



Local Government Bill (2019) and its impact on councils

The Local Government Bill (2019) was introduced into the Victorian Parliament on 13 November. The Bill has been in development since 2015 and presents a [principle based legislation for the local government sector](#).

If the Bill is passed, it will impact all Victorian councils, at both strategic and operational levels.

The Bill proposes a staged commencement process. This is outlined in s.2 of the Bill as well as in specific sections of the Bill.

Below is a summary of the new proposed initiatives and their likely impacts.

Please contact Bo Li, Senior Policy Advisor the VLGA via bo@vlga.org.au if you have specific questions regarding the Bill.

Proposed initiative	Brief explanation	Impact on councils
s.9 Overarching governance principles and supporting principles	Councils are required to observe 9 principles of good governance and 5 supporting principles	Large. Most councils already operate under these principles or similar under the current Act. There are risks for small and rural councils relating to supporting principles of community engagement, financial management and service performance as they are servicing large geographical areas with sparse population and are heavily reliant on grant funding. One governance principle worth noting relates to environmental sustainability, including “ <i>mitigating and planning for climate change risks</i> ” for their communities.
s.13 Constitution of a council	There will only be single member or un-subdivided council structures. No	Large to Significant. This is by far one of the most far reaching proposals in the Bill and will transform the structure of councils if the Bill is passed. It is likely

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	<p>provision has been made for multimember or mixed member wards.</p>	<p>that councils will be gradually phased into one of these two structures over two election cycles (i.e. 2020 and 2024).</p> <p>For single member wards, the Bill proposes that each ward must ensure to have approximately equal number of voters per councillor and that variance between wards does not exceed by more than 10%.</p> <p>Given the rapid population increase in metropolitan councils, it may require ward boundaries to change for every election.</p> <p>Un-subdivided structure may better suit rural councils with small population sizes.</p>
<p>s.18 Role of Mayor s.19 Powers of the Mayor</p>	<p>Mayors have additional roles in promoting positive behavior among councillors and assisting them in understanding their roles.</p> <p>Mayors have powers to appoint chairs of delegated committees and these appointments override appointments made by council</p>	<p>Medium to Large. There will be more scrutiny on mayors in their additional roles from both councillors and community.</p> <p>The extra power of mayors may create additional risks to good governance of councils where the mayor may be seen as rewarding their supporters by appointing them as chairs of delegated committees.</p> <p>See notes on s.23 below.</p>
<p>s.21 Role and power of deputy mayor</p>	<p>Deputy mayors will be mandated if the Bill is passed.</p>	<p>Small. Most councils already have deputy mayors and perform roles similar to what have been proposed in the Bill.</p>
<p>s.23 Declaration of offices of mayor and deputy mayor to be vacant</p>	<p>Mayors and deputy mayors may be voted out of their positions (but not out of council) by $\frac{3}{4}$ of councillors at a special council meeting.</p> <p>This provision only applies to mayors and deputy mayors elected on a two-year term.</p>	<p>Medium. While this provision gives councillors to remove mayors and deputy mayors elected on two-year terms, the process for removal will be disruptive to councils. Other measures in the Bill relating to councillor code of conduct may minimize councillors resorting to this measure.</p>
<p>s.32 Councillor induction training</p>	<p>Councillors (including returned councillors) must undertake induction</p>	<p>Small to Medium. While most councils already provide for councillor induction, they are done voluntarily. The content and process for such induction varies</p>

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	training within 6 months of taking oath of office. Failure to do so will result in withholding of councillor allowance.	between councils. The exact nature and content of such training will need to be specified in regulations if the Bill is passed.
s.39 Allowances for mayors, deputy mayors and councillors	The Bill proposed for allowances to be set by the Independent Remuneration Tribunal, rather than by the Minister as they are currently.	Small to Medium. The VLGA has advocated for this change in its submission to the 2018 Bill. While the setting of allowances by the Tribunal is welcomed, it is important to note that allowances will still be drawn from councils' revenue. Therefore, there may be pressure for small/rural councils to have lower allowances compared with larger councils.
s.45 CEO employment and remuneration policy	Councils are required to have a CEO employment and remuneration policy, and to have independent professional advice in the CEO recruitment, review and performance monitoring processes.	Medium. While some councils already have independently chaired CEO employment committees, there will be demand for experts in this field if the Bill is passed. There would be extra financial implications, particularly for small rural councils in relation to the costs associated with this mandated policy, including the independent committee chair.
s.46 CEO must develop and maintain a workforce plan	CEOs are required to develop and maintain a workforce plan that describes the organizational structure and projected staffing for at least 4 years, including measures to ensure gender equality, diversity and inclusiveness.	Medium. This new policy is consistent with councils' statutory duties such as council plans and long-term community planning. However, this will add extra operational requirements on council administration. Measures to ensure gender equality, diversity and inclusiveness may also add to the operational costs of councils, particularly in small shire councils.
s. 55 Community engagement policy s.56 Community engagement principles s.57 Public transparency policy s.58 Public transparency principles	All councils are required to adopt community engagement and public transparency policies and associated principles.	Large to Significant. The Bill is specific in stating the engagement policy must <i>"include deliberative engagement practices which must include and address any matters prescribed by the regulations ... and capable of being applied to the development of the Community Vision, Council Plan, Financial and Asset Plan"</i> . Depending on the supporting regulations, small and rural councils will be disproportionately impacted. The interpretation and expectation of what constitute deliberative engagement practices will also vary between communities.

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		The public transparency policy must be adopted by September 2020 and the community engagement policy by March 2021 if the Bill passes.
s.60 Governance rules	The governance rules will regulate council meetings, committee meetings, election of mayors/deputy mayors, election period policy, declaration of conflict of interests for staff and councillors.	Small to Medium. All councils should already have in place relevant local laws governing council meetings, election period policy and other processes required under the proposed governance rules. Councils must adopt the new governance rules by September 2020 if the Bill passes.
s.62 Joint meeting of councils	Councils can have joint meetings provided that each council in the joint meeting has a majority of councillors present.	Small to medium. This provision of the Bill is not expected to be used routinely, but nonetheless gives councils the option of hosting joint meetings on cross-council matters (e.g. joint contract/procurement of services). There is expected to be further guidance in the form of regulation governing such joint meetings and their resolutions if the Bill is passed.
s.67 Council decision making where quorum cannot be maintained	Council can resolve matters by splitting them into 2 or more separate parts if the original matter cannot be resolved due to lack of quorum.	Small. The clause provides councils with an alternative mechanism to resolve matters where a quorum cannot be maintained due to declared conflicts of interests. If the matter still cannot be resolved via the splitting mechanism, then council must establish a <i>“delegated committee consisting of councillors who have not declared a conflict of interest and any other person(s) the council sees fit”</i> . Please note the mayor has discretion to appoint chair to this delegated committee, and for that appointment to override council appointment.
s. 88 Community vision s.89 Strategic planning principles s.90 Council plan s.91 Financial plan s.92 Asset plan s.93 Revenue and rating plan	Councils will be required to develop community vision for at least 10 years, supported by strategic planning principles. Council plan remains at 4 years. The financial and asset plan must span at least 10 years.	Medium to Large. Some councils already have the required plans and community vision in place. There are resourcing constraints faced by small rural councils in adopting the required plans. The Bill specifies that all the plans must be developed with its <i>“deliberative engagement practices”</i> (see s.55 above).

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s.107 Complaints policy	Councils are required to develop and maintain a complaints policy. The policy must outline the complaint handling process and provide for an independent review of the action, service, or decision subject to the complaint.	Large to Significant. The Bill's definition for a complaint is very broad and includes " <i>communication orally or in writing to the council by a persons of their dissatisfaction with the quality of an action taken, decision made or service provided by a member of council staff or contractor</i> ". Delays in council staff or contractor taking action, making a decision or providing a service are also basis for complaints. Considering the scope and number of council services and decisions made on a daily basis, this provision could have far reaching consequences. For example, a person contacting council for a missed bin pick up could be considered a compliant and therefore be subject to the complaints policy.
s. 127 General conflict of interest s.128 Material conflict of interest	The Bill recategorizes conflicts of interests into general and material, as opposed to direct or indirect under the current Act.	Medium to Large. This recategorization received mixed reactions from councils when it was first proposed in 2018. It remains unclear what would constitute an " <i>impartial, fair-minded person</i> " test for General conflict of interest. More guidance may be required to assist councillors in addressing this issue. Exemption and process for declaration of conflict of interest remain largely similar to the current Act.
Part 6, Divisions 5 - 7 Councillor conduct, Councillor conduct registrar/officers Councillor conduct panels and VCAT	The Bill outlines a 3-stage process for dealing with councillor misconduct (internal arbitration), gross misconduct (councillor conduct panel) and serious misconduct (VCAT), with processes for application and notification.	Large to Significant. These divisions have been substantially re-written to outline the different pathways to deal with councillor code of conduct complaints and resolution. It also outlines the relationship between councillor code of conduct resolution mechanisms and office of the Chief Municipal Inspector. Councils are urged to get in-depth briefing on these changes.
s.232 Temporary administration	If council's number of extraordinary vacancies exceeds 50% of the council (i.e. council lost quorum of councillors), and if the situation restricts council's ability to provide good governance, the Minister can appoint temporary administration of that council.	Small to Medium. This provision is unlikely to be used except in very limited circumstances (e.g. mass councillor resignations). Councillor affected by this provision are deemed to be suspended from the council during the period of temporary administration but still eligible for councillor allowances (but not mayoral allowances). Suspended councillors may also be requested by administrators to provide advice, be a member of a delegated committee or represent the council on another body.

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s.248 CEO to prepare voters' list of ratepayers	The voters list as prepared by the CEO will closely align with voters roll for other elections	Small to Medium. Traditionally the CEO voters' roll automatically contains non-residential ratepayers. Under this Bill, non-residential ratepayers will need to apply in order be enrolled to vote in council elections.
s.256 Candidate for election	Candidates for an election must complete prescribed training	Small to Medium. It is unknow what the format or content of such mandatory training candidates are required to undertake. Councillors re-contesting elections are considered candidates and therefore must undertake the required training. No further details are available in the Bill.
s.262 Voting system	Voting system for elections and by-elections will be determined by the Minister	Small to Medium. There will be no council discretion on its preferred method of voting as this power will rest with the Minister if the Bill passes. Voting system is defined as postal, attendance or any other form of voting as determined by the Minister.
s.269 Marking of ballot-paper	Full preferential voting is required. Voters must express a preference against every candidate.	Small. The full preferential system is retained from the current system for un-subdivided wards, a candidate must still obtain absolute majority to win in single vacancy wards as they do under the current Act.
Part 8, Division 10 Election campaign donations	The 2019 Bill proposes to have campaign donation returns to be managed by council CEOs, not by the Chief Municipal Inspector as outlined in the 2018 Bill.	Small. Donation returns remain largely unchanged from the current Act. Donation, including gifts in kind, remain capped at \$500. The CEO remains responsible for the coordination of election donation returns within 40 days after election day and report and publication of donation returns within 14 days after collection of donation returns.

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