limitations imposed on council structures in clause 12(4).</p> <p>This clause limits representation models to those which are: unsubdivided; all multi-member wards with equal numbers of Councillors to represent each ward; or all Councillors elected to represent single member wards.</p> <p>The proposed restriction will limit the ability to capture communities of interest effectively. Communities of interest are an important consideration in all redistricting activities across all jurisdictions in Australia, including Victorian State redivisions and Commonwealth redistributions. As written, this clause would make the process for determining Victorian local government electoral boundaries anomalous compared to the other two tiers of government in Australia.</p> <p>Given the large variation in geography, population size and spread, and the diversity of communities across councils, the ability to effectively capture communities of interest while maintaining the +/-10% deviation between wards will be significantly limited under the proposed arrangement. Where communities have to be arbitrarily split by boundaries to accommodate the numbers requirements, the voice of split communities is diminished in electing their council</p>	<p>The VEC notes a recent example whereby a Citizens' Jury and the VEC considered a structure for the Greater Geelong City Council that would provide fair and equitable representation. Both the VEC's and the Citizens' Jury's recommended models which would not comply with the limited options proposed under clause 12(4).</p> <p>In order to make the Greater Geelong City Council fit within the proposed arrangements, communities of interest would need to be divided, weakening the fairness and equality of representation. The only options available to the Greater Geelong City Council with the current number of councillors would be 11 single member wards or an unsubdivided model. The VEC is of the view that both would be unsuitable in providing the Greater Geelong City Council with a fair, equitable and workable electoral structure.</p> <p>The VEC notes that 31 councils will need to be reviewed to comply with the proposed council structures.</p>

		<p>representative.</p> <p>Where it is determined that a council should have a total number of councillors that is a prime number: 5; 7; or 11, there will only be two representation models available - single councillor wards or an unsubdivided model.</p>	
14	Neutral	<p>The VEC recommends clarifying the role of the VEC in supporting decisions made regarding council electoral structures. For example:</p> <ul style="list-style-type: none"> • The mechanism for the Minister to receive enrolment advice to support decisions under clause 14(2) is unclear. • Sub-clause 14(2)(b) <i>“the number of voters per Councillor in a ward does not vary from the average number of voters per Councillor in any other ward by more than 10 per cent”</i>. This is read in the present tense, whereas sub-clause 16(1) states that the +/-10% requirement is to apply at the time of the next general election. The LGA currently allows the reviewer to make decisions based on current enrolments <u>or</u> on anticipated enrolment at the time of the next general election. • Sub-clauses 14(3)(c) and 251(1)(b) note that maps describing alterations to council electoral structures described in an Order in Council may be lodged in the Central Plan Office or with the VEC. The VEC is not clear on where the maps are being drafted and what its responsibilities would be if it is keeping the maps, particularly the timing for implementing any changes. <p>Further, the purpose of sub-clause 14(3)(f) is unclear. It appears to allow for councillor numbers and electoral structures to be set outside the prescribed criteria, contrary to all other provisions within the draft Bill.</p>	No further comments.

15	Do not support	<p>The VEC strongly recommends clause 15 be reconsidered because:</p> <ol style="list-style-type: none"> 1. The clause does not establish regular triggers for the conduct of local government representation reviews. <p>Currently representation reviews are required prior to every third election cycle. Such triggers are a positive and necessary feature of any electoral system. Changes occur within council areas and a regular, independent and scheduled check to confirm that the representation model is continuing to provide fair and equitable representation is necessary.</p> <p>If there is concern around the cost of conducting a review that results in a “no change” outcome, consideration should be given to providing an abridged review process for councils where existing models are seen to be providing fair and equitable representation and where there is no underlying concern requiring a full review.</p> <ol style="list-style-type: none"> 2. Independent oversight of representation reviews is fundamental to fair and impartial redistricting processes in a democracy. <p>This clause provides for the Minister to appoint an advisory panel to give advice on the electoral structure of a council. The panel established and instructed by the Government-of-the-day does not meet the basic test of neutrality and increases the real or perceived risk of political bias. It is unclear from the draft Bill how the panel is constituted and how it would access necessary enrolment information and modelling tools required.</p> <p>This is a significant departure from the process introduced in Victoria in 2003, when the <i>Local Government (Democratic Reform) Act 2003</i> provided for regular and independent representation reviews for councils to strengthen local democracy and apply the same level of independence that exists for other tiers of government.</p>	<p>Implementation implications:</p> <p>The lack of defined triggers for the conduct of representation reviews will make workforce planning difficult for the group intended to support the advisory panel in terms of research, community engagement, data analysis, modelling and mapping.</p> <p>As the voters’ roll and up-to-date enrolment statistics will be required to inform the advisory panel, there is no mechanism in the draft Bill for this information to be made available.</p> <p>Decisions by the advisory panel on electoral boundaries need to be integrated into spatial data kept by the VEC (and by council) in order to re-code electors in the lead up to an election. This needs to be carefully scheduled and boundary changes must be based on 100% accurate spatial data.</p>
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		<p>3. Sub-clause 15(3)(b) states that an electoral structure recommended by an electoral representation advisory panel must “facilitate good governance”.</p> <p>The VEC notes that this is a subjective element and cannot be facilitated solely through the numbers of councillors and a council’s electoral boundaries.</p> <p>The VEC proposes that the current process and methodology for undertaking representation reviews be retained with the addition of an abridged process for councils with limited evidence of change to warrant a full representation review.</p> <p>Further, there is currently no deadline for deciding changed boundaries prior to a general election. Any uncertainty or late notice in relation to electoral boundaries significantly impacts election planning and readiness. It is recommended that any orders should be made no later than 6 months before a general election.</p>	
16	Do not support	No changes proposed.	The same concerns in relation to regular triggers, impartiality and workforce planning apply in respect to ward boundary reviews as mentioned for clause 15. The VEC has previously submitted that the role of the Minister in requesting a review and in deciding whether or not to accept the outcome of a review is inconsistent with the independence of the process.
32	Support	No changes proposed.	The VEC notes that clause 32 consolidates and clarifies existing provisions in relation to the eligibility for the office of councillor.

Do you have any overall comments on Part 2 of the Exposure Draft Bill?

No further comments.

Part 9: Electoral provisions

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
254(7)	Do not support (as currently drafted)	<p>It is recommended that reference to the VEC in this clause is not necessary. It is unclear why the VEC would “under an agreement with the CEO” write to voters enrolled on the previous voters’ roll given the VEC does not hold CEO list data and does not have responsibility for updating CEO list data.</p> <p>It is also recommended that the possessive apostrophe in voters’ roll is removed from all relevant references throughout the draft Bill. The “voters’ roll” is a roll <i>of</i> voters - it does not <i>belong</i> to the voters.</p>	Given councils have access to their rates database, it is appropriate for councils to alert resident ratepayers, occupiers and corporations (who are not State electors residing within the council) of their opportunity to apply to be enrolled.
263(2)	Neutral	No changes proposed.	Withholding silent addresses from the voters’ roll under clause 263(2) is consistent with protecting disclosure, but creates issues where the voters’ roll is provided to the CEO under clause 268. See the VEC’s further commentary in relation to clause 268 specifically.
263(4)	Support	No changes proposed.	The VEC notes the change requiring the voters’ roll to be certified from three days before the close of nominations to five days before the close of nominations. It is anticipated that the reason for this was to extend the nomination period.
265	Do not support	<p>The voters’ roll is a snapshot in time; therefore the requirement for the VEC to have a copy of the certified rolls for each council available for inspection for what could be up to a four year period will result in data that is quickly out of date. It is unclear of the intent and value of this clause.</p> <p>In particular the VEC notes that silent elector status is not applied retrospectively. Electors who become silent may be published on historical roll products.</p> <p>The VEC recommends this clause is revised to relate only to a relevant election period.</p>	No further comments.

266	Do not support (as currently drafted)	<p>A person may nominate for an election and subsequently withdraw their nomination before the close of nominations and would therefore not be entitled to receive the roll for the election. The VEC therefore recommends adding to this clause that the candidate roll is only made available <u>after</u> the close of nominations.</p> <p>Additionally it should be a requirement for retired candidates to surrender any copy of the roll immediately upon retiring. As written, clause 266 would allow a retired candidate to retain the roll until the period defined under sub-clause 266(3)(b).</p>	No further comments.
267	Do not support	<p>The VEC recommends removing the opportunity for voters' rolls to be provided to third parties. The voters' roll represents enrolment in an electorate at a point in time for the purpose of an election.</p> <p>The VEC notes that while section 34 of the <i>Electoral Act 2002</i> serves a similar function for the State register of electors, the enrolment information available is from the 'live' register, not an electoral roll prepared for an election. As drafted, clause 267 presents issues in relation to controls around who has access to the voters' roll, the currency of the data after its use at an election, and how silent electors can be managed as silent elector status is not applied to electoral rolls retrospectively.</p> <p>Further, the penalties prescribed in clause 267 for misusing enrolment information are weaker than the penalties prescribed in the <i>Electoral Act 2002</i>.</p>	No further comments.
268	Do not support	<p>Clause 268 of the draft Bill provides for a council chief executive officer to provide a voters' roll to third parties. The draft Bill establishes the VEC as the custodian of the voters' roll and makes no provision for the voters' roll to be given to the chief executive officer.</p> <p>The VEC recommends that this clause is removed for all of the reasons mentioned in earlier comments with respect to accuracy, currency, privacy and purpose.</p>	No further comments.

		If this clause is retained, the VEC notes that the penalties prescribed in clause 268 for misusing enrolment information are weaker than the penalties prescribed in the <i>Electoral Act 2002</i> .	
270	Neutral	No changes proposed.	The VEC queries the enforceability of the drafting note attached to clause 270 of the draft Bill and whether or not this note should be codified within the clause.
270(1)	Support	No changes proposed.	The VEC acknowledges the clarification in relation to candidates' entitlement to stand for any ward within a subdivided council.
270(2), 270(3) and 270(4)	Neutral	No changes proposed.	The VEC notes that sub-clauses 270(2), 270(3) and 270(4) of the draft Bill appear to reflect a situation where a mayor and/or deputy mayor are directly elected. The direct election of the mayor and/or deputy mayor is not referenced elsewhere within the draft Bill.
272(2)	Support	No changes proposed.	The VEC notes that a councillor's resignation becomes 'effective' immediately once received <i>in writing</i> under the draft Bill. This removes the possibility currently provided in the LGA for a councillor to specify an effective date for their resignation, which may extend beyond the prescribed timeline for filling the vacancy.
272(5)	Neutral	The VEC notes that sub-clause 272(5) is unclear. The purpose of sub-clause 272(5) should be clarified.	No further comments.
273	Support	No changes proposed.	The VEC acknowledges the reduction to a three month period where a council may carry a vacancy. This reduces the period where it is possible for the community to be without representation.
275(b)	Do not support (as currently drafted)	The VEC notes that sub-clause 275(b) is unclear on whether or not an excluded candidate from a previous countback may become eligible at a subsequent countback. The VEC recommends the reference to "election or countback" in this	No further comments.

		sub-clause is clarified.	
Part 9 – Division 5 – Conduct of elections	Neutral	No changes proposed.	The VEC notes that the structure of Part 9 – Division 5 in the draft Bill does not accord with the ordinary election chronology. Those wanting to follow each step of the election process would not be able to do so by reading steadily through the Division.
276(2)	Do not support (as currently drafted)	The VEC notes that sub-clause 276(2) is unclear, particularly the multiple references to the “general election in 2020”. The VEC recommends this sub-clause is clarified as to the election where the Minister’s determination will be implemented.	No further comments.
276(4) and 276(6)	Do not support (as currently drafted)	The decision-making timeline in clause 276(2) requires the Minister to decide and give notice on the election method at least 12 months before the general election. This decision applies to both general elections and by-elections. Clarity is requested for the circumstance of an alternate election method being determined and a by-election occurring within the 12 months between that decision and the general election. Sub-clause 276(4) should be clarified for this reason.	No further comments.
276(7)	Neutral	For correct interpretation of clause 276, the VEC recommends that sub-clause 276(7) is re-ordered to be sub-clause 276(1).	No further comments.
277(6)	Do not support (as currently drafted)	As clause 277(6) currently reads, the timeline for a by-election for a failed ward election at a general election will start immediately on the nomination day for the general election. This means that the timeline may be slightly off-set to that of the general election for other wards in the council. It would be clearer for voters, and operationally preferable for the VEC, to commence any by-elections <i>after</i> the general election has been completed.	No further comments.

279(1)	Do not support (as currently drafted)	The cross-reference to <i>section 252</i> in clause 279 appears to be incorrect. The VEC anticipates the cross-reference should be to <i>section 255</i> .	The references to 'resident' and 'section 252' in clause 279 means the provision does not reflect current compulsory voting arrangements for Melbourne City Council elections.
280(4)	Do not support (as currently drafted)	The VEC's experience of non-voter follow up has identified some confusion between identifying the election date for enforcement from a postal election. The VEC recommends that sub-clauses 280(4)(b) and 280(4)(d) are interchangeable, depending on the election method.	No further comments.
280(5)	Do not support	<p>The VEC recommends further consideration of this clause to, at a minimum allow the VEC to retain some of the penalties collected to cover the costs of administering non-voter enforcement.</p> <p>The VEC has received a number of requests from councils to off-set the VEC's cost recovery for non-voter enforcement costs with the penalties collected from the process. This is not possible under the current LGA, and would not be possible under sub-clause 280(5).</p> <p>It is possible that remitting just the balance of penalties received to the relevant council would be more efficient than remitting all penalties received to the council and, at the same time, invoicing the council for the service.</p>	No further comments.
281	Neutral	No changes proposed.	The VEC acknowledges the insertion of this clause, including the addition of sub-clause 281(2) to reflect similar provisions in the <i>Electoral Act 2002</i> . Please consider the positioning of this clause within the Act (i.e. following compulsory voting). Perhaps this clause should appear at the beginning of Part 9, Division 4.
282(3)	Do not support (as currently drafted)	The VEC notes that sub-clause 282(3) is unclear. The 'expenses' being discussed in the sub-clause should be clarified.	No further comments.

<p>282(4) and 282(5)</p>	<p>Do not support</p>	<p>Clause 282 misunderstands the VEC’s costing arrangements for local government elections. The VEC maintains a costing application, which is regularly updated and reviewed to ensure the most current prices and rates. Only marginal costs are captured within the application as the VEC does not recover core costs. The application is comprehensively reviewed prior to each major local government electoral event, including an independent audit.</p> <p>In the lead up to an event, the VEC prepares an initial cost estimate to assist councils with budgeting approximately 12 months out from the event. At that time in the lead up to the last few local government elections, the VEC has briefed the Municipal Association of Victoria on high-level cost changes and workshops with council officers (usually governance managers) from across Victoria.</p> <p>The VEC then provides a formal quotation as part of finalising the electoral service agreement approximately six months out from the event. The VEC invoices against the formal quotation following the election, adjusting the cost according to the list of qualifications and prescribed variations that were provided with the quote. These variations cover election variables that impact the size and scale of the election, such as final enrolment figures, higher/lower numbers of candidates, and unanticipated increases to postage rates.</p> <p>While the VEC is confident that its costing arrangement is fair, reasonable and transparent, if further oversight is necessary the more appropriate period for negotiating changes to the VEC’s costing arrangement or variations to the prices and rates used in the application is during the lead up to the election event. Agreed changes can then be made in the costing application and applied fairly across all councils.</p> <p>To perform an audit after the fact and vary an invoice for a single council will be unfair to all other councils. The extended timeline of compulsory voting enforcement also means that</p>	
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		invoicing is spread across multiple invoices – roll preparation and conduct of the election in the first invoice shortly after the election, a second invoice for non-voter follow up, then a simple cost recovery regime for compulsory voting prosecutions. Any review of a particular council’s invoice after the election by the Essential Services Commission would not capture all costs associated with that election.	
282(6)	Do not support	<p>The draft Bill provides Government with the ability to direct the VEC to vary accounts issued in relation to the VEC’s election and compulsory voting enforcement expenses.</p> <p>The VEC strongly resists any provision allowing the Government-of-the-day to “direct” its activity. It is inappropriate for any Minister to direct or control the VEC and would not accord with the principle underpinned by section 10 of the <i>Electoral Act 2002</i>.</p>	No further comments.
283	Neutral	No changes proposed.	<p>The VEC has previously reported on the correlation between increased informality and higher numbers of candidates at elections under the current voting method. As drafted, clause 283 continues full preferential voting for local government elections. If partial/optional preferential voting is not being considered for local government elections in Victoria, the VEC strongly recommends an alternative response to growing informality rates.</p> <p>The VEC notes that the prescribed electoral structures proposed by the draft Bill may – if implemented – result in more unsubdivided local government areas. This may lead to higher numbers of candidates contesting fewer elections, resulting in unwieldy ballot papers and increased informality.</p>
Part 9 – Divisions 6 and 7		The VEC recommends a provision is inserted into Divisions 6 and 7 of the draft Bill permitting the election manager to adjourn or suspend a counting activity.	No further comments.

Part 9 – Divisions 6 and 7		<p>The VEC recommends that a similar provision to clause 298, which is specific to declaring the result of a countback, be inserted into Divisions 6 and 7 of Part 9 to allow for the public declaration of the result of general elections and by-elections. This has been omitted from the draft Bill as it currently stands.</p> <p>The VEC notes that the public declaration of the election is referred to in sub-clauses 245(15) and 245(16), clause 324, and sub-clause 341(p).</p>	
286(b), 287(b), 287(f)(ii), 289(24)(b), 289(25), 292(3)	Neutral	No changes proposed.	The VEC notes that a determination by lot is not repeatable in a recount situation, except by coincidence. In the event that a draw by lot is necessary to determine the defeated or the successful candidate(s), the election manager will advise those present of this fact.
287(b)	Do not support (as currently drafted)	The VEC recommends that the definition of <i>absolute majority of votes</i> in sub-clause 287(b) is changed to read “... greater than one-half the total value of votes...” rather than “... greater than one-half the total number of ballot papers” as currently drafted. The reference to ballot papers is confusing when applied to the proportional representation counting method.	No further comments.
287(c)	Neutral	<p>The VEC recommends modernising this sub-clause and removing the unnecessary complexity. As written, the sub-clause reflects language currently in the LGA, which are no longer used in electoral practice (e.g. “sealed parcel”, “allowed postal ballot paper”). These terms are even less relevant to electronic voting should it be introduced in the future.</p> <p>The VEC proposes an alternate sub-clause simply requiring ballot papers for an election to be brought together in the presence of scrutineers.</p>	No further comments.
287(c)(ii)	Do not support (as currently drafted)	The VEC recommends adding further definition to ‘ballot-papers which are rejected’. There is a difference between <i>rejected</i> returns and <i>informal ballot papers</i> . These are determined at separate stages of the vote counting process and should not be used interchangeably. Refer to section 112 of the <i>Electoral Act 2002</i> . Informal ballot papers should be defined as only those ballot papers not completed in accordance (and/or determined by the election official to not	No further comments.

		be in accordance) with clause 283.	
Division 8	Do not support	<p>The VEC recommends that the current countback process be retained.</p> <p>The VEC notes the proposed changes to the countback process to fill councillor vacancies in multi-member wards or unsubdivided municipalities. The view that all votes counted in the original election should be included in the countback is at odds with the basic principle of countback. Countback is based on the principle that if a group of voters have elected a councillor, and that councillor subsequently vacates their position, that group of voters is left without their representative. Consequently only that group of voters has the right to fill the vacancy.</p> <p>The current countback model maintains the proportionality of representation delivered by the original election and is used in Tasmania's House of Assembly, the Australian Capital Territory's Legislative Assembly, and local councils in Tasmania. The proposed model changes the proportionality of representation delivered at the original election.</p>	No further comments.
290	Neutral	The VEC recommends clause 290 is clarified in respect to the definition of <i>relevant election</i> . It is not clear whether or not the meaning extends to the general election or if the relevant election becomes the countback for a candidate who was elected at a countback and subsequently leaves office. An equivalent model that applies in Western Australia always refers back to the general election.	No further comments.
295(3)(b)	Do not support (as currently drafted)	The VEC recommends removing sub-clause 295(3)(b) of the draft Bill as it implies an unnecessary limitation on the class of people that may observe a countback. Modern countbacks are performed by computer, without any need to count back using live ballot papers on the table. The VEC opens the countback calculation to the public.	No further comments.

299(4)	Do not support (as currently drafted)	The list of disregarded candidates at sub-clause 299(4) is incomplete and, for further counts, must be read in conjunction with sub-clause 296(4). The VEC recommends a new sub-clause 299(4)(c) is added to read, “preferences indicated for a candidate to whom sub-section 296(4) applies.”	No further comments.
299(7)	Do not support (as currently drafted)	The VEC notes that sub-clause 299(7) deals only with a candidate who is successful at a countback by obtaining a quota. There are circumstances where a candidate may be successful at an election, including a countback, without ever obtaining a quota. This scenario is considered at sub-clause 289(18) of the draft Bill for counting at an election, but it is not considered for the countback. The VEC recommends sub-clause 299(7) is amended accordingly.	No further comments.
299(8)	Neutral	No changes proposed.	The VEC notes there appears to be duplication between sub-clauses 299(8) and under 296(1).
301	Do not support (as currently drafted)	The VEC recommends clause 301 of the draft Bill is clarified in relation to the address requirements as ‘address’ is no longer defined in the draft Bill. A definition for this purpose currently appears in section 55(4) of the LGA. Unless defined otherwise, the modern usage of address may extend to a PO Box address and/or an email addresses, as well as street addresses.	No further comments.
309(1)	Neutral	No changes proposed.	The VEC recommends sub-clause 309(1) is kept aligned to the corresponding provisions of the <i>Electoral Act 2002</i> .
312(1)	Neutral	No changes proposed.	The VEC continues to be concerned as to how effectively this provision can be enforced.
314(2) and 314(4)	Do not support (as currently drafted)	The VEC notes that sub-clauses 314(2) and 314(4) contain incorrect cross-references to section 336. The VEC anticipates these cross-references should refer to sub-section 335(2).	No further comments.

316(1)(a)	Do not support (as currently drafted)	The VEC recommends simplifying sub-clause 316(1)(a) of the draft Bill by ending the clause after <i>election</i> .	No further comments.
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Do you have any overall comments on Part 9 of the Exposure Draft Bill?
No further comments.

Part 10: General provisions

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
341(e)	Neutral	No changes proposed.	The VEC recommends that the appointment of election officials, declarations by election staff, and other election personnel matters refers directly to existing provisions contained in the <i>Electoral Act 2002</i> to ensure efficient and consistent appointment processes. There is no need to regulate this separately.
341(f)	Neutral	No changes proposed.	The VEC recommends that the regulations are drafted in a way that ensures clarity in relation to the candidate information to be provided to voters by the VEC, which currently includes candidate statements and photographs, questionnaire, etc.

Do you have any overall comments on Part 10 of the Exposure Draft Bill?

No further comments.
