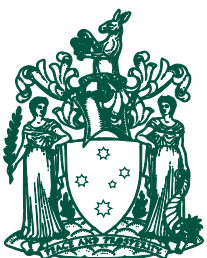


Victorian Electoral Commission

Report of local government electoral activity 2008-09

Part II

Report of the conduct of local government by-elections and countbacks



VIEC

October 2009

Contents

| | |
|---|----------|
| Foreword by the Electoral Commissioner | ii |
| 1. Extraordinary Vacancies | 1 |
| 1.1. By-elections..... | 1 |
| 1.2. Countbacks | 3 |
| 2. Preparation of Voters' Rolls..... | 3 |
| 3. Comparison of voter turnout rates..... | 4 |
| 4. Method of election..... | 5 |
| 5. Compulsory Voting Enforcement..... | 5 |
| 6. Municipal Electoral Tribunal | 6 |
| 7. Victorian Civil and Administrative Tribunal | 6 |

Foreword by the Electoral Commissioner

I am pleased to present the Victorian Electoral Commission Report of Local Government Electoral Activity 2008-09.

For the Victorian Electoral Commission (VEC) 2008 was the culmination of several years of activity relating to local government. This report provides an overview of the current year's activity, and review and analysis of the electoral representation and subdivision reviews that were conducted over a number of reporting periods.

In this report, the VEC has put forward a number of recommendations with the aim of further improving the efficiency of electoral administrative processes for local government elections.

Also noted are a number of other matters that were raised during the elections or during the electoral representation and subdivision reviews. Although these matters are beyond the scope of the VEC's responsibilities, the VEC made a commitment to include them in its report.

This report is presented in four parts, each dealing with a particular area of activity.

Part II is a report of the conduct of local government by-election and countbacks during 2008-09.

The level of activity in this area was lower than usual due to the conduct of local government elections in November 2008 (see Part I of this report). Part II provides commentary about the two local government by-elections conducted during 2008-09, along with key figures and results. There were no countbacks conducted during the reporting period.

Part I is a report of the conduct of the 2008 local government elections.

In 2008, after a rigorous tendering process involving extensive planning and preparation, the VEC was appointed to conduct elections for all 79 Victorian councils in November 2008. By July 2008 implementation of the election plan had commenced and the VEC's focus was to ensure the successful conduct of the elections, which involved providing services to 70 councils, nearly 2,000 candidates and almost four million enrolled electors.

Part I contains an overview of the elections, providing an insight into the way the VEC managed the logistical challenges presented by such a large electoral event. Details of innovations in processes, products and services are included, along with key figures and results. A brief commentary on the impact and effectiveness of recent legislative changes and a number of recommendations are included for consideration by the Government.

Part III is a report of local government electoral representation reviews conducted by the VEC between 2004 and 2008.

In Spring 2003, the Parliament of Victoria passed the *Local Government (Democratic Reform) Act 2003*, which amended the *Local Government Act 1989* (the Act) to include provisions for regular, independent reviews of the electoral structures for all Victorian local councils except for the City of Melbourne. Since then, 77 of Victoria's local councils have undergone reviews in accordance with that legislation; 39 in 2004-2005 and 38 in 2007-2008.

With almost the entire State having now been reviewed, the VEC considers it an appropriate time to reflect and report on that process. Included in Part III is commentary about the conduct of the reviews, the VEC's methodology and some analysis of the impact of structures and election outcomes.

Part IV is a report of local government electoral subdivision reviews conducted by the VEC in 2008.

Electoral representation reviews (see Part III) are scheduled to take place before every second general election. If, in the election between representation reviews, it is likely that there will be substantial variations within a municipality in the number of voters represented by each councillor, then subdivision reviews are designed to reduce the variations by adjusting ward boundaries.

The first subdivision reviews were conducted in 2008. Included in Part IV are details about how the reviews were conducted and the principles and methods used by the VEC to reach its recommendations.

The VEC looks forward to assisting both Local Government Victoria and the Municipal Association of Victoria in their consideration of electoral matters and believes that the recommendations in this report will benefit such consideration. I take this opportunity to formally record my appreciation for the professional assistance provided by those two organisations, as well as that provided by the Victorian Government Solicitor's Office.

I would like to thank our contractors and suppliers for the exceptional support and service they provide, which contributes invaluable to the success of the VEC's activities.

Congratulations go to my staff for their efforts in ensuring that all VEC activity is carried out with care and diligence. Their commitment to providing Victorians with the opportunity to participate in our democracy at this important level of government was a key factor in the success of the local government elections across Victoria in 2008.

A handwritten signature in black ink, appearing to read 'Steve Tully', with a large, stylized flourish at the end.

Steve Tully
Electoral Commissioner

1. Extraordinary Vacancies

If, more than six months before a general council election, a councillor in a single-councillor ward resigns or can no longer hold office, an extraordinary vacancy arises, and a by-election is conducted. If this occurs in a multi-councillor election and there were unsuccessful candidates at the general election, a countback is conducted. Where there were no unsuccessful candidates, or none of the unsuccessful candidates is available for the vacancy, a by-election is conducted.

1.1. By-elections

Over the past 12 months, the Victorian Electoral Commission (VEC) has conducted two by-elections to fill extraordinary vacancies arising in councils. This figure is low as was expected due to the local government general elections having been conducted in November 2008.

The VEC believes that it has achieved its target to provide value for money election services. The average cost per voter for the postal by-election was \$8.12. (*Note: Costs do not include any compulsory voting services a council may have appointed the VEC to undertake on its behalf.*)

Table 1: By-elections for 2008-09

| Municipality | Ward | Method | Election day | Voters' roll | Voter turnout | Total cost to council (ex. GST) |
|-----------------|-----------|--------|--------------|--------------|---------------|---------------------------------|
| Moorabool Shire | Bungal | Postal | 26/07/2008 | 3125 | 2,141 | \$25,391.86 |
| Pyrenees Shire | Goldsmith | Postal | 7/03/2009 | 1379 | N/A* | \$9,787.80 |

* Candidate elected unopposed

Table 2: Distribution of Preference Votes for Bungal Ward by-election

| | | | | | |
|---|-------------------|--------------------|---------------------|--------------------------|-------|
| Total valid first preference votes polled for all candidates | | | | | 2141 |
| Number of votes required to constitute an absolute majority on first count | | | | | 1071 |
| Number of informal votes | | | | | 60 |
| Candidates Names (in ballot-paper order) | CHURTON, Colin | MITAKAKIS, John | FLACK, Philip E. | CLARKE, Anthony Lowen | TOTAL |
| Total first preference votes recorded for each candidate | 399 | 385 | 811 | 546 | 2141 |
| Transfer of 385 ballot- papers of MITAKAKIS, John (1st excluded candidate) | 246 | | 93 | 46 | 385 |
| Progressive Total | 645 | | 904 | 592 | 2141 |
| Transfer of 592 ballot- papers of CLARKE, Anthony Lowen (2nd excluded candidate) | 320 | | 272 | | 592 |
| FINAL TOTAL | 965 | | 1176 | | 2141 |
| Name of ELECTED candidate: FLACK, Philip E. | | | | | |

1.2. Countbacks

A countback is conducted where the original general election involves multiple vacancies and the candidates were elected by proportional representation.

Where the original election result was determined by a manual proportional representation count, the countback is conducted manually. Where the original election result was determined by a computerised proportional representation count, the countback is conducted by computer. Countbacks continue to be conducted to fill extraordinary vacancies until there are no unsuccessful candidates remaining. After this time, any extraordinary vacancies are filled by a by-election.

The countback process involves isolating the vacating councillor's ballot papers from the general election, at the point in the count at which they were elected. The ballot papers are then distributed, according to the next available preference, to the unsuccessful candidates. The candidate who achieves an absolute majority of these votes is the successful candidate in the countback process.

There were no countbacks conducted during 2008-09.

2. Preparation of Voters' Rolls

Those electors who reside within a municipality and are enrolled on the State register of electors are automatically included on the voters roll for local government elections and by-elections. This category forms approximately 86% of the roll across all municipalities.

In addition, non-resident ratepayers are enrolled automatically - these records are extracted from the council property database. This group forms less than 14% of the roll across all municipalities.

Other council entitlements include non-citizen owner occupiers and company nominees. This group must complete an application form each election cycle to be entitled to vote. This group usually comprises less than 1% of the roll.

Those voters who have multiple entitlements within one municipality are only entitled to vote once.

The VEC believes that the amendment contained in the *Local Government (Elections) Act 2008*, (LGEA) in relation to the preparation of rolls for a by-election has clarified the question of whether the voters roll in a by-election should be prepared for the ward or for the municipality.

The VEC also believes that the LGEA has provided the necessary clarification about candidature validity.

3. Comparison of voter turnout rates

Table 3 shows the voter turnout rates at by-elections conducted over the past five years. The average turnout rate for a by-election during that five-year period is 72.42%, which is slightly less favourable than the average turnout rate for the local government general elections held in November 2008 (74.36%). Both are lower again than the November 2006 State election participation rate of 92.7%.

One of the main reasons for lower turnout rates for council elections is the fact that voting is not compulsory for non-residents. Other factors include lower awareness of the election (due to less media attention and a lower rate of candidate activity); the perception that only property owners (as opposed to tenants) are required to vote in council elections and by-elections; and the fact that while voting is compulsory for residents over 70 years of age, these people are not fined if they do not vote.

Table 3: Voter turnout at council by-elections 2004-05 to 2008-09

| Year | Council | Ward/Council | Election Type | % Turnout |
|---------|----------------------|--------------|----------------|--------------|
| 2008-09 | Pyrenees | Goldsmith | Uncontested | N/A |
| 2008-09 | Moorabool | Bungal | Postal | 70.43 |
| 2007-08 | Central Goldfields | Maryborough | Postal | 79.01 |
| 2007-08 | Greater Geelong | Deakin | Postal | 77.64 |
| 2007-08 | Ballarat | Alfredton | Postal | 75.45 |
| 2007-08 | Ballarat | Learmonth | Postal | 77.32 |
| 2007-08 | Pyrenees | Warrenmang | Postal | 73.51 |
| 2007-08 | Colac Otway | Otway | Postal | 70.40 |
| 2007-08 | Mornington Peninsula | Truemans | Postal | 66.37 |
| 2007-08 | Maribymong | Stony Creek | Attendance | 62.01 |
| 2007-08 | Boroondara | Cotham | Postal | 69.09 |
| 2006-07 | Latrobe | Galbraith | Postal | 69.34 |
| 2006-07 | Baw Baw | Tarago | Postal | 75.87 |
| 2006-07 | Moonee Valley | Debney | Postal | 60.82 |
| 2005-06 | Hepburn | Cameron | Postal | 77.65 |
| 2005-06 | Corangamite | Central | Postal | 80.42 |
| 2004-05 | Macedon Ranges | Barringo | Postal | 71.51 |
| 2004-05 | Knox | Scott | Postal | 81.03 |
| 2004-05 | Whitehorse | Central | Postal | 73.67 |
| 2004-05 | Macedon Ranges | Mt William | Attendance | 61.16 |
| 2004-05 | Wodonga | Wodonga | Postal | 75.73 |
| 2004-05 | Yarriambiack | Hopetoun | Uncontested | N/A |
| | | | Average | 72.42 |

4. Method of election

Councils may choose to conduct their by-elections by attendance or postal voting. The option for councils to elect to conduct their by-elections by post was introduced in 1995. The vast majority of councils choose postal voting as the preferred option. The cost of a postal election is lower than that for an attendance election and participation rates are often higher.

Both the councils who had by-elections during the year utilised the same method of voting – postal or attendance – as they had in their previous general election, although only one of these actually proceeded to election.

5. Compulsory Voting Enforcement

Councils are obliged to enforce the compulsory voting provisions of the LGA. Non-voter follow up following a by-election is conducted by the VEC in three stages, which are outlined in Part one of this report.

During 2008-09 the VEC continued compulsory voting enforcement for the Central Goldfields Shire, Maryborough ward by-election held on 3 May 2008. The VEC also conducted compulsory voting enforcement for the Moorabool Shire, Bungal Ward by-election.

Total penalties collected for the two councils for whom the VEC conducted Infringement and Penalty Reminder stages was \$11,371.20 during the 2008-09 financial period. Payments were transferred to councils at the end of each penalty reminder stage.

Table 4: Compulsory voting enforcement activity, 2008-09

| Election | Stage 1 Apparent Failure to Vote Notice | Stage 2 Infringement Notice | Stage 3 Penalty Reminder Notice | Status |
|--|--|--|--|--|
| Moorabool Shire Council, Bungal Ward | 453 | 124 | 117 | Final non-voter list provided to council on 27 January 2009 |
| Central Goldfields Shire Council, Maryborough Ward | Completed in 2007-08 | 367 | 285 | Final non-voter list provided to council on 30 December 2008 |
| Greater Geelong City Council, Deakin Ward | Completed in 2007-08 | NA | NA | Non-voter list provided to council on 2 July 2008 |

6. Municipal Electoral Tribunal

There were no Municipal Electoral Tribunal (MET) applications in relation to by-elections or countbacks during 2008-09. See section XX in Part one of this report for MET applications relating to the 2008 local government elections.

7. Victorian Civil and Administrative Tribunal

Section 48 of the *Local Government Act 1989* provides that a person whose interests are affected by a decision of a Municipal Electoral Tribunal (MET) to apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of the decision.

There were no matters concerning decisions of a MET in relation to local government by-elections or countbacks before VCAT during 2008-09.

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