

VICTORIAN LOCAL GOVERNANCE ASSOCIATION

CONSTITUTION REVIEW

ISSUES PAPER

Introduction

The VLGA is in the process of reviewing its constitution.

The reasons for this review are to ensure that the Constitution supports the VLGA to continue to develop in a way that reflects sustainability, good governance and engagement with and participation of members. It also seeks to support efficient and effective operations and appropriate delegation of responsibilities between the Board and the administration.

The Constitution is a statement of the fundamental rules of existence of the VLGA. The governance of the VLGA is set out in the *Governance Policy Manual* which should be read in conjunction with the Constitution.

The review is not intended to change the basis on which the VLGA exists and its fundamental approach of being led by the Board with this leadership being informed by advice from the organisation and consultation with membership. More specifically it aims to address:

- A lack of clarity in some sections of the existing Constitution
- Some ambiguities which appear to be the result of a number of past reviews
- Changes in approach which have resulted from the organisation being better resourced than when the VLGA began; and
- Legislative changes which have occurred and are occurring

In particular, there is an Associations Incorporation Amendment Bill (**AI Bill**) currently before Parliament. This is likely to be passed before the VLGA constitution review is completed and this review will be mindful of the impact of this Bill on the principal Act which governs incorporated associations in Victoria, the *Associations Incorporation Act 1981* (Vic).

This paper has been prepared to assist the organisation consult with its membership about the Constitution review. It seeks to highlight the key issues which need to be addressed and gives an indication of the directions that the Board is considering to address these issues.

The main vehicle for the consultation process will be the Leading Edge Forum (**LEF**) on Thursday 2 September, though members will also have the opportunity of forwarding their views directly to the VLGA.

Rule	Issue	Proposal
<p>Statement of Purposes</p> <p>Currently sits in Constitution as the Vision, Mission and Values (V,M&V)</p>	<p>The Statement of Purpose should be a more generic statement of why the VLGA exists and be pitched in a way which meets current and future legal requirements.</p> <p>The V, M&V are currently part of the Constitution. These are aspirational statements and may be subject to amendments as circumstances change. It would be good to be able to amend these if required without going through the whole Constitution change requirements.</p>	<p>We will draft a Statement of Purposes that:</p> <ul style="list-style-type: none"> • sets out the VLGA objectives • takes account, as far as is possible, of the AI Bill. <i>[Note however, that the Bill contains transitional provisions which will ensure the continuing validity of rules and purposes for existing associations such as VLGA that currently have a statement of purposes separate from their rules of association].</i> • adopts the language and concepts, where appropriate, of the <i>Income Tax Assessment Act 1997</i> (Cwth), which provides for tax concessions for which VLGA may have an entitlement. <i>[For example, VLGA currently assesses itself to be in the category of 'other non profit organisation'. Its only tax concession is exemption from income tax. However, there is a chance it could be classified as a 'charitable institution' and therefore entitled to a greater range of tax concessions]</i> <p>Take the V,M&V out of the Constitution</p>

Rule	Issue	Proposal
2.1 Definitions	Tighter drafting required	No changes of substance proposed
<p>3 Membership</p> <p>Membership categories are:</p> <ol style="list-style-type: none"> 1. Local governments 2. Councillors of LG members provided they formally indicate their commitment to the V,M&V 3. Community groups 4. Community individuals 5. Honorary and Life members and Governance patron <p>All members have the right to vote</p>	<p>Current requirement is that councillors of member Councils become individual members by formally signing up to the V, M&V. However, this is not occurring in practice due to the administrative difficulties.</p> <p>The VLGA wishes to continue the approach of having councillors of member Councils as individual members. The issue is whether to retain the current system (opt-in) or change to an opt-out system where all councillors of member Councils automatically become individual members unless they choose not to (opt-out).</p> <p>Councillors of member councils do not pay a membership fee for their individual memberships. Therefore, an opt-out system does not result in a member having a financial obligation without their consent. An effective system to inform councillors of their right to opt out would be required.</p> <p>It should be noted that Hayden Raysmith, the VLGA's Governance Patron who has been consulted on this project, has stated that he would prefer an opt-in system as this represents a more formal commitment on the part of the councillor.</p>	<p>An opt out system would be administratively simpler and achieve the purpose. There has been a general commitment to the V,M &V by the council choosing to become or stay a member.</p> <p>The Board's view at present is to preserve the opt-in system believing that an active commitment to the V, M&V is preferable.</p>

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<p>Membership applications</p>	<p>Applications need to be approved by a members' meeting</p>	<p>This is awkward to implement as we would need to check at every LEF to which membership applications have to go, which attendees have a right to vote.</p> <p>Further, it is the responsibility of the Board to manage the VLGA. Membership approvals fall within the scope of management responsibility.</p> <p>It is proposed that membership applications should be approved by the Board</p>
<p>4. Entrance fee and annual subscription</p>	<p>Currently determined by Board and subject to ratification at a general meeting.</p> <p>Membership fees fall within the scope of management responsibility.</p>	<p>Amend so that the Board sets the fees, without the requirement for ratification at a general meeting.</p>
<p>6 Resignation of a member</p> <p>One month's notice is currently required to resign.</p> <p>Constitution also implies that only a financial member can resign.</p>	<p>Why is a notice period required? There appears to be no practical reason for this.</p>	<p>Amend to resignation being effective on receipt of notification, but that a (former) member remains liable to any fees owed at the time of resignation.</p>

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10 Meetings	<p>Names (General Meeting, Special General Meeting etc) and procedures are not consistent or clear.</p> <p>Technically, all formal meetings of members are general meetings and are either:</p> <ul style="list-style-type: none"> • Annual General Meetings; or • Special General Meetings. 	<p>It is proposed that meetings which are not concerned with formal discussions and decisions about the governance of the VLGA will be distinct from the formal general meetings. In particular, the LEF will not constitute a general meeting of the VLGA and will not be mentioned in the constitution.</p> <p>However, the VLGA may from time to time convene a general meeting on the date of an LEF. When, the business of that general meeting is completed, then the meeting will close and the LEF may then commence. A standard procedure for convening, conducting and adjourning general meetings will be specified.</p>
17 and 19 Voting	<p>All non natural person members (councils and community groups) must have a representative who has the right to vote on behalf of the entity.</p> <p>The only person entitled to vote on behalf of community group members is the representative.</p> <p>Councillors of member Councils have the right to be members providing they sign up to the V, M&V.</p> <p>Members can only vote once on issues (S 17(1)); yet the above suggests that a council's representative can vote twice – once as a representative and once as a member in their own right.</p>	<p>The reason we have this issue is that we have wanted to encourage individual councillor participation and identification with the VLGA.</p> <p>Preference at this time is for Option 1 with the rationale that a representative/councillor individual member actually represents two members – her/himself and the entity for which s/he is a representative.</p> <p>The advantages of Option 1 are:</p> <ul style="list-style-type: none"> • it enhances member participation by enabling each member to exercise a right to vote (in contrast to Option 2); • it promotes the organisational objective of encouraging individual councillor

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	<p>It is at least ambiguous.</p> <p>There seem to be 3 options to tackling this issue:</p> <ul style="list-style-type: none"> • Option 1. A representative who is also an individual member having the right to exercise two votes as follows: <ul style="list-style-type: none"> - a vote in their own right as an individual member; - a vote on behalf of the "non natural person" that they represent. • Option 2. Representative only allowed to vote once as a representative and forfeits their right to vote again as an individual member • Option 3. End the system of councillors of member Councils being able to be individual members 	<p>participation and identification with the VLGA (in contrast to Option 3)</p> <p>The role of the representative generally is to receive notices from the VLGA, attend meetings, vote on behalf of the member and appoint a proxy. However, the member may by notice in writing vary these functions; eg. may restrict the right to appoint a proxy. (See next row re proposal to appoint a proxy).</p> <p>Voting entitlements should also be consolidated into the one section.</p>
<p>New provision – Appointment of a proxy</p>	<p>Currently there is no provision for the appointment of proxies to vote in the place of a member (or a representative, in the case of a Council or group) who is unable to attend a meeting.</p> <p>Although a Council or group can change its representative, it may not wish to do so for the sake of voting at one meeting. Further, it may not be able to do so if it receives short notice of the unavailability of its representative.</p>	<p>It is proposed to include the right of a member to appoint a proxy.</p>

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	<p>The practical effect is participation in governance through the exercise of a vote is curtailed by the lack of a right to appoint a proxy.</p>	
<p>22 and 23 Board membership and Office bearers</p> <p>Election of Board and Office bearers</p>	<p>President, VPs and Treasurer are directly elected</p> <p>If someone wants to run for an Officer position and for the Board they have to run for each separately</p>	<p>The more usual approach for incorporated associations is for the Board to be elected and then the Board selects office bearers.</p> <p>This would reduce or eliminate the need for candidates to run for both and make elections more straightforward.</p> <p>The Board already has the right to fill casual vacancies in Officer positions.</p> <p>It does have the potential to increase the disconnect between office bearers and membership.</p> <p>There are democratic rights and efficiency issues which need to be balanced out.</p> <p>The proposed approach is for the President to be directly elected and for the other office bearer positions to be filled by the Board.</p>
<p>Office bearers</p>	<p>President; three Vice Presidents (two local govt, one community); Treasurer</p>	<p>The approach in the current Constitution seems to be to recognise different member constituencies through having nominated Vice President positions. It has created a situation</p>

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		<p>where we have three VPs. There doesn't seem to be any other good reason for this.</p> <p>The responsibility of the Board is to govern in the interests of all members and members do not get any direct benefit from having their 'own' VP.</p> <p>The proposed approach is to reduce the number of VPs to two, one of which should be a councillor of a member Council and the other an individual member or a community group representative.</p>
	<p>Do we need to have a Treasurer position enshrined in the Constitution?</p>	<p>A Treasurer's functions are around management of financial resources. This is done now by the organisation. The Board issues are around financial planning and oversight, risk management and audit. It is becoming less common for incorporated associations to have a Treasurer role, when there is an organisation which performs the traditional functions.</p> <p>There is already a Resources and Finance Sub-Committee and there are plans to establish an Audit Committee during 2010/11.</p> <p>Best practice now tends to have the Board functions supported by Board committee(s) dealing with finance on the one hand, and risk and audit separately. While generally it is best practice not to have Board Committees specified in the Constitution, the Board believes that it is important to have the Chair of the Resources and Finance Committee as an Executive member and have this specified in the Constitution.</p>

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Board numbers	The current requirements are that the Board consists of the five existing Officer positions and six ordinary members of which at least two are councillors of members councils and two are community members	<p>A Board of 11 positions is quite large and makes for more administrative and coordination issues than if the Board was smaller.</p> <p>Depending on decisions around the number of officer positions, a Board consisting of nine members in total is proposed. If the Executive is reduced to three, the current requirement of six Ordinary Members, two of whom are councillors and two 'community' members can be maintained.</p>
29 Removal of a Board member	The current Rules state that a Board member can be removed through a vote at a General Meeting	<p>The AI Bill specifies additional events where a Board member will be taken to have vacated office, including where the member:</p> <ul style="list-style-type: none"> • is absent from three Board meetings without leave; • resigns by notice to the Board; • is removed by a special general meeting; • dies; • becomes bankrupt; • becomes a 'represented person' for the purposed of the <i>Guardianship and Administration Act 1986</i> (Vic); • ceases to reside in Australia; or • is on the committee of an association that has a statutory manager appoint to conduct the affairs of the association. <p>The existing requirements are a standard provision and are generally regarded as an important democratic right. However, the</p>

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		<p>drafting of the provision is very loose. It is therefore proposed that the rights of the Board member and the meeting procedure be set out in further detail to emphasise due process.</p>
<p>30 Cheques</p>	<p>Commercial bills, cheques and other negotiable instruments must be signed by two members specifically authorised by the Board, one of whom must be a member of the Board.</p>	<p>This is not an efficient system of financial management, particularly now the CEO is no longer a Board member.</p> <p>It is proposed that this be amended to provide that the Board may determine how cheques etc must be signed, drawn, etc and otherwise executed by and on behalf of the VLGA. This will permit efficient operation under a set of financial approvals in accordance with the annual budget and financial delegations.</p>
<p>31 Seal</p>	<p>Provides for the operation of use of the Common Seal.</p>	<p>The VLGA has a Seal which is used only when required by other parties with whom we are signing a contract.</p> <p>Procedures for the use of the Common Seal are often more honoured in the breach than in the observance.</p> <p>However, there is no legal requirement to have a Seal and if there is no Seal, no other party can require it to be used. It is indeed rare for a body to be incorporated these days and to adopt a seal.</p> <p>It is proposed that the seal be abolished.</p>

Rule	Issue	Proposal
33 Notices	It is not clear when a notice is deemed served when sent by email. Greater precision is required for service by mail. There is no provision for service by fax.	Draft relevant provisions
34 Winding Up	The winding up provisions do not meet the requirements of the AI Act following the 2009 amendments, nor do they meet the requirements for not for profit entities entitled to endorsement for as an income tax exempt entity under the ITAA.	Draft relevant provisions
New provision Non profit	There are no provisions prohibiting distribution of profit during operation. This is a requirement for non profit organisations.	<p>VLGA does not distribute profit to members. We understand that payments are solely made:</p> <ul style="list-style-type: none"> • for services rendered or goods provided at rates no greater than would apply to an arms length commercial transaction; and • as reimbursement of expenses properly incurred. <p>It is proposed to draft the relevant provisions.</p>
New provision Indemnity	Clause 26 of the AI Bill includes a new section 29E in the AI Act. It creates an obligation on all associations to indemnify committee members (including the secretary) against any liability incurred in good faith by that member on behalf of the incorporated association in the course of performing their duties.	<p>The constitutions of many associations and companies contain indemnity provisions.</p> <p>It is proposed that an indemnity provision be included in anticipation of the passage of the AI Bill and following discussion of the implications with the VLGA insurance broker.</p>