Conclusion

To assist with the Committee’s inquiry, the VEC provides the following information on the impact of new and changing technology, community expectation and current electoral legislation. Included are matters for noting, and a number of recommendations for consideration by the Parliament.

Matters for noting

The VEC puts forward the following matters for Parliament to note.

Party involvement in postal voting

The VEC continues to be concerned about party involvement in the distribution of postal vote applications. Section 101 of the Electoral Act 2002 (the Act) allows for other individuals or groups besides the Electoral Commission to distribute postal votes. This causes elector confusion regarding the source of postal vote applications, as electors assume that any postal vote applications available at State elections are provided by the VEC. Four formal complaints related to the distribution of postal voting applications by political parties were received during the 2010 State election, along with a number of telephone calls and emails relating to the issue.

Note 1: The VEC requests that the Committee notes that this issue continues to raise concerns among electors.

How-to-vote card registration

At the 2010 State election the VEC was required to publish all registered how-to-vote cards on the VEC’s website. A total of 1,101 how-to-vote cards were registered at the election.

A number of parties and candidates registered more than one how-to-vote card at the election with the intention of selecting one of these cards for distribution on Election Day. It is therefore possible that cards not intended for distribution, could be downloaded and distributed by a third party without authority.

Note 2: The VEC requests that the Committee notes the issues relating to the publication of registered how-to-vote cards.

General postal voters

Section 24 of the Act describes the criteria and the process for a person to apply to be registered as a General Postal Voter (GPV) for State elections.

GPVs have their ballot material sent to them automatically at the time of a State election, without having to make further application.

When processing returned postal vote declarations, the Election Manager compares 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 have an accompanying application except those from GPVs. It should be noted that VEC Election Managers check that declarations from GPVs have been signed, but the signature is not checked against any reference documentation. The VEC accepts postal vote declarations from GPVs that are signed and witnessed.

Note 3: The VEC requests that the Committee notes the process put in place by the VEC for the scrutiny of GPVs.

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.

Dissatisfaction with the use of the term ‘unsound mind’ is often expressed to the VEC by members of the public and by disability groups.

Note 4: The VEC requests that the Committee note the VEC’s ongoing concern about the inclusion of the term ‘unsound mind’.

Electronic voting franchise at local government elections

The VEC is currently unable to provide electronic voting at local government elections due to legislative constraints (i.e. 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 level. 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, Brimbank and Moreland City Councils for example, tend to have very high informality rates. 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 the effectiveness of electronic voting 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 prior to Election Day, rather than 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.

Note 5: The VEC requests that the Committee note its support of broadening the operation of electronic voting to include local government elections.
Recommendations

The VEC raises the following issues and includes, as part of this report, twelve recommendations for consideration by the Parliament.

Close of roll seven days after issue of the writ

After the 2002 State election, the close of roll was moved from three days after the issue of the writ to seven days after the issue of the writ. The extension of the close of roll date introduced practical problems for the VEC as it reduced the time available to produce roll products in time for early voting, nomination checking and for candidates for campaigning 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. Additionally, the introduction of enrolment on the day enables those electors who miss the close of roll deadline to enrol and vote during the election. Amending the close of roll to take place three days after the issue of the writ would assist the VEC with ensuring all roll products are completed by the commencement of early voting and the processing of nominations.

Recommendation 1. The VEC recommends that consideration be given to amending the legislation so that the close of roll occurs three days after the issue of the writ.

Postal voting

Signing and witnessing of postal vote applications

Sections 101–103 and 106 of the Electoral Act 2002 describe the process by which an elector may apply to vote by post during a State election. An application to vote by post must be in the prescribed form (Form K, Electoral Regulations 2002) and must be signed by the elector and a witness. Applications that are not signed and/or witnessed are rejected. At the 2010 State election, 3,285 postal vote applications were rejected as defective because they were not signed and/or witnessed.

For the March 2011 New South Wales state election, under new legislation, the New South Wales Electoral Commission introduced on-line postal vote applications. Electors completing an on-line postal vote application were not required to sign the application or have it witnessed. Additional verification processes were implemented to ensure that the elector applying for the postal vote was eligible to do so and was the person named on the roll and the application.

Recommendation 2. The VEC recommends that consideration be given to extending legislation to allow for a more simplified method for electors to apply for a postal vote at state elections.

Witnessing of postal vote declarations

Sections 104-106 of the Electoral Act 2002 describe the process for issuing a postal vote declaration and ballot paper and include directions on how a postal voter should complete the postal voting material.

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.

Recommendation 3. The VEC recommends that consideration be given to removing the requirement for postal vote declarations to be witnessed where the signature on an application has already been verified by a witness.

Commencement of early voting

The VEC continues to be concerned about the commencement of the early voting period, and has previously raised this matter for consideration by the Parliament. Section 99 (1) 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.

The practical difficulties of issuing ballot papers on the same day as the ballot draw arose again at the 2010 State election. This is especially so for the Upper House, as electors who vote on that day are restricted to voting below-the-line.

Recommendation 4. The VEC recommends that the Act be amended so that early voting commences on the Monday after nominations close to provide additional time for the VEC to produce and distribute ballot papers and permit electors to vote above-the-line if they so choose.

Clarification of terminology - 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’.

Recommendation 5. The VEC recommends that the Parliament specifies a dollar amount, or classification of gift that would constitute bribery.
Misleading or deceptive electoral material

Section 84 (2) of the Act refers to the contents of electoral advertisements, handbills, pamphlets or notices printed, published or distributed during an election. The VEC believes that the current provisions are not sufficiently specific and could lead to material that was misleading being distributed to electors and thereby inducing an elector to complete their ballot paper in way other than directed on the ballot paper.

The current legislation states:

‘A person must not during the relevant period –

(a) print, publish or distribute; or

(b) cause permit or authorise to be printed, published or distributed —

an electoral advertisement, handbill, pamphlet or notice that contains a representation or purported representation of a ballot paper for use in that election that is likely to induce an elector to mark the elector’s vote otherwise than in accordance with the directions on the ballot paper.

Recommendation 6. The VEC recommends that consideration be given to amending the legislation as follows:

(b) cause permit or authorise to be printed, published or distributed — an electoral advertisement, handbill, pamphlet or notice that contains a statement that is likely to induce an elector to mark the elector’s vote otherwise than in accordance with the directions on the ballot paper, regardless of whether it contains a representation or purported representation of a ballot paper for use in that election.

Publication of Electoral Advertisements online

Internet service providers and the proprietors of social networking sites or other online services, such as AdWords, are unlikely to have knowledge of the content of electoral advertisements or other electoral matter, and may not be primarily liable for any relevant breach of the Electoral Act. Further, the global nature of such businesses may mean that it is not possible for VEC to readily obtain information concerning the individual or organisation which placed the advertisement. Some of those providers may readily take down material which is not possible for VEC to readily obtain information concerning the individual or organisation which posted the material online. VEC may be unable to take the matter further.

Section 83 of the Electoral Act already prohibits publication of an electoral advertisement unless the name and address of the person authorising it appears at its end.

Recommendation 7. The VEC recommends that consideration be given to providing the VEC with the power to require information to be provided to it concerning the name and address and any other identifying detail of any person publishing electoral advertisements or electoral matter online.

Electronically assisted voting at State elections

Section 110D of the Act enables access to electronic voting at an electronic voting centre by an elector who otherwise cannot vote without assistance because of:

- low vision;
- a motor impairment; or
- insufficient literacy skills (whether in the English language or in their primary spoken language).

Section 100 (2) enables electors voting interstate or overseas to vote using such means of electronic voting as is provided at the early voting centre.

At the 2010 State election, stand-alone electronic kiosks and telephone voting options were provided at 101 early voting centres within Victoria. Electronic kiosks were also provided at three locations in the United Kingdom, with telephone voting available at the offices of State and Territory Electoral Commissions outside Victoria.

The highest percentage of electors voting electronically was in the United Kingdom, with over 700 votes cast electronically. Additionally, the VEC provided an emailed ballot material service at the State election for electors who were travelling interstate or overseas in remote locations and did not have a fixed postal address or would experience difficulty in accessing mail services. A total of 1,212 electors requested emailed ballot material at the 2010 State election.

While the VEC is able to roll out and support the infrastructure required for electronic voting at an early voting centre, there is a very low take up rate within Victoria by electors detailed in Section 110D of the Act. This could be attributed in part to the fact they must attend an early voting centre to vote electronically.

Providing the opportunity for electors who are eligible to vote electronically, to access a secure voting facility from home, or a location of their choice, is likely to increase participation by this group. The VEC would continue to provide electronically assisted voting facilities at early voting centres for eligible electors who do not have alternative access to computer facilities.

At the March 2011 New South Wales State election, the New South Wales Electoral Commission implemented Technology Assisted Voting (iVote). The application provided electors, who would otherwise have had difficulty either attending a voting centre or casting an independent and secret ballot, to do so via the internet. Voters registered to use the iVote system and were provided with passwords that allowed them access to their district and Upper House ballot papers.

Recommendation 8. The VEC recommends that consideration be given to amending the Act to enable the VEC to issue votes electronically from locations in addition to appointed voting centres to those electors currently covered under s110D of the Act.
for Upper House candidates. The matter was raised in a submission to the inquiry into the conduct of the 2006 State election.

The VEC has obtained legal advice on the interpretation of this section. This advice confirms that the construction that the VEC has placed on s114A is preferred.

Recommendation 9. The VEC recommends that, to avoid confusion, the Parliament amends S.114A (28) (c) of the Act to be consistent with the wording in the Commonwealth Electoral Act 1918 and the Local Government Act 1989 as follows:

“a transfer in accordance with subsection (12)(b) of all the votes of an excluded candidate that were transferred to that candidate from a particular candidate or candidates as the case may be, at a particular transfer value.”

District by-elections

Under the Act, a writ for a by-election must be issued by the Speaker of the Legislative Assembly within one month of the vacancy occurring (s61 (2)). The maximum period in which to conduct a by-election is 58 days from the issue of the writ (S.63 (8) & S.63 (10)). Accordingly, the maximum period for conducting a by-election is approximately 3 months from the date the vacancy occurs.

Recommendation 10. The VEC recommends that the Parliament considers amending the Act so that if the writ for a by-election is due to be issued within 58 days of the date of a general election, the option not to conduct the by-election should be considered and the general election used to fill the vacancy.

Automatic enrolment

Section 23A of the Act allows for enrolment by the Commission. The section applies to persons who would be entitled to be enrolled on the register of electors but have not made a claim for enrolment within 21 days of becoming eligible. The Commission may on its own initiative, having regard to information obtained under Section 26(4), send a notice to such a person, informing them that it proposes to enrol them in respect of their principal place of residence. The person has 14 days to advise the Commission if they are not entitled to be enrolled on the register of electors.

Section 20 of the Act allows for an arrangement between the Commonwealth and the State for a joint enrolment process. The Australian Electoral Commission (AEC) and the VEC exchange information as part of that arrangement necessary for the preparation, maintenance and revision of the register of electors and the rolls.

There are a number of data sources available under the joint rolls arrangement suitable for automatically enrolling electors. For example, the AEC periodically conduct background reviews of the electoral roll to identify where electors may not be correctly enrolled. It compares enrolment information against two other data sources, such as motor registry data (obtained from the National Exchange of Vehicle and Driver Information System (NEVDIS)) and Centrelink. Where the two external data sources have the same address for an elector but that elector is enrolled for a different address, the data could be used to automatically enrol the elector for their current address.

Under the current automatic enrolment provisions, the VEC cannot use data from the AEC for automatic enrolment purposes as the AEC is not an organization referred to under Section 26(4) of the Act.

Recommendation 11. The VEC recommends that the Act be amended to allow data obtained by the Commission under Section 20 of the Act as part of the joint enrolment process to be used for automatic enrolment purposes.

Enforcement of compulsory enrolment

The Victorian Electoral Commission (VEC) has traditionally taken the position of encouraging eligible electors to enrol and maintain their enrolment. This encouragement has been to protect an elector’s right to vote should an election (local, State or federal) be called. Although changes to legislation were made in 2010 enabling electors to cast on-the-day enrolment provisional votes at a State election, electors not on the electoral roll at the ‘close of roll’ for federal and local government elections are ineligible to vote at that election.

To be eligible to enrol under the Act an elector must be 18 years of age, an Australian citizen or a qualified British subject, and have been living at a principal place of residence for at least a month.

The vast majority of enrolment amendments the VEC receives are those relating to a change of address. Each time an eligible elector moves home, they are required to update their enrolment within 21 days of the end of their first month of residence. Most electors are aware that voting is compulsory, but enrolment update is low on the list of priorities at moving time compared to having the utilities connected and their mail redirected. Most think they must update their enrolment, but given that there’s no election on the immediate horizon, there’s no urgency and then they forget. At the 2010 State election, 34,546 electors attended a voting centre erroneously believing they were registered on the roll. These electors cast an ‘on-the-day enrolment provisional vote’.

At any one time, there may be up to 180,000 electors whose details are out of date, and a further 250,000 eligible electors not enrolled. Immediately prior to an election, this figure decreases due to the advertising and publicity conducted to remind people to update their enrolment. In the last seven days prior to the close of rolls for the 2010 State election, around 25,400 people updated their enrolment details. A further 12,800 electors either enrolled for the first time or re-enrolled because they had been removed from the roll for an address for which they were no longer entitled to be enrolled.
Enforcement of compulsory enrolment (cont.)

To ensure the integrity of the register of electors, the VEC conducts an ongoing Continuous Roll Update (CRU) program, in conjunction with the Australian Electoral Commission (AEC). Information is received from a variety of sources including VicRoads, the Rental Tenancies Bond Authority, the Victorian Curriculum and Assessment Authority, Births, Deaths and Marriages and the Victorian Tertiary Admissions Centre. Using this data, the VEC sends enrolment forms to those electors who are eligible to enrol, or who have moved and not updated their enrolment. If no response is received, a reminder letter is sent. The average response rate to this program over the past five years is 23.5% with a downward trend.

With the introduction of automatic enrolment, the situation will improve, as the VEC will no longer need to send enrolment forms to those it can confirm are eligible to be enrolled. However, the VEC will send correspondence to people who are potentially eligible to enrol, where eligibility cannot be confirmed.

In 2009, because of the declining rate of response to the CRU program and the concern at both a State and Federal Parliament level regarding declining enrolment, and the consequent implications for the integrity of the register of electors, the VEC conducted a trial program. This trial targeted a group of electors who had not responded to a CRU mail out but were still on the register of electors for what appeared to be their old address. These electors were sent a follow-up letter to their new address to remind them they needed to re-enrol every time they moved and if they didn’t re-enrol, they risked being fined and may not be able to vote. The electors were also informed that if they had moved and the address they were still enrolled for was no longer their principal place of residence, the VEC was required to remove them from the register of electors in respect of that address. A pre-filled enrolment form was included and the electors were requested to check the details, sign the form and return it to the VEC. Only 20% of the 812 electors responded.

Electors who did not respond were sent a second follow-up letter informing them that they were to be removed from the register of electors on the grounds that the address they were enrolled for was not their principal place of residence. The electors were given 20 days to respond. The letter also informed the electors that if they had moved and not re-enrolled at the end of that period the VEC would commence legal action to enforce the compulsory enrolment provisions of the law. Letters were forwarded to both the enrolled address and the new address, and 45% of the electors responded to this mail-out.

The details of electors who had not responded to the second follow-up letter were removed from the roll in accordance with the provisions with the Electoral Act 2002.

The VEC engaged the Victorian Government Solicitors Office (VGSO) to commence prosecution of the 213 remaining electors who had not responded. The VGSO sent letters to theses electors with a pre-completed enrolment form, providing them with yet another opportunity to enrol. Recipients were given 14 days to respond, with the alternative being the commencement of prosecution. A total of 105 electors (55% less those returned as undeliverable) enrolled at this point.

The VGSO organised for summonses to be personally served on the outstanding 86 electors. The summons informed electors that if they lodged enrolment forms prior to the date of the court hearing, the matter would be withdrawn. Over half (45%) of the summonses could not be served personally and no further action was taken in relation to these. Of the remainder, 87% completed enrolment forms and had the matter withdrawn.

Of the 12 cases outstanding, one requested to go straight to trial and the other 11 did not present for the court hearing, so ex parte hearings were requested and granted.

Summons were prepared by the VGSO and served on the remaining electors. By the day of the trial, four electors had enrolled and another completed the enrolment form on the steps of the court (all these cases were withdrawn). A further two cases were withdrawn as a result of an abnormality in the process. The elector who chose to go to trial did not present in court, nor did the other four electors summoned for ex parte hearings. All five were fined without conviction and charged statutory costs.

Over 99% of the original target group that were able to be contacted, enrolled. Based on the result of the trial the VEC sees merit in taking a firmer line on compulsory enrolment. However, as under the current arrangements further action must be taken through the courts, the process is expensive and ties up resources at the VEC, the VGSO and in the courts.

It is not the VEC’s desire to raise revenue from the collection of fines for failing to enrol — it is the VEC’s desire to have all eligible electors on the roll and able to vote should an election occur. Removal of an elector from the roll and subsequent prosecution will be a last resort after a number of contacts have been unanswered.

**Recommendation 12.** The VEC recommends that the Parliament considers introducing legislation so that failure to enrol and failure to update enrolment details is an infringeable offence, making the process less expensive and to avoid wasting the resources of the courts, VGSO and the VEC.
Electoral education fund

One of the VEC’s core functions under the Electoral Act 2002 is to promote public awareness of electoral matters that are in the general public interest by means of the conduct of education and information programs (S8(2)(f)).

The VEC performs this function through election-specific advertising and communication campaigns and importantly, through targeted electoral education programs initiated as a result of research and analysis and developed in consultation with relevant stakeholder groups. Examples of these programs are:

- **Who Decides?** - an interactive flash animation, launched in March 2010
- **All About Voting** - a resource kit to support the integration of electoral education into the teaching of English as a second language
- **Voting is for everyone** - aimed at dispelling misunderstandings about voting and disabilities
- **Passport to Democracy**

Analysis of voting patterns and census data after the 2006 State election found that a significant proportion of young Victorians aged 18-25 either were not enrolled to vote, or did not vote even if enrolled.

Further research revealed barriers to the delivery of electoral education in schools, including a lack of teacher confidence in their knowledge of the democratic process, difficulties engaging students in what may be perceived as a dry subject, and a general feeling of students’ inability to be able to affect change. To address these issues, the VEC developed **Passport to Democracy**, a very successful civics and citizenship program for secondary students.

Dynamic and interactive, **Passport to Democracy** aims to demystify political processes and institutions, and improve students’ understanding of the democratic process and their role in shaping society. Students develop a deeper understanding of how decisions that affect them are made, and how they can engage within the community to achieve positive change.

Currently fully funded by the VEC, the **Passport to Democracy** is a comprehensive resource that includes a teacher’s guide, student booklets, stimulus material such as photographs and videos, teacher and student blogs and ‘passports’ that are awarded to students who participate in the program.

On request, the VEC also provides outreach officers to guide teachers in program delivery and to provide professional development.

**Passport to Democracy** continues to receive positive feedback from students and teachers. Informal evaluation shows an increase in engagement in the democratic process after participation, and an increased interest in enrolment and voting.

Funding of electoral education

The Australian Electoral Commission’s Youth Electoral Study showed that students experiencing a voting experience before or as they become of age are more likely to maintain this involvement throughout their lives. The VEC believes that electoral education is crucial to electoral engagement. The VEC has considered a range of ways to address the ongoing funding of **Passport to Democracy** in conjunction with the development of programs to reach other audiences, and believes that the best solution is the establishment of an Electoral Education Trust to provide funding to support proven electoral education programs on an ongoing basis.

Electoral Education Fund

The VEC collects monies through the enforcement of compulsory voting provisions, and currently returns these funds to consolidated revenue. The direction of these funds to an Electoral Education Trust would serve two purposes:

1. Ongoing funding would be made available for the wider rollout and support of successful programs such as **Passport to Democracy**.

2. Current budget commitments could be reallocated to research and development of new initiatives to identify and address the needs of other groups, as well as the needs of the general elector group, who must also be kept engaged through up-to-date and relevant education and awareness programs.

The VEC believes that the establishment of an electoral education trust using funds collected through the enforcement of compulsory voting provisions is an appropriate use of funds, and has a responsive synergy.

**Electoral education > engagement > fewer infringements > decreased funding**

A decrease in voter turnout (or increase in infringements issued) would be an indicator that electoral engagement is needed and the (proportionally changing) Electoral Education Fund would be in place to identify and address the specific areas of need.

**Recommendation 13.** The VEC recommends that Parliament considers setting up an Electoral Education Fund, using money from the enforcement of compulsory voting program. This fund would be used to build on the success of the program, supporting a rollout of **Passport to Democracy** to all schools across Victoria.