

Electoral Representation Reviews

Consultation Paper

November 2009

SUBMISSIONS

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PUBLISHED BY
LOCAL GOVERNMENT VICTORIA
DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

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1. Introduction

This Discussion Paper considers options for the conduct of local government electoral representation reviews.

Electoral representation reviews are the process of considering and recommending electoral arrangements for Councils. A review considers:

- How many Councillor positions are required for the Council;
- What electoral structure is suitable for the municipality; and
- Where any electoral (Ward) boundaries should be located.

The laws specifying how electoral representation reviews are conducted are set out in sections 219A to 219O of the *Local Government Act 1989* ('the Act').

1.1 Background

The Act was amended in 2003 to change the way Councils' electoral structures and boundaries were reviewed. Previously, reviews were done by Councils themselves. This was changed to introduce a level of independence to the process and bring Councils more into line with the type of processes that apply at other levels of Government.

The old system placed many Councillors in a situation where there was a clear perception of conflict between their personal interests in re-election and their public duty to the community. While most Councillors are responsible members of the community and are likely to have been guided by good intentions, the system provided no way of demonstrating when decisions were made with good intentions and when they were guided by personal interest.

As a result, the system prior to 2003 had been the subject of many complaints from communities about the electoral structures developed by Councils, which sometimes resulted in proposals that appeared to be contrived or inconsistent with principles of democratic representation.

An additional problem with the previous system was that municipalities that were unsubdivided were not required to hold reviews at any time.

The amendments made in 2003 provided for all Councils to have electoral representation reviews every eight years and for the reviews to be conducted by an independent electoral commission. (Part 2 describes the current system)

1.2 Consultation

A number of Councils and peak bodies expressed concerns about aspects of the electoral representation reviews conducted between 2003 and 2008.

The Government indicated that a review of the arrangements would be conducted after a complete round of reviews of all municipalities had been completed. The final reviews in the first full round were completed in 2008 and all Councils elected in November 2008, with the exception of Melbourne which has separate legislation, were elected in accordance with the structures developed under the independent process.

This Paper describes the current system for electoral representation reviews and identifies a number of options for discussion. It should be noted that there is no intention to return to the old system of Councils undertaking their own reviews.

Copies of this paper, as well as the electronic template for submissions, will be made available on the internet at www.localgovernment.vic.gov.au or they can be obtained by telephoning Local Government Victoria on 03 9651 7093.

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2. Existing System

The *Local Government Act 1989* provides for independent reviews of Councils' electoral structures and boundaries to be conducted by an electoral commission.

There are two types of reviews provided in the Act:

- Electoral representation reviews, which involve a complete review of the number of Councillors, the type of electoral structure and the location of Ward (electoral) boundaries.
- Subdivision reviews, which only consider the location of Ward boundaries when needed to ensure that the number of voters in a Ward is within ten per cent of the average and when a full electoral review is not scheduled.

2.1 Electoral representation reviews

The purpose of an electoral representation review is to recommend the number of Councillors and the electoral structure that provides fair and equitable representation for voters.

If the electoral structure includes Wards, the review must also recommend boundaries that provide fair and equitable representation and also ensure the number of enrolled voters per Councillor does not vary from the average by more than 10 per cent.

A. Appointing a reviewer

A council is required to appoint an electoral commission as its reviewer. If the Council fails to do this, the Minister can appoint the Victorian Electoral Commission to be the reviewer.

B. Review timing

Electoral representation reviews are conducted before every second general election for each local government area. A review may also be required at another time specified by the Minister.

The following timelines apply to an electoral representation review:

- The Council must appoint a reviewer at least 30 months before a general election.
- The review may not commence until 24 months before the election.
- The review must be completed at least 6 months before the election.

C. Review process

The Act requires a review to include the following processes that provide for two stages of consultation.

- The reviewer must give public notice of the review and invite preliminary submissions (A Council may make a preliminary submission).
- After considering submissions, the reviewer must prepare a preliminary report with a preferred option (and any other options the reviewer considers appropriate).
- The reviewer gives further public notice inviting written submissions to the preliminary report. People who make written submissions have a right to be heard in person.
- The reviewer considers the submissions and publishes a final report.

D. Implementing the review

When the review is completed, the reviewer sends the final report to the Minister, who is empowered to recommend to the Governor that orders be made to implement the review.

2.2 Subdivision reviews

The purpose of a subdivision review is to propose corrections to Ward boundaries to ensure they stay within the 10 per cent margin of variation.

A. Initiation of review

If a Council is not scheduled for an electoral representation review and the Victorian Electoral Commission considers that the Ward boundaries will be outside the 10 per cent margin of variation for the next election, the VEC must notify the Minister. This occurs at least 2 years before a general election.

The Minister may require the Council to appoint an electoral commission to conduct a subdivision review.

B. Conduct of review

A subdivision review must be conducted in the manner the reviewer considers appropriate. This is generally a much shorter process than a full electoral representation review. The reviewer must submit the final report to the Minister at least 6 months before the general election.

A subdivision review only considers the location of Ward boundaries. It does not consider the number of Councillors or the electoral structure.

2.3 Previous reviews

Since the introduction of the new arrangements in 2003, all reviews have been conducted by the Victorian Electoral Commission. This has included:

- 77 electoral representation reviews between 2004 and 2008, covering all Municipalities except Surf Coast Shire, which had been the subject of a similar process in 2003, and Melbourne City, where the electoral structure is prescribed by a separate Act of Parliament.
- 8 subdivision reviews, mostly in outer metropolitan areas where there has been substantial population change.

A. Review outcomes

The following tables summarise the outcomes of 78 electoral representation reviews (including the 2003 Surf Coast review).

Number of Councillors

The Local Government Act provides for a Council to have between 5 and 12 Councillors. The following table shows the impact of the representation reviews on Councillor numbers.

	5	6	7	8	9	10	11	12
Before review	7	3	30	4	26	5	2	1
After review	6	1	35	0	27	3	5	1
Change	-1	-2	+5	-4	+1	-2	+3	0

In 45 municipalities there was no change in the number of Councillors. Apart from two shires which changed from 10 to 7 Councillors, all other Councils saw changes of only one or two Councillors. As can be seen from the table, the only significant trend was a shift from even to odd numbers of Councillors.

It is worth noting that, in most cases, the original number of Councillors at each Council would have been proposed by the Commissioners administering each Council during the period of local government restructuring in the mid 1990s. Unlike the VEC in recent reviews, Commissioners are unlikely to have been in a position to take full account of comparable sized Councils when making their recommendations.

Electoral structure

The Local Government Act provides for Councillors to be elected either from a single unsubdivided district or from separate Wards. A Ward may have any number of Councillors. While there are a wide variety of possible structures, the following table summarises the changes by classifying four types of structures.

- An unsubdivided district, where all Councillors are elected “at large” by all the voters in the municipal area.
- Multi-member Wards, where all Councillors are elected by the voters in wards that have more than one Councillor.
- A combination of single and multi-member Wards, where one or more wards have a single Councillor and one or more Wards have multiple Councillors.
- Single member Wards, where the voters of each Ward elect a single Councillor.

	Unsubdivided district	Multi-member Wards	Single & multi-member Wards	Single member Wards
Before review	12	12	11	43
After review	22	28	13	15
Change	+10	+16	+2	-28

The significant change shown in this Table is the move away from single member wards. This may be largely attributable to an amendment to the Act in 2003 that provided for elections in unsubdivided districts and multi-member wards to use the proportional representation (PR) system of vote counting.

This was a very significant change. Concerns about the “winner take all” effect of the old vote counting system had discouraged some Commissioners and communities from supporting or proposing unsubdivided districts or multi-member wards for restructured Councils in the mid 1990s. With the change to PR however, the opportunity to provide effective democratic representation using structures other than single member wards became more viable.

It should be noted that prior to the process of local government restructuring in the 1990s, most Councils had three member Wards with one Councillor being elected each year on a three year rotational basis.

B. VEC publications

The Victorian Electoral Commission published a comprehensive report in October 2009 that detailed review processes in relation to all electoral representation and subdivision reviews conducted by the Commission including feedback it had received about the conduct of reviews. This report, as well as the final reports of each electoral representation review conducted by the VEC, will be available on the VEC website (www.vec.vic.gov.au).

3. Review Criteria

Essential to the conduct of reviews are the criteria to be used by the reviewer in making key decisions. Local Government peak bodies have expressed various concerns on behalf of Councils in regard to the criteria to be applied in electoral representation reviews.

As part of this consultation, it is important to consider whether specific criteria should be specified for electoral representation reviews and what these criteria should be. The advantage of having a common and accepted set of criteria is that it:

- provides clear direction for reviewers;
- promotes consistency between reviews; and
- assists people making submissions to reviews.

3.1 Proposed 2005 Regulations

In 2005, as part of the preparation of new electoral regulations for local government the Government proposed that a set of criteria be specified in the *Local Government (Electoral) Regulations 2005* (the Regulations).

When the draft Regulations were distributed for consultation in 2005, submissions from the local government sector strongly opposed the inclusion of the proposed criteria. As a consequence, the final Regulations did not include criteria for reviews.

The criteria proposed in 2005 distinguished between the three aspects to a review: the number of Councillors, the electoral structure and Ward boundaries. There is a strong case that this is the correct approach.

3.2 Number of Councillors

The criteria for recommendations about how many Councillors should be elected in a municipality will be largely guided by concerns of governance, but will also be constrained by the provisions of the Act that require between 5 and 12 Councillors at each Council. The primary difficulty will be deciding what the relevant criteria should be.

The criteria proposed in 2005 for identifying the number of Councillors required were:

- population size and diversity;
- the geographic size of the municipality; and
- any limitations arising from the recommended electoral structure.

Considerations for developing criteria for future reviews may include:

- The extent to which the number of Councillors should be determined by reference to governance requirements?
- What criteria should be used to evaluate governance requirements?
- What other criteria may be relevant?

3.3 Electoral structure

The decision about what criteria should be used in choosing an electoral structure is arguably the most difficult decision in a review. It impacts on both the governance arrangements of a council and on the ability to provide effective and democratic representation.

From the point of view of Councillors, and other potential candidates, it is generally easier to campaign for election in smaller, single member, Wards. However, single member Wards can limit the scope for some communities of interest to be effectively represented unless they live or own property in a defined geographic area.

The criteria proposed in 2005 for proposing an electoral structure were:

- the relative significance of geographic and non-geographic communities of interest;
- the geographic size of the municipality and the physical features of the terrain;
- locations of geographically defined communities of interest;
- impacts of population change on the sustainability of the structure for future elections; and
- any limitations associated with the recommended number of councillors.

3.4 Ward boundaries

The setting of electoral boundaries is a process that is conducted regularly for all State and Federal Governments. The criteria used in these processes generally take account of two concerns: the location of communities of interest and the geographic features of the area.

The criteria proposed in 2005 for proposing Ward boundaries were:

- current and anticipated location of voters and communities of interest; and
- geographic features such as roads and watercourses as boundaries for wards.

4. Process Options

This section identifies a number of possible changes to the existing review processes. These are not proposals. They are presented as a basis for discussion and as a prompt for consultation. Some options may be able to be implemented together, while others are incompatible.

Key issues

There are a number of key issues to be taken into account when considering possible changes.

Independent process

Reviews must be conducted in a way that is demonstrably independent. This provides the best guarantee that they will be conducted in the public interest and not in the interests of particular sections of the community or in the interests of sitting Councillors.

Democratic principles

The process must be guided by the democratic principles so that the electoral system, as far as possible, provides for fair and equitable representation of electors.

Community involvement

The process must provide for members of the community to freely participate and have their views equally considered. This should apply to Councillors and other potential election candidates as well as other people and organisations in the local community.

Timing

As a purely practical matter, reviews need to be timed to fit in with the local government electoral cycle. It is usually preferable that any changes to Ward boundaries are made in the period leading up to a general election, particularly in areas of rapid population change.

Cost

Councils do not have unlimited funds to pay for reviews, so the process should involve a level of costs that is reasonable to ensure effective democratic representation without being excessive.

4.1 More time between reviews

The current requirement is for a full electoral representation review to be conducted for each municipality prior to every second election. This means a review every eight years. If the numbers of voters in a Ward vary by more than ten per cent from the average and a review is not scheduled, provision is made for a subdivision review (see Part 2.2).

Are reviews needed this often? While it is clear that the electoral boundaries of municipalities need regular review to ensure they remain within the required ten per cent margin, it might be argued that full reviews may not be needed as often. Particularly where:

- A municipality is unsubdivided,
- There has been little population change or movement, and
- The community is satisfied that the existing structure is democratic.

It should be noted, particularly in regard to unsubdivided municipalities, that this option does not imply a return to the previous, pre-2003 arrangement where some Councils had no regular reviews.

Issues that would need to be considered if the option of less frequent reviews is contemplated:

- How often should full reviews be conducted?
- Under what circumstances would a review be required earlier than scheduled?
- What would be the cost impacts of having less frequent reviews?

4.2 Separate process for Councillor numbers

Under current provisions, the number of Councillors to be elected in a municipality is a matter decided by the Electoral Commission as part of an electoral representation review.

There is a reasonable case that decisions about the number of Councillors should be heavily influenced by governance considerations and may be better determined under a separate process.

A suggestion made by some Councils, that each Council could decide the number of Councillors, is not feasible because Councillors have significant conflicts of interest in decisions about how many positions are available for them to contest at an election. However, one possible approach may be to use a similar approach to that used to review Council categories for allowance purposes, where an independent panel hears applications from Councils to change their number of Councillors.

Issues that must be addressed if this approach is considered to have merit:

- What process might be best used to independently decide the number of Councillors?
- What course of action would be taken if the number of Councillors determined by that process is not a good fit for the preferred electoral structure?
- What would be the cost impact for Councils of having a separate process for determining the number of Councillors?

4.3 Separate structure and boundary reviews

Another option for consideration is to provide a clear separation between reviews of electoral structures and reviews of boundaries.

In some ways, this approach may be closer to the arrangements at other levels of government. State and Federal electoral structures are specified in constitutions, rarely altered and then only through major public processes such as referenda.

If an option of this type were adopted, boundary reviews would still be conducted on a scheduled timetable, such as every eight years or whenever Ward numbers are outside the ten per cent variation margin. Structure reviews, which would decide how many Councillor positions there should be and what type of structure is most suitable, would be required less frequently.

Issues to be addressed in this option:

- How often would boundary reviews be conducted?
- How often or under what circumstances would structure reviews be required?
- Who would conduct boundary reviews and who would conduct structure reviews?
- What would be the cost impacts on Councils of having two types of reviews?

4.4 Independent panels

Reviews could, potentially, be undertaken by an independent Panel (or Panels) of suitably qualified people. Reviews of State electoral boundaries are undertaken by the Electoral Boundaries Commission, which comprises the Chief Judge of the County Court (or nominee), the Electoral Commissioner and the Surveyor General.

It should be noted that, while some comments made during past reviews appear to have questioned the independence of the VEC, such concerns were misplaced. The Electoral Commissioner is rightly protective of his status as an independent statutory officer who is accountable to the Victorian Parliament and not to the Government of the day.

A possible advantage of using independent panels is that it can bring a range of skills to a review. In past reviews, the VEC has employed people with local government experience to assist with reviews.

The main difficulties with using panels are:

- The difficulty selecting people with suitable expertise and independence who have the time to undertake so many reviews; and
- The additional costs for Councils may be significant because the costs of panels would be in addition to having to pay the VEC to support panels.

4.5 Formal role for Councils

The current process allows Councils three roles in a review:

- To appoint the Electoral Commission to conduct the review;
- To make a submission to the review if it chooses; and
- To ensure that the final report is available for public inspection.

As the first and third of these are essentially procedural, the only formal input a Council has to the substance of a review is as a potential submitter.

Whether or not Councils should be making submissions to electoral reviews is a matter that may be open to question. Aside from potential concerns about conflicts of interest, this is not the way things are done at other levels of government. Submissions to boundary reviews at other levels of government are made by political parties, individual politicians, interested persons and community organisations rather than by the Government of the day.

In addition, there are reasonable grounds to question whether elected Councillors should be able to use the resources of the Council administration, which are public resources, to propose and promote their own view of how the Council's elections should be structured.

A comment that has been made on several occasions is that Councils best know their own local areas. There is some truth in this observation, and it may be useful for Councils to contribute at this level. Possibly Councils should have a formal role, at the commencement of a review, to identify the communities of interest in the municipality and their relative connections. This might, for example be in a “Communities” report to be made available at the start of a review to assist the reviewer and also to assist people wanting to make submissions.

The main difficulties with this option appear to be:

- Defining exactly what should be in a “communities” report; and
- Ensuring that reports are impartial and that public resources are not used to promote personal interests.