



## **Explanatory Memorandum**

### **Revised Constitution**

#### **Preamble**

##### **Organisational Strategy & Purpose**

The VLGA is an independent not for profit (NFP) organisation that supports its members – councils and councillors – in strong local governance. The organisation’s vision is that Victorian communities are inclusive, sustainable and dynamic, characterised by strong leadership and effective local governance.

In 2018 the VLGA launched a 5-year strategic plan that outlines four objectives which will guide the work of the organisation throughout 2018-2022. These include: 1) Advocacy and Policy; 2) Local Government Support; 3) Good Governance Leadership; and 4) Healthy and Sustainable Organisation.

The VLGA through its strategic objectives aims to protect, advance and advocate for the importance of the role of effective local government. The organisation supports and assists councillors to do their job well. The VLGA aims to provide good governance leadership by supporting its diverse membership and aims to be a focused, sustainable and values driven organisation.

##### **Governance Model**

The VLGA was incorporated as an incorporated association in 1995 under the Victorian Associations Incorporation Act 1981. The Rules of the incorporated association (which form its Constitution) are currently provided for in the “Rules of the VLGA Inc” under the Associations Incorporation Reform Act 2012.

These Rules were last updated in November 2013. The work of the VLGA Board is also informed and guided by the VLGA Governance Policy Manual.

##### **VLGA Board**

The Board of the VLGA is accountable to the membership for the stewardship and oversight of the operations of the VLGA to ensure its ongoing viability and sustainability – beyond the life of individual Directors and all Members.



The VLGA Board is currently elected every two years (by an election process determined by the Board – in past years the election process has consisted of a preferential voting model with only those VLGA members listed on the VLGA voters roll being eligible to vote) and comprises 5 elected representatives (Local Government Councillors) and 3 Non-Councillor directors. The President is directly elected and is a Councillor. Following election, the Board appoints the following Officer Bearers - one Councillor Vice-President, one Non-Councillor Vice-President and a Treasurer.

The Board meets monthly (at least 10 times per annum) and occasionally otherwise as required.

Under its current Rules the VLGA Board has the ability to appoint up to two Independent Non- Executive Directors.

### **The NFP Sector in Australia**

Government and the broader community must recognise that strong, financially sustainable and efficient NFPs are in the best interests of the sector, the community and government (2016 NFP Governance & Performance Study; Australian Institute of Company Directors (AICD)). The results from the 2016 AICD NFP Governance & Performance Study revealed that NFP performance depends not only on the size and operational environment, but also on directors' and CEOs' expectations of performance and their motivation and ability to deliver it.

Recent studies conducted in the NFP sector (September 2017 AICD "Company Director" p. 4) have also found that in this time of disruption and change, it is critical for NFPs to build foundations for long term success, including contemporary fit for purpose governance structures supported by financially viable operational business models. Results of these studies found that while many NFP directors believed their organisation was performing well in the areas of organisational culture, risk, reputation and financial management, they were often lacking contemporary governance structures to support sufficient formal controls or monitoring of processes being undertaken at the board level.

In addition, embracing the three pillars of trust, innovation and long-term sustainability has become important for any organisation wanting to implement the type of quality governance essential for better community and organisational outcomes (February 2018 AICD "Company Director" p.18).

### **Opportunities & Challenges of Current Governance Structure**

These studies provide both timely learnings and the context for a review of the VLGA's current governance structures. The organisation is at a stage in its life cycle where, having now developed a 5-year strategy to inform its work, and, consistent with its strategic objective "Healthy & Sustainable Organisation", it is critical to implement a contemporary fit for purpose governance structure supported by a financially viable operational business model.

It is important to note that the VLGA is a NFP membership-based organisation – it is not a Council. The organisation's current Rules and governance practices appear to be a combination of a local government and an NFP model. This presents ambiguity and risks for the organisation.

## Revised Constitution

As part of broader post strategic planning discussions, the Board of the VLGA undertook a review of its current governance structures, provided for within the VLGA's current Rules and the organisation's existing governance policies and practices.

### Key New Provisions

#### Name (clause 2)

The current registered name of the incorporated association is "V.L.G.A. Incorporated". It is proposed to change the name to "Victorian Local Governance Association (VLGA) Incorporated".

#### Purposes (clause 3)

The purposes of the VLGA have been directly aligned with the organisation's current strategic directions.

#### Membership (Part 3 and clause 71)

Currently the membership of the VLGA consists of member councils, those councillors of member councils who wish to become members, other interested individuals (including the councillors of non-member councils) and honorary members. All members are entitled to vote and have equal votes.

Under the new constitution, the control of the organisation by its primary stakeholders, the member councils and their councillors, will be strengthened by the creation of two categories of members: member councils and associate members. Only member councils will be entitled to vote at general meetings and to elect the Board. All councillors of member councils will become its representatives, and automatically be entitled to vote on behalf of their council, with 1 vote per councillor, thereby encouraging the participation of councillors.

Other interested individuals and organisations will become associate members, without voting rights, but with the right to attend general meetings. Non-member councils and their councillors will not be eligible to become associate members.

Under the transitional provisions at the end of the constitution, the current individual and honorary members will become associate members, with a special subcategory of associate membership for honorary members.

Member councils that become unfinancial will automatically lose their voting rights (including those of their councillors). A member council will only be able to resign after giving 6 months' notice of its intention to do so.

### **Board of Governance (Part 5)**

The Board responsible for the governance and management of the VLGA will consist of 6 elected Board members and up to 3 co-opted Board members.

The elected Board members will have staggered 3-year terms, with 2 elected Board members elected each year in June by electronic or postal ballot using proportional representation. Only the councillors of member councils will be eligible to be elected as Board members. All councillors of member councils will be entitled to vote for the elected Board members. There will be a limit on the maximum term of office for elected Board members of 9 years.

The elected Board members will be able to co-opt up to 3 additional Board members to fill gaps in skills, experience and background. The Board may first call for expressions of interest.

### **Office-Bearers (Part 6)**

There will be 4 office-bearers: President, Vice-President, Treasurer and Secretary. The Chief Executive Officer will be the Secretary.

The other office-bearers will be elected by and from the Board every 2 years at the first Board meeting after 30 June, with a maximum of 2 full terms in any one position.

### **Election of President\***

Only elected Board members (who are councillors of a member council) will be eligible to be elected as President. The President will be elected by the Board, rather than by all members as at present.

### **Other Provisions**

The new constitution is in plain language with enhanced accessibility via the table of contents and a comprehensive index. The electronic version includes bookmarks and extensive hyperlinking.

The new constitution fully complies with the current requirements of the Associations Incorporation Reform Act under which the VLGA is incorporated.

**Footnote:**

\*In 2015 the AICD (Australian Institute of Company Directors) released their NFP Good Governance Guide. Among a number of matters, this guide recommends that NFP boards should not function like parliaments.

Some organisations seek to have various stakeholder groups (e.g. members nominated by a state) “represented” on a board or committee.

The AICD states that *“this can help to promote an appropriate diversity of views and add to a sense of involvement by those groups “represented”. However, boards can experience difficulties if individual directors regard themselves only as representatives of a particular group and this can give rise to factions and boardroom infighting, reducing the ability of boards to operate effectively.*

*It is important to remember that even though a director’s appointment may be because he or she is associated with a particular group or might look like they represent certain “constituents”, directors must in practice act in the interests of the whole organisation and apply an independent mind to the board’s work and decision-making”.*

The practice of a Committee (i.e. Board of Directors) electing Office Bearer positions from within the Committee is a model of contemporary best practice governance that is applied in most NFPs and corporate entities for the reasons outlined above.

The direct election of office bearers creates the risk of a dysfunctional committee or board, where board members do not have confidence in office bearers and vice versa.

If members of the VLGA are unhappy with how the organisation is performing, it is important that any change of regime can only be successful if a group or individuals are willing to stand up and join the Board and put time into the organisation. Simply electing a President or Office Bearer with a different perspective will only potentially cause division, destructiveness and potentially an ineffective board of governance.

The LGPro President and other Office Bearers are elected by the Board of Directors.