

Local Government Act Review Secretariat
Local Government Victoria
c/o – local.government@delwp.vic.gov.au

16 March 2018

RE: VLGA Submission – Local Government Bill (2018) Exposure Draft

Please find attached submission from the Victorian Local Governance Association (VLGA) to the Local Government Bill (2018) Exposure Draft.

Please contact Bo Li on 9349 7999 or via email bo@vlga.org.au if you have any queries in relation to any aspect of this submission.

Kind regards,



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VLGA Submission – Local Government Bill 2018 Exposure Draft

Executive summary

The Victorian Local Governance Association (VLGA) welcomes the opportunity to provide feedback to the Local Government Bill (2018) Exposure Draft. The Bill's intention to provide a principle-based Act for the local government sector is welcomed, as are the enabling provisions contained in the Bill.

While the sector is largely supportive of reform directions and proposals contained in the Bill, there are some real concerns expressed particularly from the rural shire councils about the resource implications of the mandated policies and plans contained in the Bill (see s.44, s.54-60). These requirements, coupled with the limited capacity of rural councils to raise income from other sources of revenue, leave them vulnerable to long term financial sustainability risks. The VLGA recommends that the State Government commits to additional assistance, possibly in the form of one-off and recurring grants to support rural shire councils to meet these legislative requirements once the Bill passes.

In addition, feedback received from various integrity agencies suggests that clear and additional guidelines are required to assist the sector in managing conflict of interest provisions in the Bill.

The VLGA is opposed to provisions in the Bill that grant mayors the power to appoint chairs of delegated committees (s. 18) and the power to the Minister for Local Government to appoint temporary administration of a council (Part 8, Division 7).

The VLGA firmly believes that the Bill needs to achieve a fair and equitable balance between powers of the Minister and that of the independence of councils, consisting of elected councillors to carry out the wishes and aspirations of their community.

To this end, the VLGA is opposed to provisions in the Bill that shift decision making responsibility away from councils to the Minister, specifically in respect to the method of rating system (s.102) and voting system at council election (s.276).

Procedural fairness, openness and transparency are fundamental to the operations of any Act. The VLGA therefore would like to see explicit references to these principles in the processes for declaration of the office of Mayor to be vacant (s.20) and for suspension of all Councillors of a Council (s.245). The process for an internal Councillor Code of Conduct outlined in the Bill (s.181) is also not supported as the appointment of the arbiter lacks rigor and independence; moreover, councils are not obliged to follow through on any of the recommended actions (s.182).

The VLGA believes this Bill provides an ideal opportunity to critically examine two issues impacting on the future of the local government sector: setting of allowances for mayors and councillors and the impact on council operations and services of Fair Go Rates System (FGRS). VLGA is of the view that the setting of allowances for mayors and councillors (s.37) should be carried out by an independent authority, such as the soon to be established Victorian Independent Remuneration Tribunal. Alternatively, the Minister must have regard to a set of criteria in setting of allowances reflective of the complexities of councils and therefore the duties and obligations of councillors.

The FGRS was imposed on councils without consultation in 2015, contrary to the spirit of the Victorian State Local Government Agreement. The VLGA believes that the proposed review date of FGRS in 2021 should be brought forward to 2020 to allow new councils to analyse the review findings (Part 5, Division 6). The VLGA also strongly recommends that a sunset clause to the FGRS be set by 2020 pending the review recommendations.

Finally, the VLGA calls on the Government to recognise partial preferential ballot papers as formal votes (s.283) as an evidenced-based response to increase voter participation and decrease informal votes at local government elections.

Summary of recommendations

Recommendation 1

That s.3 of the Bill be expanded to include definitions for

- discrimination as defined under the Equal Opportunity Act (2010)
- racial and religious vilification as defined under the Racial and Religious Tolerance Act (2001)
- sexual harassment as defined under the Equal Opportunity Act (2010).

That s.3 of the Bill classifies discrimination, racial and religious vilification and sexual harassment as serious misconduct.

Recommendation 2

That the word “resilience” be inserted into s.8 of the Bill, possibly under s.8 (2) (c) *“the economic, social, environmental sustainability **and resilience** of the municipal district...is to be promoted”*

Recommendation 3

That s.18 (1) (a) and s.18 (2) are removed from the Bill.

The words *“or the mayor”* be removed from s.61 (2) (b) of the Bill.

The words *“including where the appointment as chair was made by the mayor”* be removed from s.182 (1) (c).

Recommendation 4

That an additional subsection (5) be added to s.20 to the effect of *“for the purpose of subsection (3), at least three-quarters of all the councillors in office means all councillors elected, irrespective of their presence at the meeting during which this matter is being discussed and voted on”*.

That an additional subsection (6) be added to s.20 to the effect of *“the principles of natural justice and procedural fairness must prevail in the process of declaration of office of the Mayor to be vacant”*.

Recommendation 5

That an additional subsection (3) be added to s.37 the Bill to the effect of *“prior to setting allowances under subsection (1) and (2), the Minister must have regard to and demonstrate that the following criteria have been met (a). the size and complexity of council operations; (b). the duties, responsibilities and obligation for Councils and Councillors under this Act; (c). remuneration for other elected representatives; and (d). remuneration for directors or office bearers in similar government agencies and authorities”*.

Alternatively, the additional subsection (3) can require the Minister to refer the setting of allowances functions to the Victorian Independent Remuneration Tribunal once it is established.

Recommendation 6

That consideration be given to the renaming of the Audit and Risk Committee to Governance, Audit and Risk Committee.

That an additional s.52 (3) (b) (iii) be added to the effect of *“financial management, risk and governance; and”*

That consideration be given, possibly in the form of recurring grants, to support shire councils in the operation of Governance, Audit and Risk Committees (please also refer to Recommendation 15).

Recommendation 7

That clarification on potential for apprehended bias on decisions made through the splitting of matter into its constituent parts under s.64 be made and communicated to the local government sector prior to the Bill’s introduction to parliament.

Recommendation 8

That s.144 (1) of the Bill be amended to *“review of this Division is completed by 31 December 2020”*. This will give the current 2016-2020 councils an opportunity to provide meaningful feedback on the impacts of FGRS and for new councils elected at the 2020 elections to fully study the review of the FGRS.

That a sunset clause be added to Division 6, also by 31 December 2020, pending the outcomes and recommendations for and feedback from all key stakeholders on the review of the FGRS.

Recommendation 9

That the words *“if required by a decision of a majority of the other persons at the meeting”* be removed from s.170 (2) (b).

Recommendation 10

That the words are added to s.179 and s.180 of the Bill to the effect of *“for the purpose of s.179 (5) and s.180 (2), at least two-thirds of the total number of councillors elected to the council means all councillors elected, irrespective of their presence at the meeting during which this matter is being discussed and voted on”*.

That the internal resolution process provisions (s.181 and s.182) are removed and that the powers of the Principal Councillor Conduct Registrar and the Councillor Conduct Panel be strengthened to provide a truly independent arbitration and conciliation service for councillors, rather than purely focusing on recrimination and possible prosecution.

Recommendation 11

That s.245 be amended to include words to the effect of *“...prior to making a recommendation for the council’s suspension, the Minister must issue the council facing suspension with a “show cause” notice and require the council to respond with a written response within a specified timeframe”*.

Recommendation 12

That Part 8, Division 7 Temporary administration, be removed from the Bill.

Alternatively, this Division be re-written to clearly define grounds for temporary administration and to allow remaining councillors to serve on council with any appointed administrators.

Recommendation 13

That s.276 be re-written to reaffirm the council’s discretion to conduct elections via its preferred method.

Alternatively, this section can be re-written to have the voting system determined by an independent body, at arm’s length from the Minister and from councils.

Recommendation 14

That s.283 be re-written to allow for counting of ballot papers with partial indication of preference to be counted as formal votes.

Recommendation 15

That the Government commits to financial assistance to resource councils, with emphasis on rural shire councils, in the development and implementation of mandated policies and frameworks of the Bill. Such funding needs to be made available from 2018, assuming the Bill’s passage, through to 2021.

Introduction

The Victorian Local Governance Association (VLGA) is pleased to provide feedback to the Local Government Bill (2018) Exposure Draft. In preparing this submission, the VLGA extensively canvassed views from councils throughout Victoria. In addition, the VLGA analysed the Bill and made the recommendations below using the following criteria

- Does the Bill strike an adequate balance between powers vested in the Minister for Local Government, and community wishes and aspirations of each municipality?
- Does the Bill provide a platform to promote and enhance best practice governance in local government?
- Are the proposals contained in the Bill consistent with the Objectives of the Act (s.4 of the Bill) and s.74 of the Victorian Constitution Act (1975)?
- Are there potential unintended consequences contained in the Bill, particularly when the cumulative effects of the proposed changes are taken into consideration?
- What are the likely resourcing requirements of the Bill's mandated policies on councils, particularly on rural and shire councils?

The VLGA submission follows the Bill's outline in sequential format to allow ease of reading.

Definitions (s.3)

The VLGA welcomes the inclusion of the word “bullying”, and for bullying to be included as part of “serious misconduct” in the definition section of the Bill. Concerns were raised during the VLGA consultations that the Bill did not make explicit references to discriminatory behaviour and sexual harassment. The VLGA recognises that discriminatory behaviour and sexual harassment are already defined in other Acts and therefore suggests that they are included or referred to in the definitions section of the Bill. In addition, references should be made to the definitions section of the Bill to classify discriminatory behaviour and sexual harassment as serious misconduct.

Recommendation 1

That s.3 of the Bill to be expanded to include definitions for

- discrimination as defined under the Equal Opportunity Act (2010)
- racial and religious vilification as defined under the Racial and Religious Tolerance Act (2001)
- sexual harassment as defined under the Equal Opportunity Act (2010).

That s.3 of the Bill classifies discrimination, racial and religious vilification and sexual harassment as serious misconduct.

Overarching governance principles (s.8)

The VLGA generally agrees with the overarching governance principles outlined in s.8 the Bill, as they set out principles of good governance. The VLGA would like to see the inclusion of the word “resilience” in the principles to strengthen the overall intent of the Bill. Resilience is vital to the overall health and

wellbeing of not only individuals, but also communities. Resilience can refer to systems, programs and strategies at a municipal, organisational and individual level. Given the principle-based nature of the Bill, it would be appropriate for the word resilience to be included as part of the overarching governance principles.

Recommendation 2

That the word “resilience” be inserted into s.8 of the Bill, possibly under s.8 (2) (c) “*the economic, social, environmental sustainability **and resilience** of the municipal district...is to be promoted*”

Constitution of a council (s.12)

The VLGA is not opposed to the proposed council structure of between 5 and 12 elected councillors. However, some shire councils expressed the view that the move from 5 to 3 elected representative structures may pose challenges given the geographical location and population densities in rural towns. This issue will require detailed stakeholder consultation in the drafting of associated regulations (s.12 (3)) and input into the electoral structure review (s.15). Please refer to Recommendation 15 for further details.

Specific powers of the mayor (s.18)

Despite other provisions contained in the Bill, namely s.20, there is widespread opposition to the proposed power of the mayor to appoint a councillor to be the chair of a delegated committee (s.18 (1) (a)) and for the power of the mayor to appoint chair of delegated committees to prevail over? appointment by the council (s.18 (2)). These two provisions effectively give the mayor executive powers over the council and is contrary to the intent of s.17 (e) of the Bill (“*promote behaviour among Councillors that meets the standards set out in the Councillor Code of Conduct*”). Moreover, concerns were also expressed that some mayors may use this extra power to reward their supporters and thus undermine council good governance.

Recommendation 3

That s.18 (1) (a) and s.18 (2) are removed from the Bill.

The words “*or the mayor*” be removed from s.61 (2) (b) of the Bill.

The words “*including where the appointment as chair was made by the mayor*” be removed from s.182 (1) (c).

Declaration of the office Mayor to be vacant (s.20)

This new section is generally supported by the VLGA, noting the 2-step process and high threshold required to declare the office of Mayor to be vacant contained in the Bill. However, the VLGA highlights the inconsistency of wording, and therefore the potential for confusion and misunderstanding contained

in this section. Specifically, the Bill proposes that “... *the motion to declare the office of the Mayor is passed by a majority of at least three-quarters of all of the Councillors in office*” (s.20 (3)). This may have the unintended consequence of leading readers to believe the three-quarter majority applying to councillors present during the said meeting, as all other council resolutions are determined in this fashion (see s.59) and not by all councillors in office.

In addition, the VLGA would like to see the process for the declaration of the office of mayor to be vacant be subject to principles of natural justice and procedural fairness. This may be done via an additional subsection under s.20.

Recommendation 4

That an additional subsection (5) be added to s.20 to the effect of “*for the purpose of subsection (3), at least three-quarters of all the councillors in office means all councillors elected, irrespective of their presence at the meeting during which this matter is being discussed and voted on*”.

That an additional subsection (6) be added to s.20 to the effect of “*the principles of natural justice and procedural fairness must prevail in the process of declaration of office of the Mayor to be vacant*”.

Allowances for Mayors, Deputy Mayors and Councillors (s.37)

Views were expressed during the VLGA consultations that the mandated position of the Deputy Mayor should attract a higher level of allowance than that of councillors, reflective of the additional roles outlined in the Bill. The VLGA notes that s.37 outlines the powers of the Minister in relation to setting of allowance, and that provisions exist for differential allowances for mayors, deputy mayors and councillors as well as for different council categories.

However, there is no provision in the Bill stipulating the principles governing the Minister when setting allowances for councils and councillors. Councils are complex organisations providing extensive services to their community, often on behalf of or in collaboration with other two tiers of government. It follows therefore, that the role of councillors (including mayors and deputy mayors) goes beyond their duties as outlined under s.28 of the Bill, especially if councils are to give effect to the overarching governance principles contained in s.8 of the Bill. The VLGA believes that councillor allowances should accurately reflect not only their duties (s.28), but their responsibilities and obligations (s.8) under the Bill.

Recommendation 5

That an additional subsection (3) be added to s.37 of the Bill to the effect of “*prior to setting allowances under subsection (1) and (2), the Minister must have regard to and demonstrate that the following criteria have been met (a). the size and complexity of council operations; (b). the duties, responsibilities and obligation for Councils and Councillors under this Act; (c). remuneration for other elected representatives; and (d). remuneration for directors or office bearers in similar government agencies and authorities*”.

Alternatively, the additional subsection (3) can require the Minister to refer the setting of allowances functions to the Victorian Independent Remuneration Tribunal once it is established.

Mandated policies and principles (s.44, s.54-57)

The VLGA is supportive of the mandated policies and principles in relation to CEO employment and remuneration (s.44), community engagement (s.54 and s.55) and public transparency (s.56 and s.57). However, the resource constraints faced by rural shire councils in particular must be considered leading up to and during the implementation of the Bill. Feedback from shire councils indicates that there is not a one-size-fits-all approach on community engagement, and the principles governing community engagement (s.55) may impose additional administrative and resource demands on councils within a revenue constrained environment (i.e. rate capping).

Similarly, certain limits must be considered on the proposed public transparency policy and principles – where “*subject to section 57 (1) (a), specify which council documents and information must be publicly available, including all policies, plans and reports required under this Act or any other Act*” (s.56 (2) (c)). This may have the unintended consequence of “fishing expeditions” by parties with vested interests and once more impose additional administrative and resource demands on councils. Please refer to Recommendation 15 for further details.

Audit and Risk Committee (s.52)

The VLGA supports the roles and functions of the Audit and Risk Committee. However, we note that the word “governance” is missing from the Committee, despite the focus of the Bill and that of the Committee on governance. The VLGA reiterates the need to support shire councils in filling Committee positions, where recruitment, travel and associated costs are greater than for metropolitan councils.

Recommendation 6

That consideration be given to the renaming of the Audit and Risk Committee to Governance, Audit and Risk Committee.

That an additional s.52 (3) (b) (iii) be added to the effect of “*financial management, risk and governance; and*”

That consideration be given, possibly in the form of recurring grants, to support shire councils in the operation of Governance, Audit and Risk Committees (please also refer to Recommendation 15).

Governance rules, council meetings and joint council meetings (s.58, s.59 and s.60)

The VLGA supports the proposed model governance rules and how they apply to council meetings, and of the enabling provision for joint council meetings contained in the Bill. Once more, as outlined above, shire councils must be supported in the development of such model governance rules. The governance rules for joint council meetings also require extensive stakeholder consultation in the drafting of associated regulations. Please refer to Recommendation 15 for further details.

Council decisions where a quorum cannot be maintained (s.64)

The VLGA supports the proposed outline for splitting a matter into two or more constituent parts where a council quorum cannot be maintained. However, questions were raised during the VLGA consultation regarding the potential for apprehended bias for decisions made via the splitting of matters. Specifically, the process and validity of a decision where a matter cannot be resolved as a whole due to the majority of councillors having conflict of interest, but was subsequently resolved via the splitting of the matter, may be open to challenge. The VLGA is therefore unable to comment on this proposal until this issue is further clarified.

Recommendation 7

That clarification on potential for apprehended bias on decisions made through the splitting of matter into its constituent parts under s.64 be made and communicated to the local government sector prior to the Bill's introduction to parliament.

Planning and financial management (Part 4)

The VLGA strongly supports the need for councils to develop a long-term vision for their community, as well as a financial plan and asset plan for at least 10 financial years (s.83, s.86 and s.87). We note that many councils have already voluntarily adopted such plans, and the mandating of such plans promotes best practice in long term community and financial planning. Once again, the need for assistance and support for rural shire councils in the development of these plans cannot be overstated. Please refer to Recommendation 15 for further details.

Councils must use CIV system of valuation (s.102)

While the VLGA is not opposed to the notion of a consistent valuation system for Victoria, we are concerned with the loss of independence by councils to set their own rating system they believe best suited their own community and council's circumstances. While this issue is not significant on its own, other proposed changes in the Bill such as the capping of municipal rate charge to 10% of general revenue (s.106) and the power for the Minister to determine election methods for all councils (s.276) cumulatively erode the ability for councils to make local decisions suited to their individual circumstances.

Municipal rates – fixed charge (s.106)

During VLGA consultation sessions, shire councils raised concerns about the proposed changes to municipal rates. At present, shires with limited income from rates revenue derive 15% or more of their total revenue from this component. Any capping of this part to 10% will have a significant financial impact, notwithstanding the planned introduction of the cap by 2020.

This proposal, along with the ongoing impost of rate capping (see below) continues to pose challenges for councils outside of metropolitan Melbourne. Please refer to Recommendations 8 and 15 for further comment on this issue.

Rate Caps (Part 5, Division 6)

The VLGA reiterates its ongoing concerns regarding the long-term impact of the Fair Go Rates System (FGRS) on council operations. Specifically, the FGRS will impact on asset maintenance and renewal by rural councils. It will also affect regional and interface councils where population increase is placing demands on new and additional infrastructure. Evidence from NSW and feedback from Victorian councils to the VLGA suggests that the rate cap is not sustainable and that an earlier examination of the Fair Go Rates System is needed to head off any unintended long-term consequences for the community. To this end, the VLGA recommends an earlier review date than the one suggested in the Bill.

The VLGA also strongly recommends that a sunset clause be included in the Bill for the Fair Go Rates System. This will allow for results of the pending review of the FGRS to be carefully analysed by the local government sector and feedback provided to the Government regarding its future. This will address the major criticism of the FGRS – that it was imposed on the sector without consultation, contrary to the spirit of the Victorian State Local Government Agreement. This will also provide the Government with the required evidence and stakeholder feedback with all options regarding the future of the FGRS, including its continuation, after the review.

Recommendation 8

That s.144 (1) of the Bill be amended to “*review of this Division is completed by 31 December 2020*”. This will give the current 2016-2020 councils an opportunity to provide meaningful feedback on the impacts of FGRS and for new councils elected at the 2020 elections to fully study the review of the FGRS.

That a sunset clause be added to Division 6, also by 31 December 2020, pending the outcomes, recommendations and feedback from key stakeholders on the review of the FGRS.

Conflict of interest (Part 7, Division 2)

The VLGA noted mixed feedback on the revised conflict of interest provisions in the Bill. While some councils welcomed the simplified structure and definitions of conflict of interest, others indicated strong preference for the continuation of the more prescriptive form of conflict of interest as contained in the Local Government Act (1989). The main criticism of the new provisions in the Bill include the definition of general conflict of interest (s.166) being too vague and subjective. The VLGA recognises the vexed nature of public perception around issues of conflict of interest and urges in-depth stakeholder consultation during the development of relevant governance rules (s.58).

Views were also expressed regarding disclosure of conflict of interest at other meetings (s.170). It is common practice among councils for councillors and staff having declared a conflict of interest in a meeting other than a council meeting, such as during briefings or other assemblies of councillors, to leave the room prior to the matter being discussed, even though no decisions are to be made during

these discussions. The proposed wording “*if required by a decision of a majority of the other persons at the meeting*” in s.170 is unnecessary and problematic. The words “*other persons*” would include people other than councillors, and has the potential for officers to decide if a councillor should leave the meeting, and vice versa. The VLGA understands the intent behind the proposal is to enable councillors to contribute to discussions in a group where no decisions are made. However, there is a real concern that “an impartial, fair-minded person” (s.166) can conclude that it is not reasonable for a councillor, having declared a conflict, to choose to remain in the discussion.

Recommendation 9

That the words “*if required by a decision of a majority of the other persons at the meeting*” be removed from s.170 (2) (b).

Councillor conduct (Part7, Division 5)

The VLGA welcomes the updating of the councillor conduct provisions in the Bill. There are issues with consistency of wording in s.179 and s.180 of the Bill, where Councillor Code of Conduct and any subsequent amendments are required to be signed off by “*at least two-thirds of the total number of councillors elected to the council*”. Similar to the wording associated with Declaration of the office of Mayor to be vacant (s.20), the VLGA suggest additional wording to clarify the threshold requirement for the adoption and amendment of Councillor Code of Conduct.

The VLGA is concerned with the mandated requirement for councils to have an internal resolution procedure of council (s.181), and sanctions that may be imposed by a council (s.182). The VLGA contends that these two provisions have the potential to undermine ongoing relationships between councillors and create opportunities for ongoing conflict between councillors. The qualifications, attributes, powers and limitations of arbiter under s.181 are poorly defined in this Division. Finally, councils are not obliged to act on any findings made by the arbiter (s.182), which further weakens the legitimacy of the internal resolution process. The VLGA strongly recommends that the internal resolution process is removed from the Bill and that the powers of the Principal Councillor Conduct Registrar and the Councillor Conduct Panel be strengthened to provide a truly independent arbitration and conciliation service for councillors, and not to purely focus on recrimination and possible prosecution of councillor behaviours.

Recommendation 10

That the words are added to s.179 and s.180 of the Bill to the effect of “*for the purpose of s.179 (5) and s.180 (2), at least two-thirds of the total number of councillors elected to the council means all councillors elected, irrespective of their presence at the meeting during which this matter is being discussed and voted on*”.

That the internal resolution process provisions (s.181 and s.182) are removed and that the powers of the Principal Councillor Conduct Registrar and the Councillor Conduct Panel be strengthened to provide a truly independent arbitration and conciliation service for councillors, rather than purely focusing on recrimination and possible prosecution.

Suspension of all of the Councillors of a Council (s.245)

The VLGA is generally satisfied with the process for the removal of a council under s.245. However, the principles of due process and natural justice afforded to the council facing suspension should be strengthened prior to the Minister making a recommendation to suspend the council. Specifically, the Bill allows for the Minister to suspend a council for “*failure to provide good governance*” (s.245 (2)) on reasonable grounds, provided the Minister has considered “*what steps the council has taken to address and remedy the difficulties underlying the failure*” (s.245 (3)). The VLGA suggests that a formal “show cause” notice must be issued to a council as part of this process. The lack of objective definition of what constitutes “reasonable grounds” and “good governance” provides opportunities for councils to challenge the recommendations of the Minister to suspend councils.

Recommendation 11

That s.245 be amended to include words to the effect of “...prior to making a recommendation for the council’s suspension, the Minister must issue the council facing suspension with a “show cause” notice and require the council to respond with a written response within a specified timeframe”.

Temporary administration (Part 8, Division 7)

The VLGA is concerned with the power of the Minister to appoint temporary administration for a council facing multiple vacancies (s.247 (1)). There is no objective definition contained in the Bill regarding “extraordinary number of vacancies”, except where such vacancies exceed the number of councillors required to maintain a quorum for an ordinary council meeting. While the chance of this occurring may be remote, there is also no requirement for the Minister to consider any other independent advice prior to appointing a temporary administrator other than the subjective assessment of “*could restrict the ability of council to provide good governance*”. Furthermore, the remaining councillors will be suspended by virtue of the Ministerial order of temporary administration (s.248), until they resume office under conditions stipulated under s.247. This Division seems to give the Minister rather extraordinary powers, without the usual appropriate checks and balances. It also has the potential to undermine the legitimacy of elected councillors, whom through no fault of their making, could be suspended for no reason other than their colleagues vacating council. The VLGA does not support this Division in its current form. If this Division is to remain, the VLGA would strongly recommend it be reworded in a way that the grounds for temporary administration are clearly defined and the remaining councillors are not suspended but will have the opportunity to serve on council with temporary administration.

Recommendation 12

That Part 8, Division 7 Temporary administration be removed from the Bill.

Alternatively, this Division be re-written to clearly define grounds for temporary administration and to allow remaining councillors to serve on council with any appointed administrators.

Voting system (s.276)

The VLGA is aware of the benefits of a uniform voting system applying to all councils in Victoria. However, it remains of the view that each council is best placed to determine which method of voting it chooses for its elections, consistent with the principle of councils responding to the needs of their local community. While there is evidence to support certain voting methods over others, there is no perfect system for local government elections. There is a trend for councils to conduct postal voting over attendance voting in recent times, and this trend should be driven by community demand and not through Ministerial direction.

Alternatively, an independent organisation can be tasked with the setting of voting system for council elections.

Recommendation 13

That s.276 be re-written to reaffirm the council's discretion to conduct elections via its preferred method.

Alternatively, this section can be re-written to have the voting system determined by an independent body, at arm's length from the Minister and from councils.

Marking of the ballot-paper at election to express preference (s.283)

The VLGA notes that only ballot papers indicating full preference of candidates will be counted as formal votes under s.283. The option of partial preferential ballot papers being counted as formal votes has been canvassed. The VLGA sees benefits of a partial preferential system for ballot papers, particularly for elections where there are a significant number of candidates.

Rather than repeating what has been previously submitted, the VLGA attaches part of its submission to the Electoral Matters Committee Inquiry into Civics and Electoral Participation (2017). This submission outlined the potential benefit of increased voter franchise through introduction of partial preferential ballot papers. Finally, the VLGA notes recent changes to the Senate ballot papers introduced at the most recent Federal election, which allowed for partial preferential ballot papers to be counted. This provides a precedence and a way forward for introducing partial preferential ballot papers for local government elections.

Recommendation 14

That s.283 be re-written to allow for counting of ballot papers with partial indication of preference to be counted as formal votes.

Recommendation 15

That the Government commits to financial assistance to resource councils, with emphasis on rural shire councils, in the development and implementation of mandated policies and frameworks of the Bill. Such funding needs to be made available from 2018, assuming the Bill's passage, through to 2021.

Concluding comment

As stated consistently throughout this submission, the VLGA is concerned with the impact of the Bill's mandated policies and frameworks on rural councils. It is widely acknowledged that many shire councils have limited ability to derive their revenue from rates and rely heavily on grants, almost all of which are tied to specific purposes or for specific projects. There is often no dedicated staffing available to research, draft, write and review the mandated policies and requirements outlined in the Bill.

Notwithstanding verbal undertakings made by Local Government Victoria in assisting councils, the VLGA strongly recommends that operational grants are made available, particularly to rural and shire councils, leading up to and during the implementation phase of the Bill.

The VLGA is committed to the good governance of all Victorian councils and will be happy to work with key stakeholders and assist in the implementation of the Bill once it passes.

Appendix 1: VLGA submission to Electoral Matters Committee Inquiry into Civics and Electoral Participation (2017)

Voter turnout

In preparing this submission, the VLGA examined the voting statistics between the 2014 State election and the 2016 local council elections. We would like to highlight the following for the Committee's attention:

- The voter turnout for the 2014 State election was 93%, identical to the 2010 and the 2006 State election turnouts when rounded off to the nearest whole percentage pointⁱ.
- The percentage of informal votes cast for the 2014 State election was 5% for the lower house and 3% for the upper houseⁱⁱ.
- The voter turnout for the 2016 local government elections was 72%, comparable to the 2012 and 2008 council election turnouts when rounded off to the nearest whole percentage point (71% and 75% respectively)ⁱⁱⁱ
- There has been a sharp decline in voter turnout from 70% in 2008 down to 64% in 2012 and 61% in 2016 in local government elections where attendance voting is required. Postal voting in council elections resulted in similar voter turnouts – 76% in 2008, 73% in 2012 and 74% in 2016^{iv}.
- The percentage of informal votes cast for the 2016 local government elections was 6%, with attendance voting attracting higher rate of informal votes (8%) compared with postal voting (6%)^v.
- There has been an upward trend in informal votes from 5% to 6% for all council elections between 2008 and 2016. In particular, the percentage of informal votes for postal votes increased from 4% in 2008 to 6% in 2016. 72 out of 78 councils used postal voting for their 2016 elections^{vi}.

It can be seen from the above that there is already very good voter engagement at the State election level, much higher than at the local government elections level. The VLGA therefore contends that increasing electoral participation in local government elections would be beneficial and may well have consequential benefits for electoral participation in State elections.

Informal votes

In relation to strategies to reduce informal voting, the above statistics again do not suggest that informal voting is a major cause of concern at the State election level. However, the 6% of informal votes at local government elections do warrant further commentary.

The VEC analysed the informal vote in the 2016 local government elections, the first time it has done so, in order to examine any trends among the informal votes. The VEC found that *“68.8% of the informal votes were cast by voters who expressed a clear preference, but their vote could not be counted because of the formality rules in the (Local Government) Act”^{vii}*.

The VEC also demonstrated in its analysis that the average informal votes rose dramatically from 3.1% where there were 2-5 candidates standing, through to 6.49% with 11-15 candidates standing, 10.02% with 21-25 candidates and 14.65% with more than 25 candidates standing^{viii}.

The VEC concluded that *“the more candidates there were in an election, the higher the informal vote tended to be. This can be measured by the correlation between the number of candidates and the informal voting rate, which as $+0.828758^1$. This has been a consistent pattern since at least the 2005 council elections”*^{ix}

The VEC recommended that the Victorian Government gives *“consideration of a remedy for the increased level of unintentional information voting in elections with high number of candidates”*^x.

The VEC analysis of informal votes in the 2016 local government elections and subsequent conclusion and recommendation provides considerable insight into strategies which may assist in addressing informal votes at State elections.

The VLGA highlights to the Committee that the Local Government Act is currently being re-written, and opportunities exist to potentially address the VEC’s recommendation above regarding informal votes. Once again, the VLGA contends that changes to electoral participation at local government level will have positive benefits for State elections.

ⁱ [https://www.vec.vic.gov.au/files/Report to Parliament on 2014 Vic election Section 08 Voting.pdf](https://www.vec.vic.gov.au/files/Report%20to%20Parliament%20on%202014%20Vic%20election%20Section%2008%20Voting.pdf)

ⁱⁱ Ibid (page 27)

ⁱⁱⁱ

<https://www.vec.vic.gov.au/files/Report%20on%20the%20conduct%20of%20the%202016%20Local%20Government%20Elections.pdf>

^{iv} Ibid (page 25)

^v Ibid (page 250)

^{vi} Ibid (page 25)

^{vii} Ibid (page 26)

^{viii} Ibid (page 26)

^{ix} Ibid (page 26)

^x Ibid (page x)

¹ A correlation between +/- 0.5 – 1.0 is considered to be strong to very strong