



Local Government Bill – A Reform Proposal - 2019

Submission by the Victorian Local Governance Association

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Executive Summary and Recommendations

In developing this submission, the VLGA reviewed the six reform proposals against the central theme outlined in the *Reform Paper*. That is, does each proposal “*improve the democracy, accountability and service delivery of Victoria’s councils*”? Consideration was also given to the proposed reforms and their alignment with the objectives of the Local Government Bill (2018), particularly in relation to any possible consequences. While the VLGA is supportive in principle of some of the reform proposals, it holds concerns about others in the absence of the detail that will ultimately determine the legislative drafting that will accompany these reforms.

Given that these reforms will inform a new Local Government Act for the first time in 30 years, the local government sector is disappointed with both the absence of detail as to how these proposals will be implemented and the lack of sufficient time provided for sector engagement and consultation on these reforms.

The VLGA expresses its opposition to two reform proposals in particular: the mandated electoral structure and the 25% community generated petition process.

The mandated electoral representation structure would bypass the existing community consultation process and independent review facilitated by the Victorian Electoral Commission and place the responsibility for electoral representation for all 79 Victorian councils solely into the hands of the Minister. In the absence of any evidence highlighting failures in the existing electoral representation review process, the proposed one-size-fits-all structure is not aligned with the aim of improving local democracy and accountability.

Similarly, the 25% community generated petition process is opposed due to its lack of detail. There are concerns regarding several potential consequences of this proposal.

The VLGA asserts that the Local Government Bill (2019) must achieve a fair and equitable balance between the powers of the Minister and the independence of councils, which consist of elected representatives (councillors), to carry out the wishes and aspirations of their community. The VLGA urges the government to consider our views and recommendations and looks forward to engaging with the government leading up to and after the release of the 2019 Bill which will potentially result in the passing of a new Local Government Act.

The VLGA makes the following recommendations in relation to the six reform proposals:

Proposal 1: Simplified franchise

The VLGA opposes this proposal on the basis that it presents an extra barrier for civic participation for some voters, which is not aligned with the stated principle of improved democracy and accountability.

Proposal 2: Electoral structure

Given the lack of evidence highlighting any failure of the current electoral representation review process, the VLGA opposes the proposed reform and reaffirms its preference for the current statutory scheme which prescribes the Victorian Electoral Commissions (VEC) - as the ‘reviewer’ for conducting electoral representation reviews of local councils. A one-size-fits-all approach to council electoral representation does not and will not reflect the diversity of the 79 Victorian councils and the communities they represent.

Proposal 3: Training

The VLGA recommends that this proposal be further developed with consultation and input from the sector. The VLGA further recommends that existing provisions contained in the 2018 Bill regarding candidate eligibility be retained and re-introduced in 2019, and any training requirements for council candidates be introduced as a subsequent amendment once the 2019 Bill is passed.

The VLGA offers its qualified support for mandatory councillor induction, pending further details regarding the format, duration and content of such induction training.

Proposal 4: Donation reform

The VLGA offers its qualified support for the proposed donation reforms, pending further details on donation cap breaches.

Proposal 5: Improved conduct

The VLGA is opposed to the proposal for councillor conduct principles to be removed from legislation and moved into regulation and recommends that the conduct principles to remain in legislation.

The VLGA offers qualified support for the proposal for an independent arbitration process so as to remove any inherent or perceived conflict of interest by council administration. The VLGA stresses the need for adequate resourcing and adherence to the principles of natural justice throughout the arbitration process. The VLGA would also stress that arbitration should be an option available to councils and councillors once they have attempted other methods of conflict resolution such as mediation.

Proposal 6: Community accountability

The VLGA is opposed to the 25% community generated commission of inquiry proposal and holds concerns with regard to the current lack of operational clarity regarding this proposal. The proposal has the potential to disadvantage rural councils and to undermine existing independent governance oversight processes.

Introduction

The Victorian Local Governance Association (VLGA) recognises and supports the need for good governance at the local government level. We have been an active participant in the development and consultation process of the Local Government Bill (2018). This is evidenced by our proactive consultation with councils throughout late 2017 and early 2018 held over six sessions throughout Victoria, in collaboration with Local Government Victoria (LGV).

It is through these consultations that the VLGA had the opportunity to develop a comprehensive and considered submission to the Bill in May 2018. The Bill, as tabled in the Victorian Parliament in the second half of 2018, while not ideal from some perspectives, nonetheless represented a great opportunity to reform the local government sector.

Upon the release of the Local Government Bill *Reform Proposal* by Minister Somyurek on 17 June 2019, the VLGA undertook a deliberative engagement process in order to fully inform the VLGA response. This process was in two parts over a 2-week period due to the initial deadline for feedback.

Part A consisted of a survey of all Victorian councils and VLGA subscribers gauging their initial responses to the six reform directions outlined in the paper. The survey ran for 6 working days and was completed by 131 respondents. 71% of respondents came from VLGA member councils. The survey also provided opportunities for respondents to provide qualitative data in the form of free text comments on the reform proposals.

Part B was a face to face briefing and consultation session where the survey results, including qualitative data, were discussed and analysed. This session was attended by some survey respondents in person and via video conference. This submission contains results from the survey, feedback from the face to face consultation, plus data and research conducted by the VLGA into the reform proposals.

Response to Reform Proposals

Proposal 1: Simplified franchise

While councils were generally supportive of the stated rationale for the reform proposal, questions were raised regarding the potential disenfranchisement of non-resident rate payers and businesses. The stated benefit of simplified franchise comes at the risk of disenfranchising certain groups of eligible voters. The VLGA is concerned that the proposed opt-in system for non-residential rate payers does not align with the stated principle of improved democracy and accountability as the proposal presents a barrier for civic participation to these voters.

Respondents also questioned the potential costs to councils associated with this reform, particularly in administration for checking of non-residential rate payers and their nominated representatives when they choose to enrol.

On the basis of the concerns expressed above, the VLGA opposes the proposal for simplified franchise.

Proposal 2: Electoral structure

Given the lack of evidence highlighting any failure of the current electoral representation review process, the VLGA opposes the proposed reform and reaffirms its preference for the current statutory scheme which prescribes the Victorian Electoral Commissions (VEC) - as the 'reviewer' for conducting electoral representation reviews of local councils. A one-size-fits-all approach to council electoral representation does not and will not reflect the diversity of the 79 Victorian councils and the communities they represent.

The Local Government Act 1989 currently sets the parameters that guide the review of local councils, including the number of councillors and available electoral structures to best ensure 'fair and equitable representation'. While the reform paper outlined the perceived benefits of a single member ward representative structure, there are an equal number of challenges associated with such a structure.

For example, among the 12 recommendations provided by the Commission of Inquiry into the City of Greater Geelong¹, recommendation 6 was for the City of Greater Geelong to be restructured from single member wards into multi-member wards². This recommendation was adopted by the government and the City of Greater Geelong went into its 2017 council elections with its current structure of mixed multi-member wards.

The VEC has conducted a number of ward reviews over recent years which also illustrate the challenges associated with the various ward structures³. However, what is consistent in these review processes is that they were performed by the VEC, an independent statutory agency charged with the current review process and providing recommendations to the Minister for Local Government with the stated purpose of "*fair and equitable representation for people who are entitled to vote at a general election of the council*"⁴. There is no evidence that the current review process is failing communities. By contrast, the reform proposal has the potential to undermine the current electoral review process undertaken by the VEC, which currently requires input from local communities. It represents a significant shift of that responsibility away from the VEC to the Minister for Local Government.

The VLGA observes that should this reform proposal proceed as planned, new ward boundaries and new wards for large growth area councils may be required within a four-year council election cycle to ensure adequate representation. Shire councils with small populations and large geographical coverage will see some councillors representing large geographical areas while others would represent smaller areas due to population concentration around larger townships. Single member ward vacancies will result in by-elections rather than countbacks, which would have increased associated costs to the community.

This reform proposal appears to be at odds with the publicly stated position of the Minister for Local Government, namely that he supports the autonomy of local councils. This reform proposal does away with both community autonomy and an independent review process and invests that determination solely into the hands of the Minister.

¹ https://www.localgovernment.vic.gov.au/_data/assets/pdf_file/0025/49417/Geelong-City-Council-Report.pdf (page 10)

² Ibid (page 13)

³ <https://www.vec.vic.gov.au/ElectoralBoundaries/RepresentationReviews.html>

⁴ http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/lga1989182/s219d.html

This is seemingly at odds with the stated objective of the Bill (2018), that “*councils are constituted as representative bodies that are accountable, transparent, collaborative, efficient and engaged with their communities (own emphasis)*”⁵.

Finally, the 2018 Bill introduced nine overarching principles of good governance, with explicit references to councils achieving best outcomes for their municipal community. These principles are given effect in the Bill’s stated role for councillors to “*represent the interests of the municipal community in decision making*”⁶ and in the stipulation that councillors must “*consider the diversity of interests and needs of the municipal community*”⁷ in their decision making and “*facilitate and participate in effective communication between the council and the municipal community*”⁸. It is therefore difficult to envisage how a mandated ward structure would help to facilitate the implementation of such a whole-of-council good governance framework for an entire municipality.

Proposal 3: Training

The VLGA supports the ongoing engagement of local communities so they are able to hold their local councils to account in their decision making and when electing their local representatives. A majority of survey respondents agreed that candidates should have some form of training about local government. However, respondents had mixed feedback regarding the proposal for mandatory candidate training and expressed concerns regarding the lack of detail in the proposal.

Respondents were unsure if such training would be mandated for councillors seeking re-election, which the paper implied, but did not explicitly state. Respondents were also uncertain what provisions, if any, will be made to recognise prior learning and experience of candidates, such as those with higher qualifications and affiliations with professional associations. Some respondents had difficulty understanding why mandated training is proposed for council candidates, given that no requirements currently exist for candidates for state and federal elections.

The VLGA also seeks to clarify what constitutes “relevant training” as outlined in the reform paper. The VEC is not a regulatory agency. While it may be empowered to reject candidates’ nominations due to lack of “relevant training”, an independent agency would need to be established for any candidates wishing to lodge a grievance and review the VEC’s decisions. Failure to establish such an independent agency and process would undermine local democracy and accountability, as it may discourage candidates with significant experience and expertise from standing.

The VLGA believes that increased community awareness and understanding are the keys to increased electoral participation and franchise at council elections. The VLGA contends that greater investment in community education by the state government should be the focus for improving local democracy and accountability.

On the balance of the survey response and the questions raised, the VLGA opposes the proposed mandatory nature of candidate training. The VLGA recommends that this proposal be further developed with consultation and input from the sector.

⁵ https://www.localgovernment.vic.gov.au/data/assets/pdf_file/0022/91138/Local-Government-Bill-Exposure-Draft.pdf

⁶ *ibid*

⁷ *ibid*

⁸ *ibid*

The VLGA further recommends that existing provisions contained in the 2018 Bill regarding candidate eligibility be retained and re-introduced in 2019, and any training requirements for council candidates be introduced as a subsequent amendment once the 2019 Bill is passed.

The related reform proposal for mandatory councillor induction was very well supported by survey respondents. It should be noted that the vast majority of survey respondents stated that their councils already offer councillor induction training. The VLGA offers its qualified support for the proposal for mandatory councillor induction, pending further details regarding the format, duration and content of such induction training.

Proposal 4: Donation reform

The majority of VLGA survey respondents supported the proposed donation reform outlined in the paper. However, it was not clear in the paper what penalties will apply to candidates and councillors who breach the proposed lowered donation thresholds.

The VLGA offers its qualified support for the proposed donation reforms, pending further details about donation cap breaches.

Proposal 5: Improved conduct

The proposal for councillor conduct principles to be moved out of legislation and into regulation received mixed feedback from the VLGA survey respondents.

From a legislative point of view, it was put by some respondents that regulations can be changed more readily by the government of the day, and thus are more susceptible to potential political interference. The reform paper also did not state the reason as to why councillor conduct principles should be moved out of legislation when the councillor code of conduct and sanctions for breaches of the code of conduct are to remain in legislation. The VLGA contends that the principles need to remain in legislation in order to give full effect to the code of conduct and sanctions for breaching the code. The other alternative is to remove all councillor conduct provisions from legislation and move them all into regulation – something that the VLGA would oppose on the grounds that it does not represent good governance.

The VLGA is therefore opposed to the proposal for councillor conduct principles to be removed from legislation and moved into regulation and recommends that conduct principles remain in legislation.

The VLGA offers qualified support for the proposal for a legislated arbitration process. Having an arbitration process that is independent of councils removes any inherent or perceived conflict of interest by council administration. However, any arbitration process would need to be adequately resourced and obey principles of natural justice. A just outcome should be the aim of an arbitration system, not a speedy outcome. The VLGA would also stress that arbitration should be an option available to councils and councillors once they have attempted other methods of conflict resolution such as mediation.

Proposal 6: Community accountability

The VLGA is pleased to note that sexual harassment has now been included as an instance of serious misconduct, consistent with our submission to the 2018 Bill. However, the VLGA remains of the view, consistent with its submission to the 2018 Bill, that discrimination as defined under the Equal Opportunity Act (2010) and racial and religious vilification, as defined under the Racial and Religious Tolerance Act (2001), should also be regarded as serious misconduct. This recommendation is supported by our survey respondents.

The VLGA agrees that councillors should be held responsible for their conduct and offers its support for the proposal for the automatic disqualification of a councillor upon two findings of serious misconduct over an eight-year period.

The proposal for a community generated commission of inquiry received more unfavourable than favourable responses from survey respondents. It was noted that this process does not have any precedent anywhere in Australia, so it remains untested in terms of its utility and efficacy. Notwithstanding this, some respondents noted that this pathway could potentially be hijacked for reasons unrelated to governance concerns at councils, but rather in order to target specific councillors. It was also highlighted that the combined effects of the proposal for a single member ward structure and the 25% community generated commission of inquiry are unknown. As they currently stand, more eligible voters are required to call for the removal of a council/councillor than are required to vote in a councillor. By focusing on specific councillors, there is also the potential effect of losing focus on the performance of the council as a whole.

Some of the operational details of the 25% community generated commission of inquiry remain unclear. For example, would 200 words be sufficient for the applicant(s) to adequately explain the grounds for the petition? Similarly, how could the named council respond adequately to those grounds in a 200-word response? What grounds, if any, would the VEC have to reject what may be frivolous and vexatious grounds for petition?

The petitioning process, as outlined in the reform paper, also disadvantages councils with long term residents in relation to councils with more transient residents. Population movements, particularly new residents moving into outer metropolitan councils and renters in inner metropolitan councils, are significant. Residents would not be eligible to take part in the petitioning process if they were not enrolled to vote in council's most recent general election. In contrast, rural councils are much more likely to be subject to the petitioning process due to their stable resident base.

Essentially, the 25% community generated commission of inquiry may make the process easier for residents in rural councils and more difficult for residents in metropolitan councils.

Finally, the community generated commission of inquiry has the potential to undermine existing council governance accountability frameworks, namely the work of the Chief Municipal Inspector and the councillor code of conduct process. The VLGA contends that both measures have been strengthened under the 2018 Bill and the additional reform proposals such as the enhanced arbitration process are sufficiently robust without the need for this alternative pathway.

Given the concerns expressed above and the apparent lack of operational clarity regarding the 25% community generated commission of inquiry, the VLGA is opposed to this reform proposal.

Conclusion

The VLGA remains supportive of the intent and objectives of the Local Government Bill (2018). Given the significance and far-reaching consequences of the six proposed reforms, councils were disappointed with the lack of detail and lack of time for meaningful engagement and consultation with the sector. Notwithstanding this, feedback from our survey respondents indicated support for some proposals and opposition to others. The VLGA firmly believes that the Local Government Bill (2019) needs to achieve a fair and equitable balance between the powers of the Minister and the independence of councils, consisting of councillors who have been elected, to carry out the wishes and aspirations of their community. The VLGA urges the government to consider our views and recommendations and looks forward to engaging with the government leading up to and after the release of the 2019 Bill, which will potentially see the passing of a new Local Government Act for the first time in 30 years.