

# Feedback–October 2022 Local Government Elections

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This submission is provided in response to the Tasmanian government’s call for public feedback providing insight on the voters’ experiences of the October 2022 local government elections, the first compulsory elections held for this tier of government.

## Introduction:

Recognising this review of the historic October 2022 local government elections is not seeking to revisit whether compulsory voting should be used for this tier of government, the comments provided in this submission reflect personal observations of the October local government elections, matters raised with me by constituents during and since that election period, as well as public policy analysis.

While in the main, the 2022 local government elections appear to be administered to the sound professional standard by the Tasmanian Electoral Commission (TEC) as many Tasmanians have come to expect, it is not surprising that given the sudden and short timeframe by which compulsory voting was legislated and then had to be implemented, that matters of some gravity were experienced.

Of particular concern is the expressed actual, and potential for, disenfranchisement of Tasmanian voters arising from:

- Inadequate communication regarding the change in compulsory voting requirements;
- Insufficient provision for voters with visual impairment;
- Sole reliance on postal voting.

These concerns surrounding potential partial or actual disenfranchisement were substantiated to some extent by the Tasmanian Electoral Commission’s announcement of the 14<sup>th</sup> of December 2022 that failure to vote penalties for the local government election would be waived – despite 40, 000 failure to vote letters being issued – for the following reasons:

- *These are the first compulsory local government elections,*
- *Concerns about accessibility of electoral materials for vision-impaired and print disabled electors,*
- *Adverse weather events, particularly in northern Tasmania during the polling period that could have impacted elector ability to return ballot papers,*
- *The short timeframe between the change to compulsory voting and the commencement of the elections,*
- *The restricted access to postal voting services for electors travelling overseas.*<sup>1</sup>

This public statement clearly acknowledges both the short transition period - and therefore the limited capacity for any effective public education and engagement campaigns - and concerns regarding difficulty for voters to participate in and meet their newly legislated obligations were very real factors impacting upon Tasmanian citizens’ perceived or actual capacity to fully engage in their voting rights equitably and fairly.

Although there are a range of other concerns which were raised publicly in the lead up to the poll, during and since, the main focus of this feedback will be on these concerns which touch on the serious matter of potential disenfranchisement.

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<sup>1</sup> TEC media statement, [The TEC to dispatch apparent failure to vote notices for two compulsory elections](#), 14 December 2022.

## Timeline:

There were only 11 days between the compulsory voting reform being announced by the Minister and the legislation passing the Upper House, providing little opportunity for consultation with the Local Government sector or the broader community at the time. Further, between the State parliament debate in June last year and the September commencement of the local council election process there was limited time and opportunity for broader public awareness raising of the changed voting process as well as preparation of the administration of the election process.

- **Monday, 23 May 2022** – Minister Nic Street MP announces via media release his intention to legislate mandatory voting for local council elections, commencing with the October poll.
- **Monday, 23 May 2022** – President of the Local Government Association Tasmania (LGAT) states in a media release that the sector should have been consulted before voting changes announced.
- **Tuesday, 24 May 2022** - the *Local Government Amendment (Elections) Bill 2022*, number 28 of 2022, was tabled in the Assembly.
- **Tuesday, 31 May 2022** - the Bill passed the Assembly unamended.
- **Wednesday, 1 June 2022** – the Bill introduced and debated in the Legislative Council.
- **Thursday, 2 June 2022** – the Bill passes the third reading in the Council unamended.
- **Thursday, 16 June 2022** – the new *Local Government Amendment (Elections) Act 2022*, receives Royal Assent.
- **Saturday, 3 September 2022** – the Tasmanian Electoral Commission (TEC) publishes the formal notice of the local government elections.
- **Monday, 3 October 2022** – polling opened in the local government elections.
- **Tuesday, 25 October 2022** – polling closed.
- **Tuesday, 1 November 2022** – TEC announces final vote count is concluded.
- **Tuesday, 8 November 2022** – Legislative Council motion (moved by Meg Webb MLC) debated seeking to establish a comprehensive evaluation review of the impact of the inaugural compulsory voting requirements in local government elections.
- **Wednesday, 14 December 2022** – TEC announces that approximately 40,000 failure to vote notices were issued to electors who appeared to have failed to vote in the local council polls, while noting “... *the Commissioner has resolved that no penalties will be issued for the 2022 local government elections*” citing a range of reasons including the fact this was the first time mandatory voting was employed for Council elections, the short timeframe of that transition, and concerns over both restricted access to election materials for voters with a visual impairment and access to postal voting facilities for Tasmanians out of the state.

## Compulsory Voting – Government Obligations:

It must be noted the historic and inaugural use of compulsory voting in the October 2022 local government elections saw an unprecedented 348,453 total votes returned, representing a statewide return rate of 84.79%. Additionally, a further 32,002 total ballot papers were returned in response to the concurrent Hobart Elector Poll.<sup>2</sup>

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<sup>2</sup> TEC website: [www.tec.tas.gov.au](http://www.tec.tas.gov.au) 2022.

These statistics would infer that the government achieved its goal as expressed by Minister Street in a media release on the 2nd of June, following the passage of the Bill through the parliament:

*“By making voting compulsory, we will lift community’s perception of local government and its importance by bringing local council elections into line with State and Federal elections. We also want to lift community’s engagement with the local government sector...”*

However, as cited above, there were approximately 40, 000 eligible voters who did not engage in the October 2022 poll.

In the absence of data to indicate reasons for this non-engagement we also need to examine whether the state authorities sufficiently met their responsibilities to facilitate voters accessing their formal rights and obligations to vote.

As stated by University of Adelaide Political Professor Lisa Hill, while “... Australian citizens have a formal entitlement to vote, [...] declaring the existence of a right is empty if the opportunity and transaction costs of exercising that right are too costly. The right to vote should be readily exercisable in order that it is exercised.”<sup>3</sup>

Further:

*“...the right to vote is readily translated from a formal and negative right to an exercised ‘material’ right<sup>2</sup> because most of the ergonomic and practical obstacles to voting normally experienced by electors in voluntary systems have already been eliminated by the state by the time elections take place. Of course, this is not because of any inherent properties of compulsion, simply that in a properly administered system like Australia’s, governments have recognised that they have an obligation to ensure that the imposed duty to vote is not too onerous to perform, in the same way that governments provide public schools in order to ensure that the obligation of compulsory school attendance does not place an undue burden on individual parents.”<sup>4</sup>*

The October 2022 local government elections raised some serious questions whether the State had made sufficient effort to meet it’s “obligation to ensure that the imposed duty to vote is not too onerous to perform”, particularly in the following key areas: reliance upon postal voting resulting in problematic provision of ballot papers to eligible voters, and appropriate accessible information and ballots for those Tasmanians with a visual impairment.

Serious concerns were raised during the October 2022 polling period that despite some voters’ best attempts to ensure their roll details were current, ballot paper packs did not arrive in a timely manner, and in some instances not at all.<sup>5</sup> This raises queries over the appropriateness of relying solely on a postal ballot system for mandatory voting requirements, which will be discussed in further detail below.

It is of significant concern that the State may also have failed to meet fully its obligation to ensure all eligible Tasmanians with a visual impairment and/or a print disability were not discriminated against by the manner in which the new mandatory voting local government elections were held.

As detailed by Disability Voices Tasmania, up to 1 in 5 voters could be affected by the postal ballot-only option due to their print disabilities which include vision impairment or blindness, people with physical dexterity problems, learning disability, brain injury, early dementia as well as those with literacy difficulties.

Further, removing the threat of a penalty for failing to vote for this sector of the Tasmanian community does not address the government’s obligation to ensure that all Tasmanians with a right to vote can access

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<sup>3</sup> Lisa Hill (2017) Compulsory voting and the promotion of human rights in Australia, *Australian Journal of Human Rights*, 23:2, 188-202, DOI: [10.1080/1323238X.2017.1363373](https://doi.org/10.1080/1323238X.2017.1363373)

<sup>4</sup> Ibid.

<sup>5</sup> Some of these concerns were reported via media outlets during and after the October polling period.

the means by which to exercise that right, in an accessible and non-discriminatory manner as outlined by Professor Hill above. By mandating voting for local council elections, the state government must also meet its obligations to ensure an equitable voting system is available to all eligible voters. As stated by Tasmanian branch President of Blind Citizens Australia Duncan Meerding:

*“We don’t want to be ‘let off’ from voting. We demand a non-discriminatory voting system. It’s the bedrock of democracy and is a right protected under the [United Nations’ Convention for the Rights of Persons with Disabilities](#), which Australia has committed to. We know accessible voting can be done because it has been done in other elections in the past.”<sup>6</sup>*

It is also worth noting the TEC’s efforts to provide “an impartial assisted voting service” detailed in a media statement of the 3<sup>rd</sup> of October last year.<sup>7</sup> However, these arrangements were criticised for their complexity but also for the apparent placement of onus upon the visually impaired or print-challenged voter. Additionally, standard election materials such as candidate statement booklets were not immediately available as they were for non-visually impaired voters, but would instead be, “... available on the TEC website in a more accessible format later in the week.”<sup>8</sup>

This not only recognises the equitable necessity for such accessible election materials, but is also a worrying verification that the State had failed to meet its obligations to ensure all voters had equal access and means by which to fully participate in a democratic election as is their mandated human and legal right and responsibility.

The veracity of these concerns is reinforced by the TEC’s public statement of the 14<sup>th</sup> of December when confirming that failure to vote penalties would be waived for this particular poll, citing, amongst other factors, “concerns about accessibility of electoral materials for vision-impaired and print disabled electors.”

While acknowledging this preventable obstacle is an important start, it is equally important that the process to identify and develop viable alternatives **must** include as many as possible representatives from those affected communities throughout that process in its entirety.

## **Interstate Compulsory Voting Local Government elections:**

Nationally, only South Australia and Western Australia still allow voluntary voting for their respective local government elections (noting the ACT does not have a local government tier).

New South Wales, Victoria, Queensland, and the Northern Territory all use compulsory voting in their respective local government elections, yet unlike these jurisdictions Tasmania appears to be the only state which relies solely upon postal voting for its mandatory voting local council elections.

- The Queensland local government elections are held every four years on the last Saturday in March – using a dual voting system providing for both attendance booths for polling day, and postal voting for 16 of the 77 local councils, or upon voter application;
- Victoria also holds a dual voting system providing for both attendance booths on Saturday election day, and postal voting, which must be returned the day prior polling day (noting the Victorian latest 2020 local council elections were entirely postal due to COVID-19 pandemic restrictions);
- The Northern Territory also holds a dual voting system providing for both attendance booths on Saturday election day, and postal voting; and
- New South Wales holds an attendance Saturday election day, and does not use broadscale postal voting.

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<sup>6</sup> Joint Media Statement, *Local Government postal Voting Excludes Many Tasmanians*, issued by Disability Voices Tasmania, and Blind Citizens Australia (Tas Branch), 28 September 2022. See full statement in Appendix A.

<sup>7</sup> TEC, [The provision of an impartial assisted voting service for the 2022 local government elections](#), 3 October 2022.

<sup>8</sup> Ibid.

Yet the Tasmanian Parliament was told during the June debate on the *Local Government (Elections) Bill* that, “*Compulsory postal voting interstate shows it delivers higher participation rates,*” but without any corroborating data provided.<sup>9</sup>

What was the basis of that determination that compulsory postal voting delivers “higher participation rates”? If that is the case, why do all other interstate jurisdictions with compulsory voting which use postal voting also provide for attendance polling booths between 8am and 6pm on Saturday polling days? Was that option canvassed by the Tasmanian government prior the October poll, and importantly how do we evaluate whether attendance polling day facilities could help electors with a visual impairment, plus mitigate issues of missing postal ballot packages, as well as people failing to post their completed ballots in time? Would a dual voting system potentially help increase turnout beyond even the 86% achieved this time?

Anecdotally, it has been raised publicly and via my electorate office, that particularly those with a visual impairment and those expressing frustration that their ballot paper package had not arrived at their residential address in a timely manner or at all, would prefer the option of attending a TEC polling booth as per similar facilities available for federal and state general elections.

### **Adequacy of post-election review processes:**

It is matter of public record that I have argued for a comprehensive evidence-based evaluation review be undertaken of the implementation of compulsory voting in the 2022 local government elections and any matters arising, that:

- (a) provides a public consultation process;
- (b) engages with the local government sector, and the broader community;
- (c) is separate and additional to the Tasmanian Electoral Commission’s standard procedural Report on Elections;
- (d) is adequately resourced; and
- (e) the final report of which is to be tabled in both Houses of Parliament once the Minister has received and considered its findings.

While this government survey process is some form of a public consultation process it is insufficient on its own, even with the Minister’s flagged further legislative review in 2023. A survey is not going to provide a public, stringent, accountable and transparent mechanism which:

- collates timely evidence-based data and voters’ experiences to assess the transition process;
- assesses the impact on voting rates, informal votes and how well the postal ballot system held up; and
- documents any other matters arising from both voters’ and administrators’ experiences.

It is well established practice in other jurisdictions, including the Australian Parliament, which regularly hold post- federal and state election evaluation inquiries, that these are additional and separate to their respective Electoral Commissions’ reports, and in fact those Electoral Commissions participate in the post - election committee evaluation processes.

Once again, the government is urged to consider introducing systematic comprehensive and timely post-election evaluations, including for the periodic local government polls.

### **40, 000 failure to vote notices**

As stated above, on the 14<sup>th</sup> of December last year the TEC confirmed they had issued 40, 000 failure to vote letters pertaining to the October local government elections. When added to the total number of

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<sup>9</sup> *Legislative Council HANSARD*, Leader of Government Second Reading Debate, 1 June 2022.

formal votes received, the 40,000 non-voters equates to approximately 10.3% of the potential eligible electorate.

It would be a useful investment in improved voter engagement in preparation for future local government elections to investigate the specific reasons for, and any particular obstacles contributing to, this 40,000 failures to vote. To what degree was lack of awareness of the changed voting requirements a contributing factor to this cohort, for example, or problems with inaccurate electoral rolls preventing access to ballot papers, lack of appropriate visually impaired materials, lack of interstate or international postal voting facilities, or any other impediments to participation?

Potentially the TEC is seeking that insight from as many of those 40,000 as possible, but if not, then that effort should be made in as systematic and thorough manner as possible, and then integrated into the broader public debate in a transparent manner.

Providing an initial penalty amnesty due to short-notice legislative changes is a fair response on this instance, however on its own it does little to rectify any structural obstacles to these voters being able to fully participate in, and meet, their legal voting rights and obligations.

### **Concluding comments:**

To reiterate, while I appreciate this opportunity to provide some feedback through this post-election review process, the significance of this tier of government combined with the acknowledged sudden change in government policy regarding compulsory voting for local council elections, warrants a more comprehensive evidence-based public review of the inaugural implementation of this change in voting requirements, the voting public's experiences as well as that of the TEC.

As stated above, such a comprehensive evaluation review would not be to revisit whether to extend compulsory voting to local government elections, but instead would examine the impact of that transition, as well as how well and equitably the transition was undertaken.

### ***Specific Questions Arising***

There is also scope to facilitate the formation and examination of a clear whole-of-picture scenario. For example, the valuable experiences and observations of individual voters should also be viewed within the context of departmental and other pre-election modelling measured against actual results and outcomes, public outreach and information campaigns ground-truthed and assessed for effectiveness, and adequate and timely access to ballot papers and capacity to submit them examined in a statewide rigorous and systematic manner.

Further questions arising from the 2022 poll include:

- To what extent did the reduced preferencing requirements contribute to vote exhaustion, or not, and how was this assessed? What are future opportunities to review and reform this aspect if considered necessary to do so?
- What government pre-poll modelling was undertaken, and how does that compare with the actual election evidence now available?
- What are the potential future arrangements for election cost sharing between the local government sector and the state government? Should there be election cost sharing or should it be absorbed by the state entirely?
- Is postal voting-only appropriate for any compulsory voting elections, or should Tasmania move to emulating a polling booth-based system emulating the provisions for Federal and State general elections, or investigating a hybrid-model such as that employed in Victoria? What is the criteria and methodology against which the pros and cons of alternative polling systems will be evaluated?

- To what extent was the public education campaign sufficient and where could it be improved? Which sectors of the community may not have been reached or which could be better serviced?
- What work has been undertaken to identify the key contributing factors resulting in the approximate 40,000 failure to vote notices, what are those key contributing factors, and how will they be addressed for future polls?
- How do we ensure that *all* election materials are available in an accessible and timely manner for *all* eligible Tasmanians? This cannot be left to being addressed until once the formal election period has commenced, as appeared to be the case during the October 2022 polling period.
- Capacity-building of the TEC to ensure adequate resourcing during all pre-poll, formal election, and post-poll evaluation periods to meet both community expectations as well as a safe and sustainable work environment for TEC personnel. Further, were there any additional operational and logistical impacts due to the inclusion of the Hobart City Council Electors Poll, noting the local government elections occurred hot on the heels of the 10 September 2022 by-election for the Upper House electorate of Pembroke, placing increased additional demands upon the TEC.

These and other related matters, should not just be raised solely via an individual survey process, but should be explored, examined and debated in a transparent accessible public forum utilising experience of voters, candidates and administrators involved, as well as local and interstate expertise.

As the Minister, Mr Nic Street MP said, *“We have taken a big step forward for democracy with compulsory voting for local government elections. We now need to continue to build on this and review every aspect of the way that we run elections for local government in Tasmania.”*<sup>10</sup> A comprehensive review, including public hearings, could provide an appropriate forum, while also investing in strengthening voter enfranchisement and participation in the next local government elections.

While I note the Department of Premier and Cabinet website states survey responses will be collated, and overall findings presented in an aggregated report that will be published on that website and provided to the TEC, I would also urge consideration of making all survey responses (where appropriate and possibly de-identified where necessary) public as if they were submissions to a parliamentary inquiry or a standard government public consultation process. This would be consistent with the current government position to release routinely public consultation documentation and submissions, to reflect *“community expectations”* to have access to *“information that informs Government decision-making on major policy matters.”*<sup>11</sup>

Such a fundamental change in public policy transitioning from non-compulsory to mandatory voting in a tier of government, especially when announced and implemented over such a short timeframe, would warrant consideration as a *“major policy matter”* discussion.

Further, additional to the flagged compilation report being provided to the TEC, it should be formally presented to the State Parliament. It was stated during the June 2022 debate on the *Local Government Amendment (Elections) Bill* that, *“it is part of our role as members of state parliament to structure local government”*. However, if it is the role of the Parliament to structure local government, then it is also our obligation to take responsibility and accountability for any structural outcomes and ramifications. And one standard mechanism of exercising such responsibility is to ensure any findings are formally presented to the Parliament, the entity responsible for making those changes in the first place.

In light of the above comments, I confirm I provide permission for this local government 2022 elections survey response to be published in full as part of this public review process.

<sup>10</sup> Media Release, Nic Street MP, [A busy 2023 agenda for local government in Tasmania](#), 1 December 2022.

<sup>11</sup> DPAC, Public Submissions Policy:

[https://www.dpac.tas.gov.au/divisions/People Performance and Governance/government services/public submissions policy](https://www.dpac.tas.gov.au/divisions/People%20Performance%20and%20Governance/government%20services/public%20submissions%20policy)



Media Release 28/9/22

### Local Government Postal Voting excludes many Tasmanians



***Tasmanians with disability have launched discrimination complaints against the Tasmanian Electoral Commission. They say they are shut out of local government elections and risk a \$173 fine because the Commission does not offer independent accessible voting options that have been available in other elections it has run.***

Voting in Tasmanian Local Government elections is compulsory for the first time this year, following recent amendments to the [Local Government Act 1993](#). The only way for voters to cast their ballot in this election is through a postal vote on paper, presenting various concerns for voters with print disability who cannot read, mark or handle the paper ballot.

“This is no small group”, said Disability Voices Tasmania Chair, Michael Small. “It includes people with vision impairment or blindness, people with physical dexterity problems, learning disability, brain injury, early dementia as well as those with literacy difficulties.”

Up to 1 in 5 voters could be affected because they have print disabilities ([Radio for Print Handicapped](#))

In response to these concerns, the Electoral Commissioner has suggested that voters ask family or friends for help them cast their vote.

“Making voters with disability rely on family or friends totally undermines the concept of secret ballots and undermines the Electoral Commission’s ability to stop a long list of serious voting offences such as coercion, influencing and fraud,” said Mr Small.

The Commissioner has said people who cannot vote by post will not be penalised, however Tasmanian branch President of Blind Citizens Australia Duncan Meerding said “We don’t want to be ‘let off’ from voting. We demand a non-discriminatory voting system. It’s the bedrock of democracy and is a right protected under the [United Nations’ Convention for the Rights of Persons with Disabilities](#), which Australia has committed to. We know accessible voting can be done because it has been done in other elections in the past.”

“Disability Voices Tasmania supports the [call by Blind Citizens Australia for secret, independent and verifiable voting systems](#) that work for all voters across all jurisdictions.”, said Mr Small.

“In the Parliamentary debates that produced this discriminatory law, not one Member wondered about how postal-only voting would work for people with disabilities,” said Mr Meerding.

Discrimination complaints have been lodged under both the Tasmanian *Anti-Discrimination Act* and the Federal *Disability Discrimination Act*.

The complainants are demanding the Commission do all it can to provide impartial assistance with voting for this election and work directly with disability community organisations to ensure future elections are fully accessible.

#### Background

##### What Is Print Disability

[Vision Australia](#) says print disability is a difficulty or inability to read printed material due to a perceptual, physical or vision disability. For example:

- vision impairment or blindness
- physical dexterity problems such as multiple sclerosis, Parkinson's disease, arthritis or paralysis
- learning disability, such as dyslexia
- brain injury or cognitive impairment
- literacy difficulties
- early dementia

[Print Radio Tasmania](#) gives practical examples of who is affected and estimates that half of all Tasmanians can benefit from having print read to them.

### **Can Elections Be Made Accessible?**

The Australian Electoral Commission shows [what can be done to make elections accessible](#). This has included voting by phone. It is clear that voting by phone is not hard to implement, as [phone voting was stood up very quickly during the COVID19 pandemic](#).

Extensive help is also offered by the states to voters in [New South Wales](#), [Queensland](#), [Victoria](#) and [Western Australia](#). It includes various combinations of help at polling places, computerised voting, phone voting and even Braille ballot papers.

There is no shortage of willing partners among civil society organisations ready and able to help electoral commissions make elections work better for everyone;

[Position Statement on Accessible Voting](#), Blind Citizens Australia

[Federal Election Hub 2022](#), People With Disability Australia

[Disability advocates ask about accessibility voting measures](#)

[Voting, accessibility and supports](#), Disability Advocacy Network Australia

[I Can Vote](#)

This energy and innovation seems to have passed by the Tasmanian Electoral Commission.

### **How Does Tasmania Compare To Current Good Practice?**

The Tasmanian Electoral Commissioner has approved procedures for helping voters that apply to the Electoral Act, which governs State elections. They can not apply to the [Local Government Act](#) because it prescribes voting by post on paper and in no other way.

[Procedures for assisting certain electors at polling places](#); (help at polling places)

[Procedures for assisting certain electors at polling places \(blind and vision impaired electors\)](#); (use of computerised voting system at polling places)

These procedures, along with telephone voting for **overseas** postal voters, were used at the [Legislative Council elections 2022](#) and the [Pembroke By-election 2022](#).

However, the computerised voting system was only available at a small number of polling places even though the Electoral Commission said to other voters “The TEC's electronic roll means you can vote at any polling place...”.

The Electoral Commissioner has approved a procedure to help postal voters which could be applied to the [Local Government Act](#). However, the procedure violates the right to a secret, independent vote enjoyed by most voters, and abandons safeguards against electoral offences such as coercion, influencing and fraud.

[Procedure for assisting certain postal voters](#).

### **About The Organisations Behind This Media Release**

[Disability Voices Tasmania](#) is run by & for people with disabilities. Our purpose is to advance a Tasmania in which the equal rights, dignity and voices of people with disability are understood, respected and promoted.

[Blind Citizens Australia](#) is the national representative organisation of people who are blind or vision impaired. Our purpose is to inform, connect, and empower Australians who are blind or vision impaired and the broader community.