Section 10
Recommendations for legislative consideration
Postal voting

Party involvement in postal voting

Party postal vote applications continue to be an issue for a number of reasons, not least of which is the confusion on the part of the elector receiving the applications. Section 101 of the Electoral Act 2002 allows for other individuals or groups besides the Electoral Commission to distribute postal votes. Despite significant consultation with the parties to ensure that the applications clearly identified the party details, the VEC received a number of complaints from members of the public who believed that the applications were misleading, i.e. that they were from the VEC. This caused considerable administrative management issues and elector anger when the elector realised the application was from a party and that the party in fact collects elector details in this manner.

The timing of the distribution of party postal vote applications also causes issues. The Act requires the VEC to reject party applications that have been signed and returned prior to the issue of the writ. The VEC also received legitimate applications from parties too late to issue ballot packs.

A high number of people applied for a postal vote on a party application, and then, while waiting for their material to arrive, cast an early vote. The VEC believes this was largely due to the fact that postal vote applications were distributed by the parties prior to the publication of early voting centre details. In future, many of these people will be encouraged to attend an early voting centre, as opposed to applying for a postal vote.

The VEC will look to its advertising schedule in 2010 to promote early voting at the commencement of the issue of the writ. This may persuade those who might have applied for a postal vote to attend an early voting centre instead.

To avoid elector confusion and to ensure applications are distributed and received within the legislative timeline, the Act should be amended so that only the Electoral Commission can distribute postal vote applications.

Postal vote declarations postmarked Sunday

Section 106 (3) of the Electoral Act 2002 states that postal vote declarations are taken to have been posted before 6.00pm on election day if:

(a) the postmark on the envelope is dated any day on or before election day; or

(b) in the case of no postmark being legible, the declaration is witnessed on or before election day.

Australia Post advises that mail posted on Saturday is not processed/postmarked until Sunday. This means that ballot material lodged in post boxes after the Australia Post clearance on Friday night and at any time on Saturday will be postmarked Sunday.

The VEC sought legal advice on this matter and consulted with all registered political parties. A process was subsequently implemented whereby declarations postmarked Sunday were assessed according to the date that the declaration was witnessed. Declarations witnessed on or before election day were accepted.

Consideration should be given to further clarifying this situation in the legislation.

Witness on postal vote declarations

Sections 101 and 106 of the Electoral Act 2002 describe the process by which an elector may apply for a postal vote and includes directions on how they should complete their postal voting material.

An application must be signed by the applicant in the presence of an authorised witness.

The postal vote declaration returned by the postal voter must also be completed in the presence of an authorised witness and the authorised witness must sign and add their title or capacity of witness, either an elector (their name is on the roll), or an election official, to the postal vote declaration.

Many witnesses found the completion of this section of the application confusing. A large number of electors wrote “Mr” or “wife” etc, as opposed to ‘elector’.
The Election Manager checks the elector’s signature on the returned postal vote declaration against the signature on the original application. Declarations are rejected where the signatures do not match.

The Election Manager is also required to reject returned declarations that are not witnessed even though they are signed by the elector.

Consideration should be given to removing the requirement for postal vote declarations to be witnessed.

How-to-vote card registration

Feedback obtained after the election from candidates and political parties included some feedback on the requirement to register how-to-vote (HTV) cards. Parties generally found the process of registering HTV cards to be complicated, labour-intensive and pressured. One party felt that the process of registering HTV cards was unnecessary, whereas another party strongly preferred the practice to continue.

Only HTV cards distributed on election day, or those included with the material carried by mobile voting teams, are required to be registered. HTV cards distributed at early voting centres do not need to be registered.

From the VEC’s point of view, the registration of HTV cards is very labour intensive. A number of parties and candidates register more than one card covering different preference combinations.

The Electoral Act 2002 includes provisions that prohibit the distribution of election material that is misleading or deceptive (with significant penalties) in addition to the provisions relating to the registration of HTV cards.

Registration provisions for HTV cards are not included in Commonwealth legislation, or in electoral legislation in Western Australia, Tasmania, the Australian Capital Territory, or the Northern Territory.

Consideration should be given to the future of this practice in Victorian elections.

General postal voters

Section 24 of the Electoral Act 2002 describes the criteria and the process for a person to apply to be registered as a general postal voter (GPV) for State elections.

GPVs do not need to re-register each election. There are a number of GPVs who have been registered for many years and who have their ballot material sent to them automatically at the time of a State election, without having to make further application.

The Election Manager must compare the signature of the elector on each returned postal vote declaration with the signature of the same elector on the postal vote application.

All declarations will have an accompanying application except for GPVs.

Based on legal advice, the VEC has accepted postal vote declarations from GPVs that are signed and witnessed – because the application does not exist for this election and the VEC does not maintain copies of the original application to become a GPV. These are maintained by the AEC.

Consideration should be given to clarifying the scrutiny requirements for GPVs.
Registration of group voting tickets

Sections 69A and 69B of the Electoral Act 2002 provide for candidates for the Legislative Council to form groups and for groups to submit group voting ticket(s).

Groups must be registered by 12 noon on the day before close of nominations (Thursday) and those groups that do register “may” submit one or more group voting tickets by 12 noon on the second day after close of nominations (Sunday).

If a group voting ticket is lodged by the 12 noon close on Sunday, a square in relation to the group is placed above-the-line on the ballot paper.

The VEC arranges for a small number of ballot papers to be printed locally to provide early voting facilities after 4.00pm on the day nominations close. These ballot papers do not have boxes printed above-the-line because group voting tickets have not yet closed, and voters only have the option to vote below-the-line. The VEC has also recommended that the commencement of early voting be moved to the Monday following close of nominations for this reason.

Given the short timeline between close of nominations and the commencement of early voting, the VEC must begin its major print of ballot papers immediately following the draw for positions on the ballot paper (Friday). In doing so, the VEC makes an assumption that all registered groups will submit at least one group voting ticket and prints a box above-the-line for all registered groups.

In the event that a group chooses not to lodge a group voting ticket, the VEC would be required to reprint ballot papers after the close of group voting ticket registrations on the Sunday.

Consideration should be given to amending Section 69B so that groups that register under Section 69A must lodge a group voting ticket. Consideration should also be given to the consequences of dealing with ballot papers marked above-the-line for any groups that fail to lodge a group voting ticket.

Commencement of early voting

Section 99 (1)(a) of the Electoral Act 2002 directs that early voting is to commence at 4.00pm on the final nomination day. This allows the VEC only four hours to conduct the ballot draw, and to print and distribute ballot papers to voting centres for the commencement of early voting. This proved challenging. Printed ballot papers were not available at all early voting centres at 4.00pm. In addition, electors were unable to vote above-the-line as group voting ticket lodgment did not close until midday on Sunday, 12 November.

Consideration should be given to amending the Act so that early voting commences on the Monday after nominations close. This will allow sufficient time to produce and distribute ballot papers and permit electors to vote above-the-line if they so choose.

Terminology - unsound mind

The Constitution Act 1975, outlines the qualifications for being on the electoral roll. Section 48 (2)(d) provides that “by reason of being of unsound mind, [a person who] is incapable of understanding the nature and significance of enrolment and voting”, is not entitled to be on the roll of electors.

The VEC received several complaints from members of the public, and disability groups about the use of the term ‘unsound mind’. In light of this information Parliament should consider the appropriateness of this term.
Three-month rule

Election officials who do not live at their address on the roll are affected by a provision commonly known as the ‘three-month rule’. Under this rule, if an elector claiming to vote gives an address that is not the elector’s address on the roll, the election official must ask: “Has (the address shown on the electoral roll) been your principal place of residence within the period of three months immediately before election day?” If the elector answers “no” to this question, the elector’s claim to vote must be rejected.

The three-month rule is based on the principle that only people who live within an electorate should be able to vote for that electorate. This matter became an issue after the 1999 State election, and the three-month rule was included in the Electoral Act 2002. The Victorian Electoral Commission (VEC) prepared training and instructional material for election officials to guide them in applying the three-month rule. The VEC’s material stated that the rule does not apply to young people who are temporarily living away from home, people who live at two addresses, people living in aged care accommodation who intend to return to their enrolled address, and itinerant and silent electors.

The three-month rule has a potentially far-reaching impact. Victoria has a highly mobile population. An Australian Bureau of Statistics survey shows that 28.8% of adult Victorians change address over three years. This mobility is concentrated in younger age groups, with 41.8% of 18-24 year olds and 52.7% of 25-34 year olds moving in three years. These moves tend to be quite short in distance. Of people moving within Victoria, 76.2% move less than 20 kilometres, and 37.6% move less than 5 kilometres.

These statistics suggest that a high proportion of people changing address could move within their electoral district. Despite the VEC’s enrolment programs, and concentrated advertising before the roll closes, a substantial number of electors do not update their enrolment in time. These are likely to include a high proportion of the more mobile segments of the population, such as young people, the unemployed and the mentally ill. Given the efforts to engage these marginalised groups with the community, it is unfortunate if they are denied a vote at a State election even though they are on the roll.

It is estimated that around 10,000 people were denied a vote through the application of the three-month rule at the 2006 State election. Almost 1,700 voting centres operated across Victoria at the election. Notwithstanding the VEC’s training and instructional material, the three-month rule was difficult to interpret and apply. Questions arose, for example, about whether it applied to an elector who had lived overseas for a period, had just returned to Australia, but intended to change address shortly. There is a risk of inconsistent administration of the three-month rule.

In light of the difficulties in consistent administration, and the potential consequences of the operation of the rule, it is suggested that the Act should be amended to either abolish the three-month rule, or to exempt the rule from applying to electors on the roll who move within their electorate without updating their enrolment.

Close of roll seven days after issue of the writ

After the 2002 State election, the close of roll was moved from three days to seven days after the issue of the writ. Despite the movement, the same number of enrolments were received in the seven days prior to roll close in 2006, as in the three days prior to the close of roll in 2002.

The extension of the close of roll date reduced the time available to the VEC to produce roll products in time for early voting, nomination checking and for candidates for campaigning purposes. Consideration should be given to moving the close of roll back to three days after the issue of the writ, to allow sufficient time for the production of roll products. This would assist in ensuring complete roll products for the commencement of early voting and the processing of nominations. It would also allow the VEC to respond to the feedback from candidates and parties who would appreciate the receipt of the roll earlier for campaign purposes.

The VEC believes that with a fixed date election, there is sufficient opportunity for electors to update their details before the close of roll. The advertising can commence considerably earlier and as a result, electors have more notice and time to update their details.
Clarification on bribery

Section 151 (2) of the Act states: “A person must not, in order to influence or affect any person’s election conduct, give or confer, or promise or offer to give or confer, any property or benefit of any kind to the person or any other person”.

Two instances of bribery were referred to the Victorian Government Solicitor’s Office (VGSO) for advice. In both instances, the VGSO found that the dollar value amount that was conferred was not of a sufficient amount to constitute bribery. The VEC seeks definitive clarification on the specifics of what dollar amount, or classification of gift, would constitute bribery.

Electronic voting

Electronic voting franchise at State elections

Currently, legislation restricts electronic voting to “electors who because of a visual impairment cannot otherwise vote without assistance”. The VEC considers that there are a number of other electors who would benefit from access to electronic voting:

- people with motor impairments, who may have difficulty filling out paper ballots by hand without assistance;
- people with poor English-language skills who may have difficulties understanding the instructions on the ballot paper (instructions, formality warnings etc. can be provided in multiple languages using the electronic voting software);
- people who are illiterate in either English or their primary spoken language (instructions and options could be provided in audio through the headphones in multiple languages); and
- electors outside Victoria.

In the first three instances, extending the franchise to these electors would provide the same benefits to these groups as does providing electronic voting to the vision-impaired. That is, these electors would be enabled to vote secretly, whereas currently they must rely on another person to fill out their ballot papers. The Scrutiny of Acts and Regulations Committee in its report on Victorian Electronic Democracy also recommended allowing people with motor impairments and poor English language skills to vote electronically.

Stand-alone electronic kiosks in overseas and interstate voting centres would be able to easily supply ballots for any district and region. Currently large numbers of paper ballots must be shipped to these venues – this would be replaced with a small number of CDs and smartcards. The votes could also be sent back to Melbourne electronically (as they were from the non-metropolitan locations in the 2006 trial) and printed for inclusion in the count on election night, reducing the delay that currently occurs waiting for the ballot papers to be transported to Victoria.

The VEC notes that the software has been designed with these possibilities in mind and would not need to be redeveloped for this purpose.

Printing of electronic ballots

The Electoral Act 2002 (s. 110E(2)(ff)) specifies that electronic voting software must be able to print the votes to enable counting. If this requirement were removed, then time and money could be saved in the calculation of results. The VEC considers that if electronic voting were to be implemented on a wider scale, important cost off-sets could come from reducing the printing of votes and reducing the amount of time spent counting votes.

At the 2006 trial, each Legislative Assembly vote was printed on a separate piece of paper and included in the manual count. An alternative option would be to print one piece of paper for each pattern of preferences – i.e. if twenty voters all give preferences to the candidates in the same way, then one sheet with that pattern of preferences and an indication that that represents twenty votes could be printed and included the manual count. This would reduce the time spent sorting and counting votes.

Legislative Council votes were printed and then the preferences were manually entered into the VEC’s Election Management System, which was used to calculate the results in 2006. It would be more efficient to simply import the voting preferences from the electronic voting software into the VEC’s Election Management System, saving time, reducing the number of staff needed to process votes, and reducing the possibility of errors.
Electronic voting franchise at local government elections
Currently, the Local Government Act 1989 and the City of Melbourne Act 2001 do not have provisions for electronic voting. The VEC considers, however, that voting electronically would provide the same benefits to electors at this level of government as it does to electors at State elections. Moreover, the VEC considers that there are some valuable opportunities to trial electronic voting in other ways at local government elections.

One possibility would be to trial electronic voting for people with poor English-language skills at an attendance election in a municipality with a high proportion of culturally and linguistically diverse voters. Data from previous elections show that these municipalities tend to have very high informality rates, such as Brimbank and Moreland City Councils. Other municipalities with large numbers of candidates tend to also have higher rates of informality. A trial of this nature would allow the VEC to assess how helpful electronic voting is as a solution to this problem.

A second possibility would be to conduct all voting electronically in one particular municipality and then calculate the results by importing the data into the VEC’s counting software, rather than printing the votes. As mentioned above, this could provide cost advantages, faster results and a reduction in possible errors.

To make either scenario more affordable through reducing the amount of infrastructure required, the VEC recommends allowing electronic voting for two weeks and not just on election day. The VEC notes that this parallels postal voting, where voters have an extended time to fill in their ballot papers in most local government elections.

Remote electronic voting
In preparing its submission to the Scrutiny of Acts and Regulations Committee in early 2005, the VEC investigated the possibility of remote electronic voting over the internet. At the time, the VEC concluded that there were not sufficient practical security measures available to ensure that voting over the internet would be secure and accurate. The VEC does not believe that sufficient changes have been introduced since then to reduce its concerns and make internet-based voting secure, nor to protect internet-based voting from interruptions due to activities such as denial of service attacks.

The VEC also notes that in nations where voting over the internet has been trialled recently alongside other forms of voting (for example, the United Kingdom, Switzerland, Estonia), there has been very little up-take by electors. This would seem to indicate either poor public confidence in the internet, or a lack of interest on the public’s part in internet voting.

Many of the security concerns regarding electronic voting would not apply to voting remotely over a closed network. The Australian Electoral Commission is currently investigating the possibility of providing remote voting over the Department of Defence’s intranet. The VEC believes that this project should be watched closely and potential applications for Victoria assessed in light of that experience.
Research for consideration

Public funding system
Parliament may wish to research the appropriateness of the current public funding system.

Informal ballot papers
In light of the informality trend for the Legislative Council and Legislative Assembly, Parliament may wish to research how informality may be reduced through legislative amendments.