Discussion paper

Local Government Electoral Bill

Office of Local Government
Department of Premier and Cabinet

Tasmanian Government

Contents

Introduction

The Tasmanian Government is committed to developing a new and more flexible statutory framework for local government elections. This new framework will be implemented through a new standalone local government electoral bill and supporting regulations, which will be put in place ahead of the next council elections due in October 2026.

The Government is releasing this discussion paper to test with the community important reforms we are considering, which will:

- create a more flexible format for local government elections
- strengthen donations disclosure and electoral advertising requirements
- improve the quality of public information at elections
- make changes to the franchise for electors and eligibility to run for office, alongside a suite of changes intended to improve the integrity of (and community confidence in) council elections more generally.

Feedback is welcome until **4 April 2025**. Submissions can be provided by email to lg.consultation@dpac.tas.gov.au (preferred) or by post to:

Office of Local Government
GPO Box 123
HOBART TAS 7001

Tasmanian Government Public Submission Policy

All submissions will be treated as public information and published on the Department of Premier and Cabinet's website, unless you clearly specify your submission is being provided on a confidential basis. In accordance with the Tasmanian Government's Public Submission Policy, if you would like your submission to be confidential, you must specify in writing, at the time of providing your submission, the parts of your submission you wish to remain confidential and provide the reasons for this.

Submissions will be published after consideration by Government.

Next steps

The Government will consider consultation feedback in developing draft legislation, which it will release for further consultation and comment in winter 2025. The Government is targeting the spring 2025 session to introduce a Bill into the Parliament.

How we got here

The Tasmanian Government committed to developing and introducing a new standalone Local Government Electoral Bill in response to the recommendations of the Local Government Legislation Review.

That Review was announced in June 2018 and led to the endorsement of 48 approved reforms in April 2020 and a commitment to exposure legislation to follow. Those reforms were the outcome of a consultation process involving over 800 survey responses and 75 submissions.

Disruption associated with the COVID-19 pandemic, and then a commitment of Government to the wider-reaching Future of Local Government Review following the advice of the Premier's Economic and Social Recovery Advisory Council, led to legislative efforts to deliver the prior set of reforms being deferred, to ensure the future framework benefitted from the outcomes of that review. The latter review delivered its final report and recommendations in October 2023.

Separately, the Government introduced compulsory voting for local government elections in advance of the 2022 elections, through the *Local Government Amendment (Elections) Act 2022* (the Amendment Act). While compulsory voting had not been a recommendation of the Local Government Legislation Review, this subsequent policy decision saw Tasmania join Victoria, Queensland and New South Wales (where compulsory voting had been in place since 1947). Importantly, Tasmanians achieved landmark turnout of 84.8 per cent at the 2022 local government elections, with 120,695 more votes returned than at the 2018 elections: a historic result in its national context, outperforming other compulsory voting jurisdictions in recent decades.

The Amendment Act also delivered successful reforms to reduce informal voting rates, which had tended to increase in urban councils as the councillor ballot paper became longer due to larger candidate fields. The informal voting rate in the 2022 Hobart City Council councillor elections fell to 3.3 per cent, compared to 8.8 per cent in 2018 (and the statewide rate falling to 4.0 per cent, compared to 5.1 per cent in 2018). These reforms will be preserved in the new Local Government Electoral Bill.

Notwithstanding its success, the introduction of compulsory voting also drew renewed attention to the limitations of the current system under the *Local Government Act 1993* (the Act). For instance, electors living with print disabilities and Tasmanians interstate and overseas have not been able to enjoy comparable assistance and means to vote as at Tasmanian parliamentary elections, due to a prescriptive detail as to the method of postal voting in the Act. This is despite the Act making provision for assistance to electors and for voting electronically. The Tasmanian Electoral Commission was able to make available an in-person, confidential, and impartial voting assistance service at the 2022 elections, but with statutory change, more appropriate services can be made available at future elections.

Finally, important reforms to the conduct of Tasmanian parliamentary elections were delivered through the Department of Justice's Electoral Act Review, which delivered its final report in February 2021. These reforms, including a comprehensive donations disclosure regime, are embedded in the *Electoral Disclosure and Funding Act 2023,* the *Electoral Matters (Miscellaneous Amendments) Act 2023*, and the Electoral Amendment Bill 2024 (which is still before Parliament as at February 2025).

While the implementation of a disclosure regime of the complexity and comprehensiveness of the *Electoral Disclosure and Funding Act 2023* is not considered compatible with local government elections (which are primarily contested by independent candidates with no campaign assistance), these recent reforms to the conduct of Tasmanian parliamentary elections have influenced the direction of several proposed reforms laid out in this discussion paper.

Local Government Priority Reform Program 2024-26

The Electoral Bill is a core component of the Government's Priority Reform Program for 2024-2026, namely pillar three: improving local democracy and representation.

The Priority Reform Program is the implementation phase of the Future of Local Government Review and earlier Local Government Legislation Review. Alongside the Electoral Bill, Government is to introduce a targeted package of legislative reforms to the Local Government Act and new general and meeting procedures regulations in 2025.

Reform proposals and project scope

The Government's objective is to deliver new local government electoral legislation that enables future elections to be conducted in a more flexible format.

The new legislative framework will deliver the headline reforms of the Local Government Legislation Review to deliver principles-based legislation and a Local Government Electoral Act which makes it easier to administer local government elections.

The proposed reforms outlined in the paper are organised around five key outcomes:

1. **a more flexible and accessible format for local government elections**
2. **a better franchise for electors and changes to eligibility to run for office**
3. **better quality of public information at elections**
4. **strengthened donations disclosure and electoral advertising requirements**
5. **other changes to support the integrity of elections.**

One of the main reform areas the Government is seeking feedback on is in relation to how local government elections are conducted in the future, given the emerging challenges with a model that relies on the postal system. We know some change to the current model is inevitable. The goal is to ensure our legislation provides flexibility to adapt the format of elections having regard to evolving technologies and community needs, among other things.

The paper presents two scenarios for the future format of elections:

- The first is an upfront change to an **attendance voting mode**, either with a single polling day or a polling period, which would represent a substantial departure for local government elections in Tasmania.
- The second relies upon **continued distribution by mail of ballot papers**, with electors encouraged and enabled to complete and return ballots by hand to physical issuing places, creating a 'hybrid' electoral system. This responds to challenges, namely decreasing postal services standards and increasing costs, which will continue to challenge the conduct of elections by universal postal ballot.

In either instance, voters with barriers to participation (including electors with a print disability, who live in remote locations or are interstate or overseas) would be better served by legislative amendments to enable telephone voting, along with an option to continue to access conventional postal voting where that is practicable.

New directions: who should vote in local government elections and how should we elect the deputy mayor?

While proposed reforms in the discussion paper seek to support and deliver on initiatives previously agreed and announced by the Government in response to the Local Government Legislation Review, there are two main exceptions to this where we think there is merit in testing current community and sector views about alternative approaches.

These are:

- consideration for the continued eligibility to vote by non-citizens
- the manner of electing deputy mayors.

Matters out of scope

The Government is seeking broad feedback on a range of proposals in this discussion paper, and the input we receive will be vital in shaping our new local government elections legislation.

However, there are two key matters where the Government will not be considering any changes to the current arrangements:

1. **Voting at Tasmanian local government elections will continue to be compulsory.** The historic turnout at the 2022 elections has validated the decision to introduce compulsory voting, which has seen a level of public engagement and participation at elections which strengthens our vital local government sector and its engagement with our community. The Government does not intend to revisit its decision to institute compulsory voting, which enjoyed unanimous Parliamentary support, and highly positive feedback from in

the previous Office of Local Government consultation process commissioned following the 2022 elections.

2. **The local government sector should bear the cost of conducting its own elections.** This principle is provided for explicitly at section 268 of the *Local Government Act 1993*, and it will stand in the new Local Government Electoral Bill. Notwithstanding this, acknowledging the timing and impost associated with the policy change made at the 2022 elections, the Government provided approximately $400,000 in direct funding to support those elections, including costs associated with the increased count and, importantly, a public information campaign about the new requirement to vote. A further $200,000 is provided in the Forward Estimates for the 2026 elections, principally for a second public information campaign. As the community will have had two electoral cycles, and eight years, to come to understand compulsory voting, no further funding is proposed and local councils will meet the full cost of administering their elections, including public information. Non-voter fines will defray the additional costs of administering compulsory voting at the 2026 elections and beyond.

Navigating this document

The discussion paper is structured as follows:

- The first section presents the main issues for the future conduct and format of elections.
- The second section discusses possible options for reform which depart from earlier positions of the Government – namely non-citizen voting and how deputy mayors are elected - and explains why there are arguments for adopting alternative positions on these issues.
- The third section sets out all the other proposed reforms, organised by theme headings. The context and rationale for each reform is briefly explained, including useful precedent examples in other Australian local government systems and in Tasmanian parliamentary elections.

The future format of local government elections in Tasmania

Tasmanian local government elections have been conducted by universal postal vote since 1993. Postal voting has been successful and is associated across Australian jurisdictions with higher participation rates in council elections.[1] However, elections by universal postal voting are becoming increasingly challenged by declining postal service standards and additional costs, including for electors interstate and overseas.[2]

The status quo is not sustainable. At some point (be that at the 2030 council elections or beyond), letter delivery services may simply become unavailable at any cost, or with such limited frequency that the conduct of mass participation elections is impracticable. Postal service costs and service standards already represented challenges for the 2022 and 2018 elections.

Responding to this challenge, this section of the discussion paper presents two alternatives for the future format of elections.

While these scenarios are presented for consultation neither would need to be specified or 'hard wired' in legislation, with the legislation instead developed to enable a wider range of voting methods to better accommodate a range of future states. Irrespective of the future conduct of elections – whether it be a postal/hybrid model, or a move to attendance voting – the Bill will give operational autonomy to the Tasmanian Electoral Commission in the conduct and format of elections, with some capacity to fix parameters in regulation. This is appropriate, and consistent with the *Electoral Act 2004* and *Local Government Act 1993* in respect of existing elections.

For this reason, these alternatives should be regarded as a bridge to a future state. If we cannot vote fully by post anymore, how should we vote at the next election in 2026 and the elections of 2030? At some point, electronic voting systems will be secure and validated, and most people will vote electronically, in much the way that most consumer banking transactions are now completed online. However, those systems are not yet mature, and the decline in postal standards and increase in costs demands short and medium-term alternatives.

[1] At 84.8 per cent, Tasmania's 2022 election featured likely the highest statewide turnout at Australian local government elections for some decades. Those elections were also the first held in Tasmania with compulsory voting.

[2] The Australian Government reduced letter services standards by amendment to the *Australian Postal Corporation (Performance Standards) Regulations 2019* effective 15 April 2024, succeeding pandemic-era temporary reductions in those same standards (later reversed). Despite these changes, the cost to the Tasmanian Electoral Commission for Australia Post's services for elections has risen substantially.

Scenario A: change to voting in person as the primary means of participation

Move to universal attendance elections with a weeklong polling period, or a polling day, including an extended pre-poll period and postal voting for persons on the supplementary electoral roll.

Telephone voting would be made available for electors with barriers to participation or who are intestate or overseas.

The first scenario presented is to move to an attendance voting model for electors on the House of Assembly roll. This would align local government elections more closely to the model used for Tasmanian and Australian parliamentary elections.

Transitioning to this model presents a significant shift in electoral format requiring the community to immediately adjust to attendance voting at council elections, which is likely to present some additional disruption (especially as voting is now compulsory). However, attendance voting is a feature of most other Australian jurisdictions' local government electoral legislation (besides South Australia), which tend to rely on a mix of voting methods for individual councils or across councils (some council elections are conducted by universal postal ballot and others through a mix of attendance and postal voting).

Attendance voting on a polling day at Tasmanian and Australian parliamentary elections is declining in favour of pre-poll voting. When presented with the option, people increasingly favour voting early and at a time that suits them. The 2022 federal election saw a landmark majority of electors nationally vote early (by pre-poll, predominantly, and postal ballot). At state elections, the proportion of electors voting early tripled between 2002 and 2021, to almost 30 per cent of votes, with the significant majority of this growth being votes cast by pre-poll ballot.

Recognising this emerging preference, there is an opportunity to introduce a polling period of one week, rather than a single polling day. However, there is a direct trade-off between a polling period and a polling day, and the number of polling places which can be made available. It is not affordable, for instance, to staff the density of polling places made available at state elections for an entire week, most of which are not available for that purpose on weekdays (namely schools).

This is relevant as postal voting is, generally, associated with higher turnout at local government elections in other Australia jurisdictions. Despite compulsory voting, it is reasonable to assume the less flexible the manner of voting – for instance, a single day attendance election or a weeklong polling period with limited polling places – the lower turnout will be.

Were attendance voting to be pursued, it is expected a single or small number of polling places for each local government area would be open for a polling week. A pre-poll centre, potentially servicing multiple municipalities, may also be open for a four-week early voting period. These options would be complemented by postal

voting (upon registration) and telephone voting for eligible electors, including electors interstate and overseas.

Even with this kind of flexibility, a wholesale shift to attendance voting still presents challenges, particularly for local government elections, where electors are required to choose between sometimes very large fields of candidates[3] who may have less prominent public profiles, and who do so often without political party support.

While larger fields and community candidates are core to the value and differentiation of local government, they can make it difficult for electors to make informed and meaningful choices at a ballot box. Postal voting has provided electors the ability to work through the ballot paper with the candidate information provided privately and in their own time. Care will need to be taken in the preparation of candidate information and elector material distributed to households to address this gap.

Scenario B: flexible additions to the status quo (a 'hybrid' model)

Provide for a 'hybrid' postal model where:

- all electors are mailed a ballot and candidate information pamphlet
- there is a minimum four week polling period, enabling the earlier return of postal votes
- there are more issuing places in each municipality, to enable the hand return of ballots by electors until the close of polls
- ballots may be returned to issuing places until the close of polls.

Telephone voting would be made available for electors with barriers to participation or who are intestate or overseas.

Under this scenario, future elections would be conducted in a flexible manner which attempts to preserve the benefits of universal posting voting (at least while the postal system remains available and affordable), while embracing the efficiencies and advantages of a 'pre-poll like' model.

At the 2022 elections, traditional postal voting was complemented by increased use of an option for electors to return their completed ballot to council offices as 'issuing places'. This scenario seeks to build on and extend this type of model, and would involve:

- all electors continuing to receive candidate information and ballot papers in the mail following the close of nominations
- a likely polling period of a minimum of four weeks, to enable a longer period for the delivery of ballot packs and for the return of votes

[3] In more populous municipal areas, councillor ballots are sometimes very lengthy, and becoming lengthier. For example, 44 candidates contested the 2022 Hobart City Council ballot, compared to 36 in 2018.

- electors wishing to vote by post needing to complete a postal ballot declaration, identifying one among a prescribed set of reasons for voting via post. Otherwise, electors will be required to hand return completed ballots, in the declaration envelope, to issuing and receiving places.

As voting is compulsory, advice will be provided regarding return postal timeframes, and it is foreseeable that electors voting via post will have substantially less time to complete their votes than voters who return their ballots to a polling place. It is intended that, over time, most ballots are to be returned to issuing and receiving places.

Reduced time for persons voting by return mail does raise equity considerations. However – unlike parliamentary elections – counts for the office of councillor feature exclusions at very low margins, and it would not be feasible to commence the count or calculate provisional result prior to the return of all ballots to be included in the count. This means, unlike at state and Australian Government elections, postal votes cannot be received until a later time after the conclusion of the polling period.

What would these scenarios cost?

Tasmania's 2022 local government elections cost $9.32 per elector, an increase of 34 per cent over the 2018 elections ($6.92 per elector). This is largely attributable to the very large increase in participation (driving increased postal and counting costs) and the costs associated with the returning, processing and counting those additional ballots. By comparison, the 2024 Tasmanian state election cost $12.37 per ballot.

Jurisdictional comparisons demonstrate a wide range in potential costs. 2021 local government elections in the Northern Territory and New South Wales (which are primarily run on an attendance model) incurred costs of $15.10 and $29 per elector, respectively (noting that a range of factors may underpin that, including higher participation at the NSW elections).

It is not possible to quantify with confidence the costs of future Tasmanian local government elections under either alternative. It is reasonable to assume that the slower pace at which electors would take to complete their votes, and so move through the polling place, would increase costs of attendance elections relative to state elections; as may the provision of a polling period, rather than polling day (though this would vary with operational decisions regarding the number and distribution of polling places). As at present, local government elections are a more complex counting process than for state elections, though as discussed elsewhere in this document, this could be addressed by adopting an alternative means of selecting the deputy mayor.

It is similarly difficult to quantify costs of the hybrid election model, though this is anticipated to be less than for attendance elections. Postal services are expected to be more costly over time as overall letter volumes decline.

Under either alternative, the costs of local government elections are expected to increase at the next ordinary elections and beyond.

Potential new directions: who should vote in local government elections, and how should we elect the deputy mayor?

This section of the discussion paper seeks feedback on two reform options for consultation, which if adopted, would depart from agreed reforms in response to the Local Government Legislative Review, namely:

- a continuation of non-citizen voting (limited within certain parameters)
- a move away from the popular election of deputy mayors.

We are testing these directions because we think they have merit in the current landscape and having regard to future challenges and opportunities for council elections in Tasmania.

Reforming the franchise: should non-citizens enjoy a continuing entitlement to vote at local government elections?

If this entitlement were to continue, it is proposed a person's ordinary place of residence must have been in Tasmania for the 12 months prior to making an application for enrolment (or otherwise must own property in Tasmania in a personal capacity).

This would be, in effect, a 'non-citizens' electoral category.

The Government previously endorsed as an outcome of the Local Government Legislation Review that a 'person must be an Australian citizen to be eligible to be enrolled to vote in local government elections'.

Tasmania, alongside Victoria and South Australia, has not limited access to supplementary entitlements to vote only to Australian citizens, or to persons eligible to vote in state and Australian government elections.[4]

This proposition proceeded through the legislation review process with relatively narrow public comment. The local government sector provided conditional support, with several councils supporting the maintenance of voting entitlements for non-citizens who own property or for permanent residents and/or refugees.

There is some civic benefit for continuing a broader franchise than at state and Australian Government elections. Maintaining a franchise that is accessible and equitable encourages participation and interest in the local community and builds connection and civic values. Local councils make decisions that shape people's local,

[4] Those being Australian citizens and British subjects enrolled to vote immediately before 26 January 1984.

immediate environments, and those decisions benefit from the input and engagement of all people who use and enjoy local recreational spaces and public infrastructure.

Enabling a wider segment of the community to vote at local councils provides for democratic engagement and is a first experience of Australian democracy for people who may go on to become Australian citizens and lifelong members of our community.

As noted, some councils have supported continued electoral participation for permanent residents and/or refugees. It is not considered desirable for the Tasmanian Electoral Commission to have to review, and verify, the immigration status of electors, and to make determinations on the basis of visa categories which are themselves the subject of change and reform.

As an alternative, it is proposed that persons seeking enrolment on the supplementary roll who are not entitled to be enrolled on the House of Assembly roll, and whose ordinary place of residence is Tasmania, must be able to demonstrate a minimum of 12 continuous months' residence in Tasmania (not necessarily in the municipal area) at the time of seeking enrolment.[5] This is intended to establish a minimum level of community engagement and integration in Tasmania prior to participating in local government elections and indicate some expectation of continuing residence in the community.

Reforming the entitlement to nominate as councillor

If an entitlement for non-citizens to vote is preserved, require that a person must appear on the House of Assembly electoral roll to be eligible to hold the office of councillor, in addition to appearing on that roll or the supplementary electoral roll at an address in the municipal area.

If Government adopts a revised position that long-term non-citizen residents of Tasmania, or non-citizen owners of property in Tasmania, will enjoy a continuing entitlement to vote in local government elections, it is additionally proposed that persons seeking nomination for office will be required to be on Tasmania's House of Assembly electoral roll, and as a result, be Australian citizens or British subjects eligible to vote in parliamentary elections.

This change would bring Tasmania into alignment with Victoria and South Australia, which impose this differential requirement. The proposal, combined with the continuation of the wider franchise, is intended to balance the benefit of wider civic

[5] By way of example, in South Australia, one month's residence in a ward or council area is required prior to an application for enrolment as a resident for persons not entitled to vote on the basis of enrolment on the state's House of Assembly roll. An extension to this period was acknowledged as a potential direction or reform in the state's Local Government Participation and Elections Review discussion paper.

participation with the acknowledged risks of foreign influence and interference at local government elections and in council decision-making.

Remove the direct election of the deputy mayor

Instead, the councillors are to elect the deputy mayor at the first ordinary meeting of the term of the council. Otherwise, the role of deputy mayor could be removed entirely or made optional in favour of provision for acting mayors, including supplementary allowances.

Change to the mode of election of the deputy mayor and mayor was proposed during Local Government Legislation Review but was not ultimately recommended as a final reform. There was not clear or strong support for the change in submissions to the legislation review at that time, from either councils or the community.

However, there are reasons to reconsider a change, particularly with higher participation rates brought about by the recent introduction of compulsory voting and increasing election costs. It is becoming less clear the costs associated with directly electing the deputy mayor result in attendant democratic or governance benefits for councils and communities.

Tasmania is the only Australian jurisdiction where the deputy mayor is popularly elected and there are obvious complications and limitations to the process of electing the deputy mayor as it stands, including that a person may not contest both the roles of mayor and deputy mayor at the same election.

It is already the case that casual vacancies in the role of deputy mayor are filled ‘around the table’ and not by by-election. Election around the table is consistent with the approach in all other jurisdictions (noting councils in some jurisdictions also appoint their mayor or principal member in the same manner). Election by popular ballot is not clearly consistent with the actual function of the deputy mayor, which is as an alternative, or acting, spokesperson for the council and the chairperson of its meetings in the mayor’s absence. Further, election around the table enables all councillors (including those who contested the mayorship) to seek the deputy mayorship. This may lead, in some circumstances, to council’s leadership becoming more reflective of the sentiment of the electorate than is permitted under the present system.

As all Tasmanian mayors are appointed by popular election, one alternative would be the second ranked mayoral candidate be appointed deputy mayor. Such a system may increase the likelihood the mayor and deputy mayor represent factional or partisan opposites in the council, and this may be an impediment to the performance of the deputy mayor’s functions. Council choosing its own alternative chairperson and spokesperson is considered preferable to that model.

Alternatively, it may be timely to revisit the express necessity of the office of deputy mayor. Instead, new provision could be made in the *Local Government Act 1993* for the mayor to delegate their functions to a councillor during a period of absence; or for the council to appoint an acting mayor around the table during a period of absence. Provision would be made for a councillor so appointed to receive a mayoral allowance in this period. The mayor would be provided a general power to delegate the role of council spokesperson other than for periods the mayor is on leave.

Only Queensland and Western Australia require a council to appoint a deputy mayor, with legislation in other jurisdictions leaving this at the discretion of councils. This could be the legislated outcome in Tasmania, or provision be made only for acting mayors.

Either proposal could play a significant role in defraying the escalating and unavoidable costs of future local government elections. Wider participation at elections increases the cost and time required to conclude the count, which provides an additional reason to streamline the popular electoral process. The Tasmanian Electoral Commission provided preliminary estimates that the direct election of the deputy mayor cost approximately $285,000 in 2022, or seven per cent of the cost of those elections. This cost can be expected to, at least, increase proportionally with any scenario for the format of future elections (if a change to deputy mayor election around the table, or acting mayors, is not adopted). However, the Commission has indicated this assumption may be conservative were attendance elections introduced for local government.

Were the office of deputy mayor to be removed or made optional, additional savings could be realised from the abolition of associated allowances, or otherwise, these be redistributed among the councillors.

Local Government Elections: technical reforms

Thirty-three technical reforms are presented below, under five themes:

1. **a more flexible and accessible format for local government elections**
2. **a better franchise for electors and changes to eligibility to run for office**
3. **better quality public information at elections**
4. **strengthened donations disclosure and electoral advertising requirements**
5. **other changes to support the integrity of elections.**

1. A more flexible and accessible format for local government elections

This set of reforms will provide future flexibility for the conduct of local government elections and, importantly, remove current barriers to using available assistive practices and technologies for electors with print disabilities and electors who are interstate or overseas.

Reform 1: reduce prescription in the statutory framework to enable the Tasmanian Electoral Commission to approve the electoral process.

This principle will guide the preparation of the new statutory scheme. It corresponds directly to the first headline reform endorsed through the Local Government Legislation Review in April 2020, which is to deliver principles-based legislation removing prescription or moves procedural detail into subordinate legislation that can be more readily adapted as circumstances change. Critically, a more flexible format for local government elections will enable greater responsiveness to the developing challenges with the current universal postal ballot system.

It is acknowledged the unique integrity risks associated with election require care in drafting and sufficient detail in statute to enable impartial arbitration of electoral matters. However, recent electoral cycles have made plain the extent of procedural detail in the *Local Government Act 1993* has frustrated the ability of the Tasmanian Electoral Commission to conduct elections in line with community expectations or to respond to changes in technology and the declining availability and suitability of postal services.

This is particularly so in relation to current constraints on the Commission providing assistance to electors with barriers to participation, including print disability, and electors who are interstate or overseas during the polling period.

Technical engagement with the Commission during the preparation and public consultation on the exposure draft of the Electoral Bill will be prioritised.

Reform 2: enable the Tasmanian Electoral Commission to approve procedures for voting, including by telephone and electronic means, for interstate and overseas electors and electors with impediments to ordinary participation, or for other classes of person prescribed by regulation.

Electors with impediments to participation or who are outside Tasmania during the polling period have not been able to enjoy equitable participation in recent elections, due to limitations in the flexibility afforded to the Commission and Electoral Commissioner in the relevant sections of the current *Local Government Act 1993*.

For electors with print disabilities, section 291 does enable the Commissioner to provide a framework to provide assistance but does not provide for that assistance to overcome prescription in the Act as to what ballots may be accepted and counted (namely, ballots not received in an envelope with a signed declaration, pursuant to sections 285 and 287).

These constraints mean assistance provided at elections for the Parliament of Tasmania – such as the VI-Vote terminals which enable persons with sight impairments to complete an electronic ballot paper independently – cannot be provided for Tasmanian council elections. Similarly, the Commissioner cannot currently enable voting by phone, either with an automated secure system or with the assistance of a human operator.

The new Electoral Bill will remove statutory impediments to participation in elections by phone or with an assisted voting system for people who are not able to complete a written ballot paper.

Section 296 of the Act currently empowers the Commission to approve procedures such that electors who are outside Tasmania may vote by receiving a ballot paper electronically and returning it electronically or by mail. However, provision is not made for telephone voting.

Due in part to cybersecurity risk, electoral commissions in Tasmania and interstate have suspended remote internet voting until more secure systems are developed and validated.[6] This reduced access to the 2022 elections for persons outside Tasmania, particularly those overseas, due to the public and private costs and lengthy lead times associated with postal ballots, and the challenges faced by postal systems in maintaining service standards amid declining letter volumes.

The new Electoral Bill will provide for the Commission to approve procedures to enable either telephone or electronic voting, or both, for voters outside Tasmania. While internet voting is not currently contemplated for local government elections for the reasons outlined above, flexibility will be built into the Bill to ensure the most appropriate method or methods can be used for future elections as determined by the Commission.

[6] For example, the cessation of the New South Wales iVote system following council elections in 2021.

Similar facilitating amendments are proposed for the Electoral Act through the Electoral (Alternative Voting Procedures) Bill 2024. It is anticipated the provisions in the new Bill will mirror these provisions, once finalised.

As systems for telephone and, particularly, electronic voting mature, they may become suitable for more widespread use at elections. A power will be provided for regulations prescribing classes of persons for whom electronic and telephone can be made available.

It is noted that provision will be made for an appropriate balance of accountability between the Commission, Government and Parliament for the conduct of elections, and consideration will be given in the development of exposure legislation for the Commission to transmit its decision as to the manner of elections to the community and Parliament prior to those elections being held.

Reform 3: legislate that the Tasmanian Electoral Commission is required to approve procedures in accordance with universal franchise principles, namely all electors, including electors with additional barriers to participation, are to be afforded an opportunity to vote in an independent, secret and verifiable manner.

While the Electoral Bill will reduce overall statutory prescription and introduce much-needed flexibility, new principles for the conduct of elections will enhance community confidence and guide the Commission and Electoral Commissioner in the making of procedures for electors with impediments to ordinary participation or who are outside Tasmania.

These principles are that all electors are to be afforded an opportunity to vote at those elections in a secret, independent and verifiable manner so far as this is consistent with the Commission conducting efficient and timely elections and the integrity of those elections.

Not all existing and prospective methods of voting, including assistive technologies, perfectly reflect these principles. Postal voting, voting by telephone with a human operator, or voting using internet-based systems each involve trade-offs that may be acceptable or preferable for those who may value factors such as convenience highly, or benefit from direct human assistance.

As above, similar facilitating amendments are contained within the Electoral (Alternative Voting Procedures) Bill 2024, and the draft bill will seek to align to those provisions as made.

It is not possible or appropriate to prescribe in legislation a detailed model for assisted voting which avoids compromise between secret, independent, and verifiable voting and which meets all electors' needs and preferences. However, it may be appropriate to prescribe principles enabling the Commission to continually review and improve its assistive protocols, in consultation with affected electors, to

ensure the range of practicable and achievable voting methods and technologies are provided to electors.

Reform 4: require the Electoral Commissioner to publish after each election a statement on the implementation of the accessibility principles, after information, including relevant statistics and initiatives undertaken to promote universal participation in the election.

The Electoral Commission publishes a statistical report following each ordinary local government election. Supporting the above reforms, the Electoral Bill will require the Electoral Commission to publish a statement on the accessibility principles, including relevant statistics and initiatives undertaken to promote universal participation at the election. This proposal is considered to balance appropriately the independence of the Commission, while providing a transparent accounting of participation at the election for electors with additional barriers to participation.

2. A better franchise for electors and changes to eligibility to run for office

This set of reforms will make the administration of the local government electoral franchise more robust and, importantly, embed the core 'one person, one vote' principle for future elections. It also provides a higher – but appropriate – bar for nomination without the introduction of a candidate nomination fee.

Reform 5: increase the number of elector signatures required to support a notice of nomination to the lesser of 30 or one per cent of the number of electors in the municipal area.

The Local Government Legislation Review contemplated the introduction of a candidate nomination fee, intended to 'to attract serious candidates and reduce nominations by those without real intentions to be elected'. Despite being a common feature of local government elections in Australia, the proposal was not ultimately endorsed, in part due to the potential for the fee to deter genuine candidates and the equity impacts of a fee on participation from a wide section of the community.

However, the imperative to ensure ballots comprise genuine and credible candidates remains relevant. Under compulsory voting, it is perhaps even more important than previously to ensure that the field of candidates is well-understood by electors, to ensure all voters, including those less engaged in political processes, are able to make meaningful choices and are not incentivised to vote arbitrarily.

As an alternative to a candidate fee, the number of signatures required to submit a notice of nomination would be increased from two electors at present to the lesser of 30 persons, or one per cent of electors on the electoral roll for the municipal area. This change provides an initial test of credible public support for a candidacy, while not imposing a financial barrier on candidates. The alterative thresholds are intended to accommodate smaller municipalities for which obtaining 30 signatures could represent an unreasonable barrier.

It is noted a range of thresholds apply at Tasmanian elections, from 100 nominators for a non-party candidate for the House of Assembly to 10 for a non-party candidate at a Legislative Council election. While it is acknowledged there is some apparent conflict with the lower threshold applying for Legislative Council elections, it is considered desirable and appropriate that candidates demonstrate a threshold commitment to seeking and then serving in the office of councillor prior to appearing on the ballot paper. The nomination deposit of $400 for all candidates at Tasmanian Parliament electors provides an alternative incentive for serious candidates at those elections, but a higher nominator threshold is considered more suitable and more inclusive for council elections.

Acknowledging the potential impact of this measure on those who could gain the support of 30 (or one per cent) of electors, but who make a relatively late decision to nominate, consideration will be given to a two-stage nomination process in the Electoral Bill. This would see prospective candidates submit a notice of intention to nominate, followed by a period (of two to four weeks) to collate signatures, prepare a candidate statement, and ensure completion of pre-nomination training, prior to the submission of the notice of nomination (Reform 10).

Reform 6: move administration of the 'general managers' roll' from councils to the Tasmanian Electoral Commission, including administration of the process through which land occupier and corporate nominee (supplementary electoral roll) electors are to enrol.

This change was endorsed through the Local Government Legislation Review.

Presently, supplementary rolls of electors – that is, persons with property-based entitlements and non-citizen electors – are maintained by council general managers, in a manner and using forms approved by the Commission.

Shifting this responsibility to the Commission entirely should enable increased consistency in the administration and application of the supplementary electoral roll. Importantly, the administration of this function will be streamlined with complementary changes to clarify the extent of the electoral entitlement and to establish clear evidentiary requirements, as below.

It is anticipated this change would commence following the next ordinary local government elections to enable time to consolidate and validate supplementary rolls from all councils using the land titles dataset.

Reform 7: provide a definition for the purposes of 'occupier' of land that establishes an occupier holds a leasehold interest or licence over land, and/or the person's ordinary place of residence is in the municipal area.

Presently, a person who owns or occupies land in a municipal area (or is the natural person nominee of a corporate owner or occupier) may vote in an election on the basis of enrolment on a supplementary roll. The term 'occupy' is not adequately defined in the relevant part of the *Local Government Act 1993*.

This created ambiguity around the extent of association with land required to generate an entitlement to vote in local government elections in some specific instances (for instance, persons making regular use of a secondary property owned by a family member or associate). A clear definition of occupier will be introduced in

the new Bill, with the intent of linking entitlement to be enrolled on the supplementary electoral roll with a clear evidentiary basis.

This will include:

- a natural person, or a corporate body, with a personal lease for land
- a natural person, or a corporate body, with a personal licence for land (potentially limited to a private purposes licence at section 86AA of the Act)
- a natural person, otherwise, whose ordinary place of residence is in the municipal area, and who is a longer-term resident of Tasmania, and who is not enrolled for an electoral roll for the House of Assembly. This third case is intended to capture non-citizen persons resident in Tasmania who are not named personally on a residential lease.

Reform 8: provide that a person seeking enrolment on the supplementary roll must complete a land occupier declaration and provide documentation of the leasehold or licence over land, or evidence of their period of residence in Tasmania to the satisfaction of the Commissioner.

Enhancement will be made to the existing provisions for the electoral enrolment form for the supplementary roll, establishing clear evidentiary requirements for enrolment.

Persons seeking enrolment will be required to supply a copy of their lease or licence document, on which they are named; or provide, to the satisfaction of the returning officer, evidence of residence in Tasmania at least 12 months prior to the date of their application for enrolment (for instance, a utility bill) and, if required by the Commissioner, additional information for the intervening period.

Provision will be made for appeal of the determination.

Reform 9: implement the ‘one person, one vote’ principle and require a nominee of a corporate landowner or occupier of land may nominate one natural person who is an officeholder of the company to be its nominee.

The Local Government Legislation Review endorsed the institution of a ‘one person, one vote’ principle at local government elections in Tasmania. This requires removing the existing and explicit provision for a person to have up to two votes (found at section 254 of the *Local Government Act 1993*) for an election in a municipal area, where one vote may be in that elector’s own right, and another on behalf of a corporate body.

Instead, it is proposed a nominee of a corporation may not also be enrolled on the House of Assembly roll at an address in the municipal area or be enrolled on the supplementary electoral roll for the municipal area.

In addition to providing a person may only have, in any circumstances, one vote in an election for a municipal area, it is proposed natural person nominees of corporate bodies must be officeholders of the corporate body (a director or company secretary of the body). This requirement mirrors arrangements in Victoria and South Australia.[7]

Requiring a nominee of a corporate landowner or occupier is an officeholder provides some additional integrity to the 'one person, one vote' principle as it will no longer be the case a corporate nominee may be arbitrarily selected (and so in some cases, be selected to avoid the prohibition on multiple voting that might otherwise apply). Corporate bodies will continue to have a single nominee for each municipal area, even if it owns or occupies land in several places in that municipality.

A corporate body providing a nomination will have to supply evidence, to the satisfaction of the Commissioner, that the nominated person is an officeholder of the corporate body.

Provision will be made for the appeal of this determination.

Reform 10: provide that all intending candidates (other than incumbent councillors) must complete a prescribed program of pre-nomination training prior to their submission of a notice of nomination.

Councils are obligated to complete pre-nomination training and/or training in office in Victoria, South Australia, Queensland and Western Australia. The Tasmanian Government endorsed the institution of compulsory pre-nomination training as part of its response to the Future of Local Government Review.

The Tasmanian Government, Local Government Association of Tasmania and sector representatives are working to implement and refine a learning and development framework (Learn to Lead) for Tasmanian councillors. A pre-nomination training module was made available to incumbent councillors and candidates at the 2022 local government elections.

The Bill will provide that people intending to become candidates at elections (other than those who are councillors at the time of the notice of elections) must complete training specified by the Director of Local Government, if any, prior to lodging their notice of nomination. The intention of this provision is that all people contesting local government elections will have a common threshold understanding of the particular role and functions of councillors and the day-to-day functioning of councils as the tier of government closest to the community.

While incumbent councillors seeking re-election will be encouraged to avail themselves of all available training, their experience in office, combined with Learn to

[7] See *Victoria's Local Government Act 2020* and *City of Melbourne Act 2001* and South Australia's *Local Government (Elections) Act 1999.*

Lead materials developed for serving councillors, is considered to obviate the need for mandatory pre-nomination training.

Training will be self-paced, online and in an accessible format.

Candidates will be required to attest to their completion of the pre-nomination training in their notice of nomination. Provision of a false declaration would be managed through offences related to the provision of false information to the Commission.

As outlined in Reform 5, consideration will be given in the drafting of the Electoral Bill to a two-stage process, where candidates submit an initial notice of intention to nominate, followed some weeks by a final notice of nomination. If this is pursued, candidates will be required to complete the training in the intervening period, with direct facilitation of training facilitated by the prior notification.

3. Better quality public information at elections

This set of reforms is intended to improve the understanding by electors of the candidate field, including notation on the ballot where candidate nominations have been lodged by a registered political party and the publication of candidate information statements and relevant regulatory information provided by the Director of Local Government.

Reform 11: require that the TEC provides all people submitting a notice of nomination the opportunity to provide a candidate information statement (in an approved format, providing prescribed information) and the Tasmanian Electoral Commission is to publish candidate information through appropriate means.

The candidate information booklet mailed to electors by the Commissioner is an essential component of local government elections. It is the primary way electors become aware of the range of candidates, their reasons for seeking election, views and propositions.

This candidate information is presently not an element of the statutory scheme, despite being core to the electoral process. It is proposed this become part of the statutory elections framework and candidates be afforded a right to submit an information statement as part of the notice of nomination. While provision of the statement will be encouraged, it will not be mandatory. The returning officer will also be empowered to reject a statement that is offensive or could mislead electors, which is similar to the conditions for the name of a candidate or for registering a party name under the Electoral Act.

A head of power will be provided in the new Bill for making regulations, should it be necessary to prescribe specific information to be included in the request for a candidate information statement.[8]

A power will also be provided for potential regulations specifying the form in which the material is to be made available to electors. The Tasmanian Electoral Commission will be required, in the first instance, to provide the candidate information to electors in printed form and publish it on the Tasmanian Electoral Commission website. Providing the candidate and election information to households by unaddressed mail (letter drop) is more affordable than addressed mail (though the use of unaddressed mail will depend upon the model of future elections, as this is unsuitable for the delivery of ballot papers). In practice, this is consistent with the current delivery method of candidate information (that being mail).

[8] An analogous requirement can be found in the candidate information sheets in the New South Wales *Local Government Act 1993.*

Reform 12: provide that the Director of Local Government may provide a statement to be published by the Tasmanian Electoral Commission alongside the candidate information.

Provision will be made for the Director of Local Government to supply a statement to the Tasmanian Election Commission for publication alongside the candidate information statement. The purpose of that statement, in legislation, will be the provision of relevant public information as to matters of broad council performance.

The Director may use this power to inform electors (at a high level) as to where they may locate relevant council regulatory and performance information, for instance, published Code of Conduct Panel determinations, and the council performance data dashboard to be developed as a result of recommendations of the Future of Local Government Review.

The Commission will be provided a power to reject a statement where that statement would have an undue bearing on the considerations of candidates by electors, in the Commission's view, which will be final.

Reform 13: establish that nomination by a registered party is to be included in the information published by the Tasmanian Electoral Commission, and printed on the ballot paper, with the candidate's name to be printed alongside the name of the registered party.

This option is testing whether the Tasmanian Electoral Commission should be required to publish in the candidate information booklet and website information, and on the councillor, mayoral and deputy mayoral ballot papers a candidate has been nominated by a registered party.

This is proposed as a public information measure. Membership of a registered party will not compel prospective candidates to seek nomination by that party, as candidates can nominate individually. Rather, the measure is intended to provide a level of transparency as to when candidates have sought and gained party endorsement, with the party then able to assist in compiling nominator signatures (see Reform 5).

It is noted candidates can, and do, declare party endorsement using the existing non-statutory candidate statements. While a range of considerations are relevant to the general proposition of partisan involvement in local government, this is considered a matter the statutory framework must be fundamentally neutral to, and it is the case parties already involve themselves in the local government electoral process.

Acknowledging the potential for printing party names on the ballot paper, consideration may also be given to candidates to have printed names of affiliated groupings and/or the word 'Independent' on the ballot paper, as below.

Reform 14: provide for candidates whose nomination form is not lodged by a registered party to request to be identified with a group name.

It is acknowledged printing the names of registered parties may raise concerns about equity between candidates who are nominated independently and those nominated by a registered party.

Subject to further development and technical consultation, provision may be made for two or more candidates who are not nominated by a registered party to request to be identified next to a common group name in the candidate information booklet and on the councillor, mayoral and deputy mayoral ballot papers through their notice of nomination. For the avoidance of doubt, this will not be a system of local government only registered parties, separate to parties registered under the *Electoral Act 2004.*

The returning officer would be empowered to reject any request for a group name that appears obscene, offensive, frivolous or intended to mislead electors, including by confusion with the name of a registered party. These proposed provisions correspond to grounds for rejecting the proposed name of a registered party under section 47 of the *Electoral Act 2004*.

While local government candidates could seek to establish a registered party in the meaning of the *Electoral Act 2004*, this requires a party membership, an advertising period, and complex ongoing regulatory obligations. The named group as proposed has no continuing status beyond the polling period but does serve to improve transparency. The proposition does not entail the establishment of ranked groups on the ballot paper or ‘above the line’ voting.

As above regarding political parties, it is noted candidates can use the existing non-statutory candidate statements to establish affiliations between candidates. This proposal formalises these practices and is intended to improve the quality of public information and provide appropriate guardrails.

Candidates who are neither identified by reference to a group nor nominated by a registered party will be able to request the word ‘Independent’ be printed on the councillor, mayoral and deputy mayoral ballot papers, in the manner provided for Legislative Council candidates by section 77 of the *Electoral Act 2004*.

4. Strengthened donations disclosure and electoral advertising requirements

This set of reforms will provide integrated approach to the management of political donations and electoral expenditure, including advertising. It seeks to align requirements for Tasmanian local government and Legislative Council elections to the extent considered appropriate and practicable. Importantly, it introduces gifts and donations disclosure requirements for non-incumbent candidates for the first time. Proposed prohibitions on the publication of deceptive and misleading statements are aligned to the *Electoral Act 2004*.

Reform 15: corresponding to the Electoral Act Review Final Report and the amended section 197 of the *Electoral Act 2004*, introduce new prohibitions on the dissemination of misleading and deceptive statements.

The Electoral Act Review Final Report recommended the existing section 197 of the *Electoral Act 2004* be augmented to provide it is an offence to print, publish or distribute electoral matter that:

- contains incorrect or misleading information about whether a person is or is not a candidate or a member of/endorsed by a registered party
- uses the name or derivative of a name of a party in a way intended to or likely to mislead any elector
- could result in an elector casting an informal vote
- contains a statement (express or implied) to the effect that voting is not compulsory
- contains a statement intended or likely to mislead an elector that the material is an official communication from the Electoral Commission or Electoral Commissioner.

It is proposed the scope of the amended section 197 be applied in the new Local Government Electoral Bill. Notably, the *Local Government Act 1993* does not presently regulate the content of electoral matter (be that advertising or other communications) with provisions corresponding to the prior section 197, so the changes will represent substantial additional protections for local government elections. A definition of ‘electoral matter’ corresponding to the *Electoral Act 2004* will be introduced.

The Electoral Act Review derived these standards through a review of interstate and Australian Government electoral provisions, with particular reference to section 180 of the New South Wales *Electoral Act 2017*.

It is acknowledged the Tasmanian local government sector has sought increased regulation of false or defamatory statements during elections, citing an increase in adverse comment on social media. While this issue is real and concerning, it is not

considered feasible or desirable for the Electoral Commissioner or similar to adjudicate on the truthfulness of candidates' comments during local government elections beyond the framework above, which should guarantee the proper conduct of elections and regulate electoral disinformation. Beyond the issue of the resource impost placed upon the Tasmanian Electoral Commission, it is not considered appropriate that Tasmanian local government electoral legislation test the limits of what is a complex legal and constitutional matter.

To the extent that defamatory material is published during elections, it is noted candidates have the same recourse to civil litigation as do all members of the community.

Reform 16: remove the general restriction upon a person, without the consent of the candidate or intending candidate, printing, publishing or distributing any electoral advertising that contains the name, photograph or a likeness of a candidate or intending candidate at an election; other than 'how-to-vote' material intended to instruct an elector in the completion of their vote.

This reform was recommended through the Electoral Act Review Final Report in respect of Tasmanian parliamentary elections and has been recently supported by the House of Assembly in the Electoral Amendment Bill 2024. Restrictions that closely correspond to those in the *Electoral Act 2004* occur in the *Local Government Act 1993* in respect of local government elections.

It is acknowledged a range of views on this reform are likely to arise. However, the maintenance of the present restriction, with its wide application, could be viewed as inconsistent with the freedom of political communication. The application in practice of the present restrictions is also uncertain, as these are subject to exemptions at section 278(4)(b) regarding 'a broadcast by radio or television or by a repeat on the internet of any such broadcast'.

While this provision is proposed for repeal, the Local Government Electoral Bill will contain substantial and enhanced protections, including authorisation requirements that attribute electoral advertising to the candidate for whom benefit is intended, alongside continued limits on election expenditure. This is considered to achieve similar objectives to the repealed provision without so directly impinging on speech and expression.

Reform 17: clarify the definition of electoral advertising.

The definition of 'electoral advertising' will be strengthened to ensure it encompasses all paid communications in print, broadcast, internet and social media; but does not include general comment in broadcast, print and social media or otherwise on the internet. Electoral advertising will be defined to include (whether paid or unpaid) unsolicited calls (including automated calls) and direct unsolicited electronic messages and direct mail, including letterboxing.

The definition of electoral matter will include electoral advertising.

Reform 18: provide that only a candidate, intending candidate, or a person so nominated in the notice of nomination by a candidate, may incur electoral expenditure; and provide that expenditure by other persons to promote or procure the election of a candidate or intending candidate is an offence.

In the manner of the *Electoral Disclosure and Funding Act 2023* framework for Legislative Council elections, within provisions to commence 1 July 2025, only candidates, intending candidates and a natural person authorised in a candidate's notice of nomination may incur electoral expenditure.

Regulation 22 of the *Local Government (General) Regulations 2015* currently provides presently that 'a person must not purchase electoral advertising time or space in relation to the election of a candidate without the written authority of that candidate', and further: 'a candidate who authorises a person to conduct electoral advertising on his or her behalf relating to an election is taken to have personally undertaken that advertising'.

This means, in effect, only candidates and persons acting as their agents may purchase electoral advertising, and requires that be attributed in full to existing advertising expenditure limits.

However, the indirect nature of this mechanism is less than ideal. A straightforward requirement, made in the new Bill, that only intending candidates, candidates and persons nominated by candidates themselves may incur expenditure is more effective and easier to administer and enforce.

This mechanism also addresses the possibility of broadly unregulated third-party campaigning of a negative character in relation to candidates.

Section 278 of the *Local Government Act 1993* provides presently for a global offence provision regarding electoral advertising to promote or procure the election of a candidate other than in accordance with the regulations, and further provides a successful candidate convicted under that section by a court is to have their election voided in all but special circumstances. This latter provision will be retained.

Reform 19: institute authorisation requirements for electoral advertising and associated material.

Under this reform, electoral advertisements and associated material will require published authorisations, consistent with the requirements in the *Electoral Act 2004*. Authorisation may be by a candidate or intending candidate or a nominated person, identifying the candidate or intending candidate who has provided their endorsement for the advertising or material.

It will be an offence to cause to be published or transmitted electoral advertising without providing the authorisation particulars with the advertising.

These requirements will improve the transparency of elections and improve the integrity of the advertising returns system.

Reform 20: replace advertising expenditure limits with a general expenditure limit, with reference to the expenditure limit for Legislative Council elections under the *Electoral Disclosure and Funding Act 2023*.

Presently, a system providing for an electoral advertising expenditure limit is contained in the *Local Government (General) Regulations 2015*.

It is proposed this limit be expanded to cover election expenditure generally, with reference to the forms of expenditure in and out of scope, and the period, of regulation under the *Electoral Disclosure and Funding Act 2023* in respect of Legislative Council elections (noting those provisions are to commence 1 July 2025).

A general expenditure limit more flexibly (and appropriately) captures the range of campaigning activities open to candidates at contemporary elections.

Reform 21: require that a candidate is to report expenditure made on their behalf in their electoral expenditure return, in the same manner as personal expenditure. The present requirement to attribute, in full, to each candidate so featured the value of advertising featuring multiple candidates (for instance, multiple party candidates) will be retained.

These provisions, currently found in the *Local Government (General) Regulations 2015*, are to be retained and elevated to primary legislation. The effect of these is to attribute expenditure made on behalf of candidates (who must have authorised that expenditure) to individual candidates, to enable the effective regulation of electoral advertising and other campaign activities using individual candidate expenditure limits.

As present, the full value of advertising (or other activities) promoting multiple candidates (for instance, an advertisement depicting several candidates as members of a political party – including across municipal areas – or an advertisement promoting another group of candidates) is attributed to each individual candidate.

While further analysis will be required, the limits are proposed to be retained as at present, being an indexed amount which commenced at $16,000 for candidates in Hobart, Glenorchy, Clarence, Kingborough and Launceston, and $10,000 for remaining councils in 2018.

Reform 22: prohibit any person from incurring any expenditure for or on behalf of a registered party with a view to promoting or procuring the election of a candidate or intending candidate.

This provision occurs in the *Electoral Act 2004*, and in the *Electoral Disclosure and Funding Act 2023*, in respect of Legislative Council elections (with the latter provision commencing 1 July 2025).

This prohibition is meant to complement the above requirement that all electoral expenditure, including advertising, only be made by candidates or intending candidates themselves (or their nominees), which enables regulation and disclosure for individual candidates. It is considered appropriate to apply the same prohibition as stands for Legislative Council elections, given advertising (now to be general) expenditure limits are an existing feature of local government elections.

Reform 23: maintain the $50 threshold for the disclosure of gifts and benefits and extend this requirement from incumbent councillors to all candidates, who will be required to lodge two candidate donation returns with the Tasmanian Electoral Commission. The new Bill will also require the publication of initial donations disclosures on the Commission's website during the polling period and until the certificate of election.

Councillors are required to report gifts and donations of an 'item, service, loan of money, loan of property or any other benefit with a monetary value of $50 or more', or gifts and donations received from the same donor of an aggregate value of $50 or more. As an outcome of the Local Government Legislation Review, Government endorsed all 'electoral candidates will be required to declare gifts and donations received during the electoral period'.

There is no intention to revise the threshold for the disclosure of a gift or benefit in the development of the new Electoral Bill and it is not considered desirable a separate or higher threshold would apply to non-incumbent candidates or sitting councillors.

Councillors are required to provide the general manager notice of the receipt of a gift or benefit over the threshold within 14 days and this forms a register updated on at least a monthly basis and is available for inspection by the public, including on the council's website.

It is proposed that the proposition endorsed through the Local Government Legislation Review be strengthened to apply to gifts and benefits received for the purpose of a supporting an intending candidate's election from 30 days after the certificate of election of the last ordinary election for the council to 30 days after the certificate of election of the current election (the donations period). Victoria's *Local Government Act 2020* establishes an analogous donations period.

Candidates, whether successful or unsuccessful at the election, will be required to provide a donation return, at the same time candidates are required to provide their return in relation to electoral expenditure, being 45 days after the certificate of election. The return will need to be in a form approved by the Tasmanian Electoral Commission and a power will be provided for regulations to be made prescribing information that must be included in the donation return.

To further enhance transparency, it is proposed non-incumbent candidates will be required to lodge an initial donations return at the time they submit their notice of nomination, for the donations period until that date. In lieu of this requirement, councillors who are contesting the election will be able to certify on their return the gifts and benefits disclosed on the register maintained by the general manager are current at the time of their notice of nomination.

The Tasmanian Electoral Commission will be required to publish the initial donations disclosures on its website during the polling period and until the closing day. Subsequently, the final donations returns of successful candidates will be provided to the general manager and form the basis for the new council's gifts and benefits register.

Reform 24: provide that it is an offence for a person other than a candidate or intending candidate to accept a gift or benefit for the purpose of promoting or procuring the election of a candidate, or for the dominant purpose of influencing the way electors vote in an election; and that it is an offence to make a gift or donation to a person other than a candidate or intending candidate for this purpose.

This provision is intended to prohibit donations made to intermediaries which could otherwise obfuscate the origins and purpose of gifts or benefits intended to promote or procure the election of a candidate, or influence the outcomes of elections. These provisions, while far reaching, are proposed as an alternative to a system of requiring returns from third-party campaigners and agents, the complexity of which is considered to be incompatible with the conduct of local government elections. By restricting the receipt and making of donations to candidates and intending candidates themselves, the regulation of gift and benefits through the disclosures of individual candidates can be preserved.

Reform 25: provide that it is an offence for a councillor, intending candidate or candidate, at any time, to accept a donation for the purpose of promoting or procuring the election of a candidate or intending candidate at a local government election:

- over $50, including services or goods valued in kind, without recording the basic details of that donor
- over $50 in cash
- over $50 from a foreign donor.

These requirements are again derived from those in the *Electoral Disclosure and Funding Act 2023*, adjusted for the longstanding financial thresholds for disclosure for councillors. The provision of information collection requirements is intended to support the submission of complete donations disclosures by candidates at the time of nomination and following the certificate of elections.

Provision will be made, in the manner of the *Electoral Disclosure and Funding Act 2023*, for a person to return or dispose of a gift accepted improperly within a short period.

5. Other changes to support the integrity of elections

These additional reforms provide for the continued integrity of local government elections and adopt measures common to other jurisdictions and Tasmanian parliamentary elections. Sanctions for elections offences will be enhanced and the Tasmanian Electoral Commission provided with corresponding powers of investigation; and a legislated caretaker framework will embed the voluntary policy approach adopted by most councils at the 2022 elections. Consistent with the Local Government Legislation Review, elector polls are to be retained, but a larger section of the electorate will be required to petition for an elector poll to be held, reflecting their substantial costs.

Reform 26: provide that a local government election or by-election may not be held such that the polling period overlaps the date of a Tasmanian or Australian Government parliamentary election.

The Bill will provide expressly that a local government election may not coincide with a Tasmanian parliamentary election, of either house, or an election for the Parliament of Australia. As the timing of local government elections is fixed in legislation, with their closing on the last Tuesday in October (absent an order of the Governor) these elections coinciding is not likely, other than for a Legislative Council by-election. However, the making of an express provision removes any need for the Minister for Local Government to seek an order to this effect, as the impact on the community and the Tasmanian Electoral Commission of simultaneous elections (the latter in the case of a state election) is foreseeably unmanageable and would discourage participation and engagement at local council elections.

Reform 27: provide the Tasmanian Electoral Commission with powers of investigation.

Consistent with the outcomes of the Electoral Act Review and the amendments to the *Electoral Act 2004* contained within the *Electoral Matters (Miscellaneous Amendments) Act 2023*, powers of investigation – including powers to compel information and to use that information to prosecute an electoral offence – will be contained in the new Bill. The provisions will mirror those contained in the *Electoral Matters (Miscellaneous Amendments) Act 2023*.

Reform 28: alignment of electoral offences and sanctions with the Electoral Act.

Consideration will be given to aligning electoral offences between the new Bill and the Electoral Act, including enhancements contained in *Electoral Matters (Miscellaneous Amendments) Act 2023*. This includes the introduction of fault elements to the offence of electoral bribery and undue influence as presently established in the *Local Government Act 1993*, and consideration to alignment of

sanctions, including provision that some offences may be tried on indictment or in a court of summary jurisdiction, unlike the existing provision only for summary offences.

Alignment of offences will leverage the recent work of the Electoral Act Review and ensure the Tasmanian Electoral Commission, combined with its powers of investigation, will be able to better ensure the integrity of local government elections in Tasmania.

Reform 29: provide a statutory caretaker framework, applying from the notice of election to the date of the issue of the certificate of election for all elections other than by-elections and countbacks.

While caretaker conventions are non-statutory at state and Australian Government elections, local governments in Victoria, New South Wales, South Australia, and Queensland operate under statutory caretaker rules during their election period, with caretaker provisions legislated in Western Australia for future elections.

Most Tasmanian councils implemented caretaker provisions on a voluntary basis for the 2022 elections, and Government endorsed the introduction of a statutory local government caretaker framework as an outcome of the local government legislation review.

A caretaker period is intended to ensure councils do not make decisions to bind an incoming council inappropriately, and councils cannot use the resources of council to improperly influence the outcome of the elections in favour of incumbent councillors.

Councillors – particularly those not seeking or anticipating re-election – may not be incentivised to make decisions in the interest of the general community, including after the close of polls but prior to the issuance of the certificate of elections. As such, it is appropriate to the limit the matters subject to the decision of elected councils in this time, noting the provisions will only apply for approximately 10 weeks in each four-year local government term.

Reform 30: provide that during the caretaker period, prohibit a council from making any major policy or financial decisions, namely decisions:

- relating to the appointment, reappointment, remuneration or termination of a general manager, other than a decision in respect of the appointment of an acting general manager under section 61B
- committing the council to expenditure greater than one per cent of general and service rating and fees and charges revenue raised in the preceding financial year, or $100,000, whichever is the larger
- directing council resources in a manner intended, or likely to, influence voting at the election
- relating to a matter the council considers it could reasonably defer until after the election period, other than:
    - decisions relating to a matter the council is required to determine in that period under statute
    - decisions of a routine and operational nature.

The specific elements of the proposed caretaker framework correspond generally to interstate caretaker frameworks and are intended to enable effective operations of council through the electoral period.

As the Tasmanian Electoral Commission may not be positioned to investigate the activities of councils, these provisions may be inserted into the *Local Government Act 1993*, or otherwise formulated so the Director of Local Government would hold primary responsibility in respect of compliance.

For instance, in the event of a general manager vacancy during the period the provisions are in effect, council could only make an acting appointment as provided for by section 61B of the *Local Government Act 1993*, but could not substantively appoint a new general manager. A council could not decide to reappoint its general manager or to vary the terms of the appointment or remuneration.

Council decisions committing council to expenditure over one per cent of their own-source revenues from the preceding financial year (with an alternative threshold of $100,000 to provide flexibility to smaller councils) may not be made during the caretaker period. Matters endorsed by elected council previously and which are operationalised within the council organisation, may continue as usual (for instance, the execution of contracts for capital or maintenance works in accordance with councils' previously endorsed annual plans).

Councils will be prevented from directing council resources in a manner likely to influence voting at the election and will be generally required to defer matters which may be reasonably considered after the new council is in place, with the exception of matters of a routine and operational nature (for instance, the execution of works contracts as noted above) or matters councils must consider within the election

period under statute, including the determination of planning applications and other regulatory matters.

Reform 31: provide that during the caretaker period, it is an offence for a council to:

- publish any material in any format which promotes any candidate or group of candidates for election, or otherwise seeks to influence voters in the election
- publish material in relation to the election other than information to promote participation in the election and in relation to election process, or other material of a kind published by the Electoral Commissioner
- make resources available to the advantage of any candidate, which are not equally available to all candidates for election.

Broad restrictions are to apply to the publication of material by councils during the electoral period. These will properly ensure councils cannot leverage public resources to favour incumbent councillors. For instance, councils must refrain from publishing material, including through newsletters or social media posts, promoting initiatives or works completed by council which associates those works with incumbent councillors.

Councils will be permitted (and indeed should) publish material generally to encourage and facilitate participation in compulsory local government elections.

Similarly, councils would not be permitted to make resources available to the advantage of any candidate which are not equally available to all candidates. For instance, a council could not hold a candidate forum where an invitation to participate was not extended equally to every candidate.

Reform 32: provide that major policy or financial decisions of a council during the caretaker period are of no effect and provide that persons who incur loss or damage due to an ineffectual decision of a council, who acted in good faith, are entitled to recover compensation from the council.

Council compliance with the caretaker provisions relating to the making of decisions is enforced by providing that such decisions are of no effect at law. As a contractual counterparty who acted in good faith could be disadvantaged, it is to be provided that a party so disadvantaged may recover compensation from the council under the *Local Government Act 1993*.

Variations of this provision have been implemented in Victoria, South Australia and Queensland.

While the proposal may lead to public funds being expended on financial penalties in the future, it is considered that strong incentives towards compliance are in the broader public interest.

Consideration will be given to provision for a dispensation from the Minister or Director for a decision to be made in prescribed circumstances. Versions of this are provided for in New South Wales, South Australia and Queensland.

Reform 33: increase the proportion of electors signing a petition required to compel a council to hold an elector poll to 20 per cent; while restricting the matters about which an elector poll may be held to matters with a legitimate connection to the exercise of a council's functions or powers or to the incorporation of the council, as determined by the council.

This proposal is an endorsed outcome of the Local Government Legislation Review.

Presently, an elector poll can be compelled by a petition signed by the lesser of 1000 electors, or five per cent of electors; following from a public meeting which can be compelled by a petition signed by the same number of electors.

Under present provisions, issues which motivate in the order of two per cent of electors in the largest municipalities, or 40 people in the smallest, can lead to a general elector poll at substantial public expense.

Elector polls are advisory and do not bind the subsequent decision making of councils on any issue. For that reason, and despite appearances, they are not a direct democratic mechanism, but rather a means of establishing the sentiment of the community in a local government area on an issue.

Councils may, on their own initiative and without receiving a petition, hold elector polls, and this is not proposed to change.

Elector polls are expensive, especially when held out of cycle with local government elections. For example, the recent Clarence City Council poll, resulting from a public petition, was estimated to cost in the order of $200,000. Raising the threshold to compel an elector poll (or hold a public meeting) to 20 per cent of electors ensures that elector polls are only held (without the initiative of council) for issues which credibly motivate a large proportion of the community, and where the proposition has a clear prospect of gaining popular support. Similarly, placing some limitations around the matters upon which an elector poll may be held will avoid substantial public expenditure to test sentiment on matters remote to councils, noting elector polls are an inefficient and expensive means of testing the views of the public.