

1.4 Recommendations by the Taskforce

Table 2 - Summary of Taskforce Recommendations

Topic	Recommendations
<p>3.0.0 Approach and Principles for the Development of the New Act</p>	<p>The Taskforce recommends</p> <ol style="list-style-type: none"> (1) integrated planning and reporting form the central framework for the new Act providing local government with a robust strategic planning mechanism that is based on community engagement, expectations and aspirations, and financial responsibilities (2) a flexible, principles-based legislative framework, avoiding excessive prescription and unnecessary red tape, written in plain language and presented in a logical format. The new Act should be confined to setting out the principles of how councils are established and operate. When further detail or explanation is required as to how these principles are to be achieved, regulations, codes and guidelines should be used (3) a more consistent approach be adopted to the definition, naming and use of regulatory and other instruments, noting that currently there is inconsistent use of mandatory and discretionary codes, guidelines, practice notes, discretionary guidelines and the like.
<p>3.1.0 Structure of the New Local Government Act</p>	<p>The Taskforce recommends that the new Act is structured with the following elements:</p> <p>Part I - Structural Framework of Local Government in NSW</p> <ul style="list-style-type: none"> • Purpose of Local Government Act – 3.1.1 • Role of Local Government – 3.1.2 • Guiding Principles – 3.1.2 • Legal status of councils (includes establishment) – 3.1.3 • Roles and Responsibilities of Council Officials – 3.1.4 <p>Part II - Strategic Framework for Local Government in NSW</p> <ul style="list-style-type: none"> • Integrated Planning and Reporting – 3.2.1 • Community Engagement – 3.2.2 • Performance of Local Government – 3.2.3 <p>Part III - Council Operations</p> <ul style="list-style-type: none"> • Governance Framework – 3.3.1 – 3.3.8 • Financial practices – 3.3.9 – 3.3.11 • Public Private Partnerships – 3.3.12 • Public Land – 3.3.13 – 3.3.14 • Regulatory Functions – 3.3.15 – 3.3.16 • Other functions <p>Part IV - Tribunals and Commissions - 3.3.17</p>
<p>3.1.1 Purposes of the Local Government Act</p>	<p>The Taskforce recommends that the Purposes of the Local Government Act be drafted as follows:</p> <p>The purpose of this Act is to provide</p> <ol style="list-style-type: none"> (1) a legal framework for the NSW system of local government in accordance with section 51 of the <i>Constitution Act 1902 (NSW)</i> (2) the nature and extent of the responsibilities and powers of local government (3) a system of local government that is democratically elected, interactive with and accountable to the community, and is sustainable, flexible, effective and maximises value.
<p>3.1.2 Role and Guiding Principles of Local Government</p>	<p>The Taskforce recommends the inclusion of a new Role of local government and a set of Guiding Principles for local government as follows:</p> <p>Role of Local Government</p> <p>The Role of local government is to provide local democracy, strategic civic leadership, stewardship and sound governance to achieve sustainable social, economic, environmental, health and wellbeing and civic engagement through:</p> <ol style="list-style-type: none"> (1) utilising integrated planning and reporting (2) working in cooperative arrangements with the community, other councils, State and Commonwealth Governments to achieve and report outcomes based on community priority as established through integrated planning and reporting (3) providing or procuring effective, efficient and financially affordable economic assets, services and regulation (4) exercising democratic local leadership and inclusive decision-making (5) having regard to the long term and cumulative effects of its decisions (6) valuing local difference and system diversity (7) committing to the application of the Guiding Principles of local government

Topic	Recommendations
<p>3.1.2 Role and Guiding Principles of Local Government cont'd</p>	<p>Guiding Principles of Local Government</p> <p>Guiding Principles to be observed by local government are to:</p> <ol style="list-style-type: none"> (1) provide elected community-based representative and participatory local democracy, and open and accountable government (2) foster and balance the needs, interests, social and economic wellbeing of individuals, diverse groups and community (3) adhere to the social justice principles of equity, rights, access and participation (4) encourage stewardship and facilitate sustainable, responsible management of resources, infrastructure and development (5) consider future generations by protecting, restoring and enhancing the quality of the environment to maintain ecologically sustainable development, reduce risks to human health and prevent environmental degradation (6) ensure sustainable management and that all decisions incorporate considerations of risk management and long-term sustainability (7) recognise the responsibility of other levels of government in the provision of local services while accepting that local choices should be made at the local level wherever possible under the principle of subsidiarity (8) achieve and maintain accepted best practice public governance and administration, and act fairly, responsibly, ethically, transparently and in the public interest (9) optimise technology, and foster innovation and continuous improvement.
<p>3.1.3 Constitution of Councils</p>	<p>The Taskforce recommends that the legal status of councils remains as a “body politic”.</p>
<p>3.1.4 Roles and Responsibilities of Council Officials</p>	<p>The Taskforce recommends following consideration of the final report of the Independent Panel, the roles and responsibilities of mayors, councillors and general managers are reviewed to ensure they align with the requirements of the strengthened IPR framework (see section 3.2.1 below) and any recommendations of the Independent Panel that may be adopted by the State Government.</p>
<p>3.2.1 Integrated Planning and Reporting (IPR)</p>	<p>The Taskforce recommends</p> <ol style="list-style-type: none"> (1) elevating IPR to form the central framework of the new Act and the primary strategic tool that enables councils to fulfil their civic leadership role and deliver infrastructure, services and regulation based on community priorities identified by working in partnership with the community, other councils and the State Government (2) strengthening and embedding the principles of IPR in the Act more broadly, setting minimum standards in the Act and defining process through regulation, codes and/or guidelines (3) removing duplication from other parts of the Act, where the principle or practice is already captured in the IPR legislation or guidelines (4) ensuring the legislation facilitates a strategic leadership role for councils in their local communities (5) moving sections of the Act to other legislation, in order to create an Act that better reflects the strategic role of councils and the framework that ensures and enables that role. The Taskforce proposes the outline displayed in Table 6 as the chapter structure of the new Act (6) simplifying the provisions of IPR to increase flexibility for councils to deliver IPR in a locally appropriate manner.
<p>3.2.2 Community Engagement</p>	<p>The Taskforce recommends</p> <ol style="list-style-type: none"> (1) councils prepare the most locally appropriate and flexible community engagement strategy guidelines. This will provide communities the opportunity to engage, through the following and other locally appropriate principles, and allow a flexible framework for continuing community engagement. The principles for such strategy will: <ol style="list-style-type: none"> a. include commitment to the community being at the centre of local government using ongoing engagement which ensures fairness in the distribution of resources; rights are recognised and promoted; people have fairer access to the economic resources and services essential to meet their basic needs and to improve their quality of life; and people have better opportunities to become informed and involved especially through use of technology b. consider and understand that persons who may be affected by, or have an interest in, a decision or matter should be provided with access to relevant information concerning the purpose of the engagement and the scope of the decision(s) to be taken

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<p>3.2.2 Community Engagement cont'd</p>	<ul style="list-style-type: none"> c. consider and understand that interested persons should have adequate time and reasonable opportunity to present their views to the council in an appropriate manner and format d. ensure that the views presented to the council will be given due consideration e. consider and understand that councils, in exercising their discretion as to how engagement will proceed in any particular circumstance, will have regard to the reasonable expectations of the community, the nature and significance of the decision or matter, the costs and benefits of the consultation process, and to intergenerational equity f. arrange flexible special engagement procedures in particular instances g. consider all groups, even though it may be difficult to reach every diverse community group, and some groups will choose not to engage.
<p>3.2.3 Performance of Local Government</p>	<p>The Taskforce recommends that a performance system is developed that is linked to IPR and includes the following elements:</p> <ul style="list-style-type: none"> (1) a standard series of measures that can compare the performance of councils across the State (2) an analysis of the performance measures results so that councils can identify the actions required to elevate performance (3) a self-assessment of the performance of the governing body on an annual basis (4) in lieu of an end of term report, councils provide a mid-term report as to progress with the Community Strategic Plan.
<p>3.2.4 Technology</p>	<p>The Taskforce recommends</p> <ul style="list-style-type: none"> (1) as a general principle the Act should enable optimal, flexible and innovative use of technology by councils to promote efficiency and enhance accessibility and engagement for the benefit of constituents (2) the Act should allow each council to determine the most appropriate use of technology taking into account the Guiding Principles of local government and community engagement through the IPR framework.
<p>3.3.1 Elections</p>	<p>The Taskforce recommends</p> <ul style="list-style-type: none"> (1) councils to have the option of using universal postal voting or alternative means of voting such as technology assisted voting where feasible as a means of increasing efficiency and voter participation and reducing council costs (2) the Act be drafted so as to enable the adoption of new technologies such as technology assisted voting when feasible to do so (3) include mechanisms for removing the need for by-elections, when a vacancy occurs either in the first year following an ordinary council election or up to 18 months prior to an ordinary election as a means of avoiding the holding of costly by-elections (4) a counting system should be adopted as an appropriate mechanism for filling vacancies that occur within the first year following an ordinary election whereby the unelected candidate who had the next highest number of votes be appointed to fill the vacant position (5) councils to be required to fill vacancies occurring after the first year following an ordinary election and up to 18 months prior to the next ordinary election by the postal voting method (6) where universal postal voting is used for any election, a candidate information booklet is to be included in ballot packs as a way of increasing voter knowledge of the candidates (7) the transfer of local government elections law to a single new Elections Act to consolidate all State and local government election provisions along with the regulation of campaign finance and expenditure (8) the term of mayors elected by the councillors to be extended from 1 year to 2 years.
<p>3.3.2 Meetings</p>	<p>The Taskforce recommends that the provisions relating to council meetings be:</p> <ul style="list-style-type: none"> (1) consolidated into a generic mandatory Code of Meeting Practice that may if necessary be supplemented to meet local requirements, provided the amendments are not inconsistent with the provisions of the Act and standard Code of Meeting Practice (2) modernised and unnecessary prescription and red tape removed (3) designed to facilitate councils utilising current and emerging technologies in the conduct of meetings and facilitating public access (4) flexible to enable remote attendance through technology at council meetings in emergencies such as natural disasters.

Topic	Recommendations
<p>3.3.3 Appointment and Management of Staff</p>	<p>The Taskforce recommends</p> <p>(1) the strategic responsibilities of the council be clearly separated from operational responsibilities and be aligned with IPR by:</p> <ul style="list-style-type: none"> • the council being responsible: <ul style="list-style-type: none"> • for determining those services and priorities required by the community, and for providing the necessary resources to achieve the council's Delivery Program; and • on the advice of the general manager, the council determine the organisation structure to the level that directly reports to the general manager • the general manager being responsible: <ul style="list-style-type: none"> • for determining the balance of the organisation structure; and • for recruiting all staff with appropriate qualifications to fulfill each role within the structure. The general manager will consult with council regarding the appointment and dismissal of senior staff <p>(2) positions meeting the criteria as senior staff be appointed under the prescribed standard contract for senior staff, identified as senior staff positions within the organisation structure, and remuneration be reported in the council's annual report</p> <p>(3) each council to determine arrangements for regulatory responsibilities other than under the Act</p> <p>(4) the current prescription in the Act relating to the advertising of staff positions and staff appointments be transferred to regulation or to the relevant industrial award</p> <p>(5) that the maximum term allowable for temporary staff appointments be extended from 1 year to 2 years</p>
<p>3.3.4 Regional Strategic Organisations of Councils and Formation and Involvement in Corporations and Other Entities</p>	<p>The Taskforce recommends</p> <p>(1) the Act include a mechanism enabling councils to form statutory entities to undertake regional strategic collaboration activities. The Taskforce is of the view that, in place of Regional Organisations of Councils, a model similar to that developed by the Hunter Councils – Council of Mayors provides a suitable mechanism for achieving regional strategic collaboration, with the exception of Western NSW. ROCs could transition to a Council of Mayors to broaden joint collaboration between councils</p> <p>(2) the provisions of the Act relating to the formation of corporations and other entities should continue.</p>
<p>3.3.5 Protection from Liability</p>	<p>The Taskforce does not propose changes to the liability provisions of the Act.</p>
<p>3.3.6 Code of Conduct</p>	<p>The Taskforce does not propose changes to the conduct provisions of the Act.</p>
<p>3.3.7 Pecuniary Interest</p>	<p>The Taskforce recommends</p> <p>(1) the pecuniary interest provisions be reviewed to ensure they are written in plain language, easily understood and with unnecessary red tape removed</p> <p>(2) consideration be given to utilising technology to assist with the submission and maintenance of pecuniary interest disclosures and to facilitate appropriate access to this information, while ensuring that privacy rights are protected.</p>
<p>3.3.8 Delegations</p>	<p>The Taskforce recommends</p> <p>(1) that the provisions of the Act relating to delegations be reviewed to ensure that they are streamlined, written in plain language and are reflective of the roles and responsibilities of the council and the general manager to facilitate the efficient, effective and accountable operation of local government.</p> <p>(2) that the exceptions to delegations of an operational nature not be carried forward to the new Act, ensuring the council focuses on strategic decisions, consistent with IPR. These would include for example:</p> <ul style="list-style-type: none"> • acceptance of tenders • provision of minor financial assistance to community groups • delegation of regulatory functions to another council or shared services body.

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<p>3.3.9 Financial Governance</p>	<p>The Taskforce recommends</p> <ol style="list-style-type: none"> (1) there be greater focus on principles and definition of financial systems and minimum standards in the new legislative framework and for assimilation of financial governance with the IPR requirements (2) there be a realignment of the regulatory focus under the legislative framework towards systems and risk management rather than process prescription (3) complementing the Guiding Principles of local government, the new Act should articulate a set of financial (or corporate) governance principles that align more effectively with the principles and objectives of IPR, especially in relation to stewardship of resources and accountability. For example: <ol style="list-style-type: none"> a. safeguarding integrity in financial reporting b. making timely and balanced disclosures c. recognising and managing risk (4) minimum expectations be prescribed by legislation or sub-regulatory instrument. A potential framework is: <ol style="list-style-type: none"> a. financial management governance and oversight b. financial management structure, systems, policies and procedures c. financial management reporting (5) financial statement requirements be included under IPR annual reporting requirements (6) a further review of rating and finance matters be undertaken as required after the Independent Panel recommendations are determined by the State Government.
<p>3.3.10 Procurement</p>	<p>The Taskforce recommends</p> <ol style="list-style-type: none"> (1) the adoption of central principles of procurement combined with a medium level of regulation to ensure support of the following principles: <ol style="list-style-type: none"> a. accountability b. value for money c. probity, equity, fairness and risk management d. efficient and effective competition e. market assessment (2) main considerations for each principle be contained in the Act or regulations, with further considerations contained in guidelines or a mandatory code (3) a council's procurement framework be consistent with its IPR framework (4) rather than the legislation setting a monetary threshold, a more flexible principles-based approach be established to enable councils to determine their threshold based on risk assessment of the proposed procurement and the procurement principles (5) regulation of procurement support councils entering into collaborative procurement arrangements and utilising technologies to assist with efficient, effective and economic procurement processes that are accessible to all relevant stakeholders and are fair, open and transparent (6) a regulation or code to express councils' default procurement framework (7) councils be qualified to adopt a more strategic approach through "earned autonomy" whereby: <ol style="list-style-type: none"> a. the Division of Local Government may exempt a council from compliance with a requirement under the regulation or code where it is satisfied that a council's procurement framework is consistent with the procurement principles; and b. qualification for a council's earned autonomy may be through an accreditation process or by council's development and diligent maintenance of policies and practices that are consistent with requirements issued by the Division of Local Government or other oversight entity. Qualification by accreditation is preferred as this should increase the accountability of councils to the community. (8) councils continue to be able to take advantage of purchasing from Commonwealth and State Government procurement panels and the State Government policies which afford exemption from tendering obligations such as when purchasing from registered Australian Disability Enterprises.
<p>3.3.11 Capital Expenditure Framework</p>	<p>The Taskforce recommends a capital expenditure and monitoring guideline be developed that integrates with the IPR framework and enables the appropriate management of risk by councils. This guideline should be tailored to risk levels, including significance of the project, materiality and whole of life costs, and not based on arbitrary monetary thresholds or procurement vehicles.</p>

Topic	Recommendations
<p>3.3.12 Public Private Partnerships (PPP)</p>	<p>The Taskforce recommends</p> <ol style="list-style-type: none"> (1) that PPP projects continue to be subject to regulation due to the significance of the risks involved (2) aspects that could be streamlined or simplified be identified and mechanisms for ensuring PPPs be considered for inclusion in the IPR framework.
<p>3.3.13 Acquisition of Land</p>	<p>The Taskforce recommends council plans for the compulsory acquisition of land be linked with the IPR processes, and in particular the expressed opinion of the community in the Community Strategic Plan on the need for additional public land or the sale of public land be included in Delivery Program provisions.</p>
<p>3.3.14 Public Land</p>	<p>The Taskforce recommends</p> <ol style="list-style-type: none"> (1) councils be required to strategically manage council-owned public land as assets through the IPR framework (2) balancing reasonable protections for public land use and disposal by retaining the classification regime of public land as either community or operational land and require a council resolution at the time of acquiring or purchasing land to specify the classification, category and proposed use or uses (3) a proposed change in the use or disposal of community land be addressed through the council's Asset Management Planning and Delivery Program (4) a public hearing be held by an independent person where it is proposed to change the existing dominant use or to dispose of community land, with the results of the public hearing to be reported to and considered by the council before a decision is made (5) any use of a public hearing or other consultation process under the Act be specified in the council's Community Engagement Strategy (6) recognising the LEP zoning processes and restrictions applying to council owned public land (7) simplifying and reducing the categories and sub-categories of use to which community land may be applied through the Asset Management Planning process so as to identify and accommodate other ancillary or compatible uses appropriate to the current and future needs of the community (8) ceasing the need for separate plans of management for community land to be prepared and maintained, and in lieu, utilise the Asset Management Planning and Delivery Program of the IPR process (9) ceasing the need for a separate report to be obtained from the Department of Planning and the need for ministerial approval where council proposes to grant a lease, licence or other estate over community land in excess of the current 5 years, where an objection has been received by the council (10) proposed leases and licences be addressed as part of the council's Asset Management Plan and adopted Community Engagement Strategy with the 30 year maximum term to remain unchanged.
<p>3.3.15 Approvals, Orders and Enforcement</p>	<p>The Taskforce recommends</p> <ol style="list-style-type: none"> (1) regulatory provisions be reviewed to ensure that the Act provides guidance on regulatory principles but contains flexibility and less prescription in regulation implementation, provision of statutory minimum standards or thresholds, and councils having discretionary "on-the-ground" functions (2) consideration be given to the notion of a risk based approval process where persons or corporations are given general approval to conduct certain work rather than dealing with applications on a piecemeal basis (3) within this framework, the prescriptive processes of approvals and orders be streamlined and, subject to risk assessment, be placed where possible into regulations (4) removal of as many approvals and orders as possible and placing in specialist legislation if they cannot be repealed (5) the principles for dealing with approvals and orders be incorporated into a council's IPR framework through the Delivery and Operational Plans, including adoption of an Enforcement Policy and any LAPs and LOPs (6) penalties for offences in the Act and regulations be increased to ensure they are proportionate to the nature of the offence, and that the ability to serve a penalty notice should be made an option for additional offences (7) councils be required to adopt an Enforcement Policy stating what factors will be considered in determining whether or not to take action, including the level of risk. The factors should be consistent across all councils (8) improving councils' ability to recover costs for conducting work on private land (9) aligning council powers of entry with contemporary legislative standards (10) increasing the time limit for commencing summary proceedings from 6 to 12 months.

Topic	Recommendations
3.3.16 Water Management	<p>The Taskforce supports changes proposed to water recycling provisions which will consolidate and simplify the legislative framework. Otherwise the Taskforce makes no recommendations regarding the structures for the delivery of water and sewerage in non-urban areas, noting that the Taskforce gave the issue consideration but is aware this area is being dealt with by other reviews.</p>
3.3.17 Tribunals and Commissions	<p>The Taskforce notes</p> <ol style="list-style-type: none"> (1) it is expected the Local Government Pecuniary Interest and Disciplinary Tribunal will be consolidated into the newly constituted NSW Civil and Administrative Tribunal (2) the Independent Panel is examining the issue of structures and boundaries, how boundary changes might be facilitated, and possible change of method of operation of the Local Government Boundaries Commission and accordingly makes no comment pending the outcome of this review (3) consideration be given whether to merge the Local Government Remuneration Tribunal with the Statutory and Other Officers Remuneration Tribunal.
3.3.18 Other Matters	<p>The Taskforce recommends</p> <ol style="list-style-type: none"> (1) consistent with Taskforce recommendation 1.3, that in place of sections 23A and 10B(5) that the Act empowers the Director General to issue mandatory codes on operational and governance matters relevant to local government (2) a formal Oath of Office for councillors is introduced as a mechanism for inducting councillors into their role and reinforcing the serious nature of the role and the chief responsibilities and duties the role entails (3) the provisions of the Act governing councils' expenses and facilities policy are reviewed to ensure they are streamlined and unnecessary red tape eliminated (4) a review be undertaken of circumstances that do not invalidate council decisions and including consideration of the appropriateness of adding the following to those circumstances that do not invalidate council decisions – "a failure to comply with the consultation and engagement principles" (5) conferring authority on councils to allocate, maintain and enforce property numbering (6) councils be provided with an effective means to regulate camping in vehicles on road and road related areas (7) the following matters be reviewed depending on the outcomes of other reviews currently incomplete: <ol style="list-style-type: none"> a. how councils are financed, particularly rating. The Taskforce consistently received feedback detailing issues with the provisions of the Act relating to how councils are financed b. community engagement to ensure consistency with the planning community participation proposals under the new Planning Act if adopted c. Tribunals and Commissions, particularly the role and functions of the Boundaries Commission to ensure that the Act supports recommendations of the Independent Panel adopted by the State Government d. roles and responsibilities of council officials. It is essential that the Act clearly defines the roles and responsibilities of the mayor, councillors and the general manager. The Taskforce recommends that these definitions are reviewed to ensure they reflect recommendations of the Independent Panel adopted by the State Government.

Topic	Recommendations
<p>4.1 City of Sydney Act</p>	<p>The Taskforce recommends</p> <p>(1) a separate Act for the City of Sydney be retained (pending the report and recommendations of the Independent Panel) noting that the Sydney City Council is also subject to the provisions of the Local Government Act</p> <p>(2) the electoral provisions applying to the Sydney City Council be transferred from the CoSA to a new Elections Act, as recommended at section 3.3.1 above, thereby providing a single repository for NSW electoral law</p> <p>(3) residents of the City of Sydney who are at the relevant date enrolled, within the meaning of the <i>Parliamentary Electorates and Elections Act 1912</i>, on the roll for any electoral district and whose place of living as described on the rolls is within the City of Sydney, shall be entitled to one vote provided that if a person is so entitled to vote because they are a resident of the City of Sydney, they shall not be entitled to be enrolled as an elector in any other capacity</p> <p>(4) (i) that persons presently entitled to vote and corporations who are entitled to nominate a person to vote on its behalf to vote under the CoSA at Council elections be entitled to enrol to vote (ii) that persons, other than those on the roll as set out in recommendation 4.1(3) being presently entitled to vote under the CoSA at Council elections, retain that entitlement to enrol to vote. If a person so entitled to enrol to vote or a corporation who is entitled to nominate a person to enrol to vote on their behalf has not enrolled to vote by the due date or being a corporation nominated a person to enrol to vote on their behalf by the due date, then those persons so entitled to vote as individuals or on behalf of corporations shall be deemed to be enrolled to vote at the Council election (iii) in the case of corporations, if no nomination has been made by a corporation of a person to be entitled to vote on behalf of the corporation the Council will, from the records of ASIC, as mentioned in recommendation 4.1(5) hereof, enroll the first director in alphabetical order to vote on behalf of that corporation and if that director may be disqualified to vote for any reason, the next director in alphabetical order until a director is validly appointed to vote on behalf of the corporation</p> <p>(5) the Sydney City Council determines, from all available Council information and records as well as information provided by ASIC, the person deemed to be entitled to vote on behalf of non-resident owners and corporations</p> <p>(6) to determine the occupiers entitled to vote, the Sydney City Council canvas the businesses within the City of Sydney six months before council elections to determine such entitlement</p> <p>(7) the non-residential rolls be prepared and maintained by the Sydney City Council with the General Manager of the Council to certify the rolls</p> <p>(8) for the Sydney City Council election, the postal voting method be compulsory for all people enrolled or deemed to be enrolled as non-residential enrollees</p> <p>(9) that non-compulsory candidate information be required to be distributed with the ballot papers sent out as part of the postal voting procedure, limited to a photo of the candidate and 250 words</p> <p>(10) that those enrolled as non-resident enrollees shall remain on the rolls for two ordinary elections unless they sooner lose their qualification or are disqualified from being an enrollee.</p>