

Protecting integrity: Investigation into 2016 Wyndham City Council election



Local Government Investigations and Compliance Inspectorate
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November 2017

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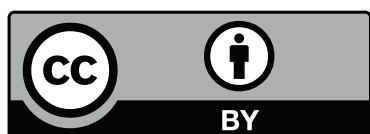
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Foreword

David Wolf, *Chief Municipal Inspector*



Protecting the integrity and transparency of the democratic process for council elections is a role my office gives highest priority to as this underpins the system of government. During the 2016 general council elections my office received and responded to more than 2000 enquiries and received 409 formal complaints. Dozens of contacts from community members and 21 formal complaints related to the activities of candidates for the City of Wyndham election.

In addition to the enquiries and complaints, our attention was drawn to this municipality by the unusually high number of candidates that nominated for the election. With 95 candidates – almost three times the state average of candidates per position vacant – this issue alone was the subject of significant commentary in the local community and media, driving many contacts with my office.

Initial responses to specific allegations revealed information about several candidates potentially having unlawfully nominated or receiving inducements to nominate. Given the complexity and impact of these actions, it was important for the integrity of the election to understand if this was a broader issue or confined to a small number of candidates. On that basis, my office initiated a full examination of all candidates involved in the Wyndham council election.

Our investigation included the examination of campaign material, media articles, social media posts, relevant documents and interviews with 90 of the 95 candidates. Of the five remaining candidates, three exercised their rights in a criminal investigation to not be interviewed, one was travelling for the duration of the investigation but provided information and the remaining candidate remains a person of interest in a matter yet to conclude.

From my perspective, there are three important issues arising from the investigation which I will highlight and are further expanded on in this report. Firstly, the large majority of the candidates who nominated for this election were genuine in their intentions, albeit with varied motivation and understanding of the councillor role. Given the number of candidates this is encouraging, however a theme around a lack of understanding of the role of a councillor, particularly for first-time candidates, was consistent.

Secondly, this investigation identified 10 candidates where reservations or impropriety about their candidacy were revealed. Of concern were actions of candidates to establish false entitlements in the municipality in order to nominate for council and more concerning were actions that resulted in two people being nominated as candidates without their knowledge. The latter case is a complex matter under active investigation.

The final issue is identifying opportunities that strengthen the local council election process and provide greater confidence for voters in their candidates and, ultimately, council. Earlier this year my office published a report summarising our activity and observations from the 2016 general council elections. In this report we recommended the strengthening of the nomination process to require candidates to provide proof of identity and satisfy the personal and financial probity elements of eligibility criteria. The findings of the Wyndham election investigation further support this recommendation.

Our view remains that the current self-certification by candidates – to acknowledge identity and the eligibility criteria is met – is open to genuine mistakes or deliberate deceit. The production of identification and a police and personal solvency check at the time of nomination would limit corruption and integrity risks and prevent potentially ineligible candidate nominations.

The vast majority of candidates advised the Inspectorate that providing this material was a reasonable requirement and would not have impeded or deterred their nomination. In addition, evidence suggests that candidates considered as non-genuine may not have nominated if required to take these additional steps.

In publishing this report, I must acknowledge the significant work by my staff, the support and assistance provided by the administration of Wyndham City Council and the vast majority of candidates who provided their valuable time, insight and information.

1 Background

Local government elections, particularly those in municipalities with a high number of candidate nominations, have been a key source of complaints since the Local Government Investigations and Compliance Inspectorate (the Inspectorate) was established in 2009.

With an unprecedented 95 candidates running for Wyndham City Council in the October 2016 election, and community concerns over the validity of specific candidates, allegations came to light during and well after the election period that required investigation. This municipality has the highest overall number of candidates and at a rate of 8.6 candidates per vacancy, this was close to three times the state average.¹ Harrison Ward as an example had the highest number of candidates of any ward across all Victorian councils with 41 nominations.

	Number of candidates	Number of vacancies	Average candidates per vacancy
Wyndham City Council – 2016 election	95	11	8.6
All Victorian councils – 2016 election	2135	635	3.3

Table 1: Statistics from 2016 council elections
(Source: Victorian Electoral Commission)

In the course of the elections, the Inspectorate received a high proportion of complaints related to matters such as unauthorised electoral material and conduct of candidates.

Additionally, allegations were made about potential illegal activity such as bribery and unlawful nominations, which had the potential to undermine the democratic process. Several allegations related to the running of non-genuine candidates (commonly referred to as “dummies”) to direct preferences to one candidate and improve their chances of being elected. While not illegal, this has the potential to negatively affect the confidence of voters in the electoral system and in the elected councillors.

More disturbingly, in early 2017, the Inspectorate identified two individuals who were not aware they had been candidates in the election. The circumstances of their nomination remains under active investigation and accordingly, no further details can be provided in this report.

2 Investigation scope and aims

The Inspectorate is the dedicated integrity agency for local government in Victoria and investigates offences under the *Local Government Act 1989*. The Chief Municipal Inspector leads the Inspectorate and is able to investigate or examine any matters relating to council operations, elections and can prosecute any offence under the Act.

During the 2016 elections, the Inspectorate received 409 complaints across all Victorian councils, including 21 directly related to the Wyndham election – the highest related to any Victorian council election². The Inspectorate received a large volume of additional enquiries with concerns about the conduct of Wyndham candidates that continued until well after the elections.

On the basis of the number and seriousness of the complaints and allegations, the Inspectorate initiated a large-scale investigation into the broader conduct of all candidates including any illegal activity in this election. Seventy-eight candidates were interviewed during May and June 2017 and 12 further candidates interviewed over the course of the investigation. Five candidates were not interviewed during this process: three exercised their legal right not to be interviewed, one candidate was overseas and one is involved in an ongoing investigation.

The Inspectorate acknowledged that public assistance would be required to substantiate the allegations and speculation, which had received significant coverage in social and traditional media. Accordingly, the Inspectorate invited public submissions to be made. Despite this being publicised in print, social media and advertising, only six allegations with limited supporting evidence were subsequently received from the public.

The Inspectorate’s aim was to monitor activity during the election period, then to conduct a broader review to explore issues and identify gaps or opportunities to strengthen the system.

This report will deal with allegations made about candidates in the election, the Inspectorate’s findings resulting from interviews, information and intelligence gathered, and opportunities to improve the system.

1 Statistics from Victorian Electoral Commission’s 2016 Local Government Elections Report.

2 Complaints submitted to the Inspectorate during the 2016 council election period, recorded from 1 September to 30 November 2016.

3 Concerns raised

The following issues were presented by the community and other candidates through complaints, social media and in-person interviews and have been aggregated into six key areas:

1. Non-genuine candidates
2. Candidates not living in Wyndham
3. Candidates nominating in wards other than where they live
4. Bribes or inducements offered to nominate
5. No understanding of the role of councillor
6. Transparency of candidate alignment and preference deals

3.1 Non-genuine candidates

In the course of and subsequent to the Wyndham City Council election, the Inspectorate received and noted many concerns around the genuine nature of candidates. Non-genuine candidates are commonly referred to as “dummy candidates”.

What are non-genuine candidates?

The community expects candidates to run with the intention of being elected. It is also not uncommon for groups of candidates with similar aims, values or political alliances to exchange preferences to maximise their chance of being elected.

In contrast, non-genuine candidates are individuals who conduct little or no campaign and have no involvement in the community. Rather than seeking to be elected the general purpose for nominating is to direct preferences to another candidate to increase the candidate’s chances of success³.

The law requires candidates must satisfy the eligibility criteria to nominate but once accepted as a candidate, there are no laws that dictate they must campaign in a particular way.

What distinguishes a genuine from a non-genuine candidate?

The investigation found several distinguishing factors between genuine and non-genuine candidates, such as:

- whether the candidates resided in the municipality and had valid reasons for nominating
- whether they had knowledge or received training regarding the role of a councillor
- their level of community involvement
- whether they were genuinely interested in being elected
- whether they actively campaigned.

Were a large number of candidates non-genuine?

Interviews revealed that the overwhelming majority of candidates chose to nominate for council in order to represent the interests of their ward or the broader Wyndham community.

Several candidates who met the eligibility requirements appeared to have been assisted to nominate by other candidates and conducted little or no campaigning, giving the impression their nomination served no other purpose than to deliver preferences to other candidates. While not illegal, this does little to enhance the integrity of the process.

Of the 95 candidates, evidence indicates 85 candidates were considered genuine candidates. Ten candidates, however, were found to have certain behaviours that raised questions about the legitimacy of their candidature. These behaviours included: dubious entitlement, no active campaigning, attended no information sessions or training and in some cases being unaware they had even nominated as candidates. Encouragingly, voters may have identified these traits and none of these candidates were elected to council.

Examples

Unusual preference arrangement

Candidate 1 and Candidate 2: This investigation found two candidates standing for council for the first time. Despite standing for council to support each other, both indicated their second preference for another candidate (A) who features in all examples. Candidate (A) was connected to several candidates through an employer/employee relationship or by addresses used for residential entitlements or, in this case, as associates. While preference deals are a matter for each candidate, the Inspectorate found this situation unusual whereby a candidate indicates a second preference for another candidate (A) before preferencing their partner.

No intention of being elected

Candidate 3: This candidate nominated for council but did not attend any information sessions and informed the Inspectorate they had not conducted any research on a councillor’s role. This candidate claimed on the Candidate Questionnaire Lodgement Form to having read the Council Plan and Councillor Code of Conduct but later admitted those answers were false. This candidate conducted no electoral campaign yet indicated their second preference for the same previously mentioned candidate (A).

³ For an explanation of the preferential voting system, visit the VEC website: <https://www.vec.vic.gov.au/Voting/PreferentialVoting.html>

The table below is an example of two contrasting candidates, based on information and intelligence gained by the Inspectorate during the investigation.

Candidate A (genuine)	Candidate B (non-genuine)
Resided in Wyndham for more than a year before nominating	Enrolled at Wyndham address close to closure of nominations
Had understanding of role as either a previous councillor or through independent research or training	Had no prior knowledge and/or understanding of role
Attended the VEC training sessions	<ul style="list-style-type: none"> • Did not attend the VEC information sessions • Did not read the Candidate Information Kit
Genuinely interested in community and history of engagement with local issues	Limited or no knowledge or involvement with the community
Wrote and submitted own candidate statement	Either did not submit a candidate statement or their statement was prepared and submitted by another person

Table 2: Examples of two candidates in the Wyndham election

3.2 Candidates not living in Wyndham

Several concerns were raised about candidates who were suspected of either not living in Wyndham or having a suspicious entitlement to nominate.

What does 'candidate entitlement' mean?

Individuals are required to have an entitlement to nominate as a candidate for local government elections. To be entitled to nominate for council, one of the key requirements is that the candidate must be enrolled as a voter in the municipal district in which they wish to nominate for a period of at least 57 days prior to the election date. Candidates must nominate at least 32 days prior to the election day. The most commonly used form of entitlement is a residential entitlement.

During the interview process, it was ascertained that nearly half (48%) had lived in Wyndham for less than five years prior to nominating for council and about 10% had lived in the area for less than a year. Allegations against a small number of candidates related to their claims of residential entitlement made just prior to the entitlement period closing. This could either reflect the fact that Wyndham is an area experiencing high population growth and migration from other parts of Victoria, interstate and overseas, or it may indicate deliberate attempts to undermine the system.

While the majority had a clear residential entitlement, the Inspectorate's investigation revealed two cases of suspicious entitlement where candidates enrolled shortly before close of entitlement period using addresses which did not appear genuine. These two candidates also maintained other residential properties outside the municipality but given the high threshold of evidence required, the offence of unlawful nomination could not be established beyond reasonable doubt as required for a criminal prosecution.

Suspicious residential entitlement

Candidate 4: This candidate was a former employee of candidate (A). This candidate indicated their second preference for their former employer in their candidate statement. They updated their residential address to claim a residential entitlement in the municipality three days before the entitlement period closed. This residential entitlement related to a small bungalow behind a larger residence, which was associated with their former employer, candidate (A). This candidate maintained a primary residence a significant distance from the municipality and conducted little or no campaign. The Inspectorate's view is that the candidate was running in support of their former employer, candidate (A) with no intention of being elected. This candidate exercised their right to not be interviewed in respect to this matter and despite a strong circumstantial case, the Inspectorate was unable to reach the evidentiary threshold to initiate a criminal prosecution for false nomination.

Candidate 5: This candidate was connected to candidate (A) as per previous examples. This investigation revealed this candidate changed their residential address 13 days before the entitlement period closed, using a Wyndham address also associated with candidate (A). The property was found to be in a dilapidated state with no electricity or water connection and considered uninhabitable. The candidate was also found to be maintaining another residence in a municipality a significant distance from Wyndham and conducted no election campaign. This candidate also indicated their second preference for candidate (A). This candidate exercised their right to not be interviewed in respect to this matter. Despite a strong circumstantial case, the Inspectorate was unable to reach the evidentiary threshold to initiate a criminal prosecution for false nomination.

3.3 Candidates nominating in wards other than where they live

Nominating in a different ward to where a candidate resides without specific reason to nominate in that ward can be indicative of a non-genuine candidate. The law does not currently restrict the candidate to nominating in the ward they live in, as long as an entitlement in the municipal district exists. The Inspectorate notes however, there is a matter currently before the Supreme Court resulting from a Municipal Electoral Tribunal hearing that may challenge this view.

Of the candidates interviewed, 32 nominated in wards other than the ward in which they resided. Three key reasons were given for candidates choosing this option:

- Having a closer affinity with the community in that ward
- Running as part of a group ticket and not in competition with other group members, and/or
- Identifying competition in their own ward and electing to run in a less-contested ward.

Several candidates stated their choice of ward was based on their personal connections to members of the community in a particular ward. For example, some candidates that lived in the Iramoo ward nominated in either the Chaffey or Harrison wards, as Iramoo was perceived to have an agricultural focus, which did not fit their work or personal interests.

“In Iramoo ward, (the) majority of the people there are from agricultural background. I’m a financial professional, so most of my network, friends, people are in Harrison ward. That...means I understand their problems, their concerns more. Because I’m not from an agricultural background I won’t be able to help people from that background as much...”

Almost 40% of candidates contested in wards other than where they resided and the majority gave the Inspectorate well-founded reasons for running in a particular ward. This demonstrates that candidates nominating in alternative wards was common but does not raise concerns about the genuine nature of their candidacy or negatively impact on the integrity of the election.

3.4 Bribes or inducements offered to nominate

The Inspectorate received several allegations relating to candidates being offered inducements or personal gain to nominate in support of another candidate. Allegations of this nature, if proven, are extremely serious and undermine the democratic system of government. The Act provides a specific offence of bribery which, if proven, carries a maximum penalty of five years imprisonment and/or a fine of \$95,142.

In most cases, the allegations were not supported by any evidence, or insufficient evidence to reach the prosecutable threshold. Many of these cases related to complaints about a candidate or other person funding the nomination fee or election campaign of another candidate to garner support through preferential arrangements.

In the course of this investigation, the Inspectorate did discover a set of circumstances where two candidates had been deceived into nominating on the premise of a benefit. This is an exceptionally complex matter that is continuing in order to determine if a prosecutable case exists. No further details can be provided in this report.

3.5 No understanding of the role of a councillor

A consistent concern raised in candidate interviews was that many candidates had no understanding of what the role and/or responsibility of a councillor entailed.

When nominating, it was considered by candidates as desirable to understand the role of a councillor, the workings of the democratic process and the challenges and needs of the community. One of the key ways first-time candidates learn about the role of a councillor is through attending information training sessions run by the Victorian Electoral Commission (VEC), peak industry bodies or council. These sessions are held primarily for the purpose of assisting candidates in the nomination process and in understanding their responsibilities as a candidate.

In the course of this investigation, it was ascertained that most candidates displayed engagement with the community and at least a basic understanding of political systems and the electoral process.

“I’ve had a passion for politics for some years, I’ve been involved in either a volunteer or working capacity with state or federal members of parliament. I have a very clear link in relation to my political degree – it’s political science. I...ran for local government to help people but also to get an opportunity to do more in the community”

However, of the 95 candidates who nominated, more than 70% of candidates interviewed said they had never previously nominated as a councillor. Of those first-time candidates, more than 40% had not attended training sessions and had limited or no understanding of the role.

Q: What do you think being a councillor involves?

A: "I still don't know exactly what it is. I was just going to get into it and see. If I didn't like it, then get out"

The investigation also revealed that candidates who displayed little understanding of the role had varied reasons for nominating, ranging from representing certain minority groups to attaining social or political status through election to council.

"I've been to a meeting once and I saw the proceedings. I liked the people there...they clap and everything so I liked it"

Understood role of councillor

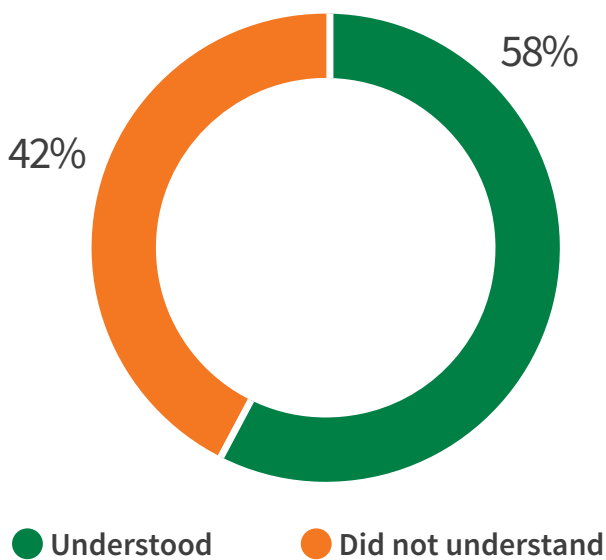


Figure 1: Candidates who showed understanding of the councillor role (from interview responses)

Pre-nomination training and information

The investigation revealed that 24 first time candidates had not attended information or training sessions and had limited understanding of the role of a councillor. While not a prerequisite for eligibility to nominate, the majority of candidates believed compulsory training and education prior to nomination should be considered. Candidates felt that mandatory training would improve both councillors' ability to fulfil their positions and public perceptions of their competency for the role. Importantly, candidates noted that mandatory training or information sessions would not deter them from nominating in future.

3.6 Transparency of candidate alignment and preference deals

In the course of general elections, many concerns were raised about the difficulty faced by voters in determining the alignment of individual candidates and the preference system.

It was found that many candidates exchanged preferences based on shared values, beliefs or interests. Candidates supported by political parties, as occurs in most levels of politics, typically preferred other party members. Preference arrangements are not against the law. The issue that caused most concern was around candidate alignment and the transparency of any preference deals.

On 31 August 2016, the Victorian Parliament disallowed the regulation prescribing indications of preferences at local council postal elections. As a result, candidates were no longer able to lodge an indication of preferences for inclusion in the ballot pack mailed to voters.

Some candidates used their published candidate statement to indicate their preferences, which was not prohibited by legislative change, but other candidates missed this opportunity; this may have led to a perception of imbalance amongst the candidates and a lack of transparency for the voter.

The Inspectorate notes that, with such a high number of candidates, it was difficult for voters to determine which candidates were aligned. Many candidates raised this as an issue.

"People contacted me asking how they should vote ...because they said "we can't make head nor tail of this ballot paper"..With 41 candidates, the feedback that I was getting was "I can't understand it.""

4 Conclusion

The democratic process for local government is underpinned by fair and transparent elections for the Office of Councillor. Laws exist to establish who is eligible to nominate, how they nominate and certain requirements when campaigning to be elected. There are also laws in place to protect the integrity of the election process and consequences for those proven to have offended against those laws.

Council elections, similar to most elections, heighten the emotions of candidates and parties to the election, which is often a positive sign of engagement in the process. This can also create perceptions of unfairness when candidates make statements, claims or criticisms that are considered embellished or untrue or, as in a number of cases with this election, candidates are effectively invisible in the election process. Drawing a distinction between robust political debate or electioneering and unlawful activity to undermine the democratic process is one of the key challenges in an election.

Through the election period, most complaints and issues raised with the Inspectorate were found to fall in the category of electioneering or no offence against the law. Through the investigation, the majority of candidates were also found to be genuine with the large number of candidates more a reflection of a growing and diverse community.

As previously identified in this report, the Inspectorate did identify ten candidates where concerns about legitimacy were realised. Ten candidates from a field of 95 on the surface represents a very high percentage but the investigation revealed that this was in fact two loosely aligned groups.

One group, depicted through examples in this report, were connected through a principal candidate and nominations appear solely for the purpose of supporting the election of the principal candidate. Of this group, several candidates did not appear genuine in their candidacy but genuineness is not a legislative requirement. Other candidates in this group were the subject of an extensive investigation for false nomination, however, the criminal prosecution threshold could not be satisfied.

The second candidate group remains under active investigation with a strong likelihood of serious charges for the principal candidate of this group.

Contrary to the widespread concerns, and with the exception of the two loosely aligned groups, the Inspectorate is of the view the election process was largely fair and transparent. The investigation did highlight three key themes which present as opportunities for improvement the process and perceptions of candidates. These were:

- ease of candidates to nominate,
- lack of understanding of the councillor role, and
- transparency of alignment by candidates.

The ease of nomination was raised in the Inspectorate's 2016 election report and will be addressed in the recommendations to follow. Understanding the role of a councillor was an issue raised by many candidates and mandatory attendance at an information session prior to nomination was proposed as a solution.

The high proportion of Wyndham candidates raised many concerns about the genuine nature and/or alignment of candidates. If this is to be reflected in future elections there should be greater transparency of candidate alignment to reduce confusion and improve voter engagement in the electorate.

5 Inspectorate recommendations

This investigation revealed several candidates that had signed and lodged a nomination form but were unaware of its meaning. It also revealed candidates claiming dubious residential entitlements and non-genuine candidates that nominated to support other candidates.

Following the 2016 general elections, the Inspectorate produced a report recommending the strengthening of the nomination process, requiring candidates to substantiate personal eligibility criteria and provide supporting photographic identification when nominating.⁴

While this process does not directly relate to the three key issues found in this investigation, the additional steps by a candidate to provide a police and financial probity check achieves several outcomes:

1. Ensuring the eligibility of the candidate
2. Provision of two additional documents by a candidate at the time of nomination can also verify identity and potentially, their entitlement address
3. These steps may deter non-genuine candidates identified in the course of this investigation.

It should be noted that genuine candidates had no objection to these additional steps.

Q: “Would having to undertake a criminal history check prior to nominating dissuade you from nominating for council?”

A: “No. It doesn't make any difference to me”

⁴ Further recommendations arising from the 2016 council elections are on pages 14-15 of *Protecting Integrity: 2016 council elections*

Appendix 1

Relevant legislation

Local Government Act 1989

The principal legislation in Victoria governing councils is the Local Government Act 1989. This Act provides the aims and functions of local government as well as providing the legal framework for establishing and managing councils. The Act gives the Victorian Parliament the power to make laws for local government, including laws relating to the constitution of councils, council elections and the powers and duties of councillors and council staff.

The full Act can be accessed here:

http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/

Specific sections off the Act can be accessed on the AustLII website:

http://www.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol_act/lga1989182/

Local Government (Electoral) Regulations 2016

These regulations prescribe matters relating to the conduct of local government elections:

[http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/b05145073fa2a882ca256da4001bc4e7/7245AA21A39375C9CA257FFC001E3AAB/\\$FILE/16-091sra%20authorised.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/b05145073fa2a882ca256da4001bc4e7/7245AA21A39375C9CA257FFC001E3AAB/$FILE/16-091sra%20authorised.pdf)

Appendix 2

Local Government Act provisions related to elections

Section 11	Entitlement to be on voters' roll
Section 22	Voters' roll preparation
Section 24C	Misuse of voters' roll
Section 28	Candidate eligibility
Section 29	Disqualification of candidate
Section 41	Holding of an election
Section 52	Unlawful nomination
Section 54	Interfering with rights
Section 55	Authorisation of election material
Section 55A	Statements likely to mislead or deceive a voter in the casting of their vote
Section 55B	Heading of electoral advertisements
Section 55C	Authors to be identified
Section 55D	Prohibition on Council
Section 58	Offences relating to ballot papers
Section 58A	Interference with postal ballot materials
Section 59	Bribery, treating and undue influence
Section 62	Election campaign donation returns by candidates
Section 76D	Councillor misuse of position
Section 78	Indirect interest by close association
Section 79	Disclosure of conflict of interest
Section 80	Exemption by Minister
Section 81	Register of interests
Section 238A	False written declaration
Schedule 2	Provisions with respect to the holding of an election
Schedule 3	Provisions with respect to voting and the counting of votes and polls of voters
Schedule 3A	Provisions with respect to filling extraordinary vacancies
Schedule 4	Provisions relating to municipal electoral tribunals
Schedule 6	Provisions with respect to equal employment opportunity
Schedule 8	Provisions with respect to local laws



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