



29 August 2024

Mike Gooley
Executive Director
Local Government Victoria
Department of Government Services
By email to lgv@ecodev.vic.gov.au

VLGA Submission into Stage 2 of the 2024 Local Government Reforms

Dear Mr Gooley (Mike)

Thank you for the opportunity to make a submission in relation to Stage 2 of the Local Government Reforms 2024. The Victorian Local Governance Association (VLGA) was pleased to see our previous feedback taken into consideration in the development of the draft proposals and now offers a further contribution to the process for your consideration.

The ongoing commitment by the Victorian Government to fostering good governance in the local government sector is to be commended, as is a focus on the welfare of Councillors. The VLGA is of the view that the recent changes to the Act¹ will assist the sector in creating positive working environments where Councillors can continue to make a meaningful contribution to their local communities.

About the Victorian Local Governance Association

The VLGA is the peak body for Victorian Councillors and Victoria's Councillor support network.

We are an independent, membership-based organisation that supports councils and Councillors in good governance. We inspire and enable the good governance of our members, empowering their participatory, inclusive and ethical decision-making when it comes to leading our diverse communities.

The VLGA is the only organisation with a singular focus on good governance and support for Councillors and those who work with them. We are apolitical and member-run.

We are the leading voice for Councillors, advancing policy and legislative change to improve the working lives of our members.

The VLGA is an independent governance organisation supporting councils and councillors

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VLGA Councillor Census

In June and July 2024, the VLGA conducted a census of Victoria’s Councillors. While the data from that research effort is still being analysed and a full report will be available later this year, it is possible to share some of the early findings arising from the 300 responses received (an almost 50% response rate).

While the census explored a wide range of issues, it did pose some specific questions that relate to Councillor conduct and the process for dealing with it. The results are cause for concern.

One of the questions posed related to a Councillor’s personal experiences of unacceptable behaviour in their role. The findings were:

Question	Yes	No
In your role as Councillor, have you experienced threatening or intimidating behaviour?	80%	19%
In your role as Councillor, have you experienced bullying and non-sexual harassment?	59%	36%

When asked about the processes that are currently in place to support Councillors who have experienced this unacceptable conduct when from another Councillor, the findings were:

Question	< very ineffective		very effective >	
How effective are any arrangements in place to deal with inappropriate and improper behaviours by another Councillor?	23%	39%	25%	6%

When asked more specifically about dispute resolution procedures, the findings were:

Question	< strongly disagree			strongly agree >	
Do you agree or disagree with the following statement? “There are good dispute resolution mechanisms in place to deal with conflict between Councillors”	37%	18%	19%	13%	7%



It is clear from the preliminary results of the VLGA Councillor Census that improvements are necessary to ensure that Councils can operate effectively and that any poor behaviour is addressed early and without negatively impacting the good governance of the Council.

In assessing the current proposals, the VLGA has considered the degree to which they will alter a status quo that would appear not to be fit for purpose.

Model Councillor Code of Conduct

The development of a Model Councillor Code of Conduct is welcomed by the VLGA, and we are now pleased to see a model code that extends the Councillor conduct standards. We are particularly pleased to see a stronger alignment between the model code and the role of a Councillor as set out at section 28 of the Act.

One concern of the VLGA is that the amendments to commence on 26 October 2024 will see the removal from the Act of section 139(3)(d), which have enabled Councils to include matters in its Code of Conduct (other than standards of conduct) which it considers appropriate to the achievement of good governance. Many Councils have done just this, including measures relating to a range of matters, including the receipt of gifts, the process to follow when standing for election to another level of government, the adherence to a media policy and the manner in which Councillors engage with the Council in relation to personal matters. The removal of this section, and the failure to replace it with an equivalent provision, now means that many of these policies are now ‘orphaned’ – essentially without a legal head of power.

By way of example, in the wake of Operation Sandon, a number of Councils introduced policies providing for public transparency in relation to meetings or other dealings with property developers. In the absence of a specific requirement to adopt such a policy, the only way it could be given life was by including it (or a reference to it) in a Councillor Code of Conduct. With section 139(3)(d) now removed, the mechanism to adopt such a policy can now be found at the new section 54A of the Act, but it relies on an inclusion in the Regulations to do so. No such inclusion has been proposed.

A further matter of significance is the high-level nature of the proposed new conduct standards. The interpretation of the existing standards has proved challenging for Councillors, and there has been a need to rely on the findings of Arbiters and Councillor conduct panels to gain more clarity. Given the specifics of each circumstance and the changing interpretations over time, this has been difficult.

It is proposed to rely heavily on additional supporting material to provide this additional guidance for the sector and while this approach is laudable, it is difficult to comment on it until the material becomes available. We note that one of the suggested guidance documents is the VLGA’s own *Good Governance Guide*, developed by the VLGA in partnership with the state government and other sector peak bodies and last published in 2012. In recognition of the reliance on this material in the reforms, the VLGA is now developing plans to publish an updated and contemporary “Good Governance Guide” in coming months. The challenge for us is that as a member-based organisation, the resources we draw on have been provided to us by our members. Without external support for this effort, our members would essentially be subsidising non-member Councils in the development of these guidance materials.

RECOMMENDATIONS

The VLGA recommends that:

1. in addition to the proposed prescribing of a Council confidentiality policy and a Councillor social media policy for the purposes of section 54A of the Act, the Regulations also prescribe “any other policy which the Council considers appropriate in relation to good governance to support a Councillor to perform their role in accordance with section 28”.
2. Local Government Victoria support the VLGA to develop and publish a “new” *Good Governance Guide* and make it available as a guidance resource for the local government sector.

Mayoral and Councillor Training Frameworks

The VLGA believes that the topics included in the proposed curriculums provide a comprehensive grounding in the roles and responsibilities of Councillors (and Mayors and Deputy Mayors).

The VLGA supports the current approach to induction training, which establishes through Regulation the subject matter to be included, but leaves the detail of each module and the method of delivery to a Chief Executive Officer to determine. The different priorities of local communities and the particular issues facing each Council mean that a ‘one size fits all’ training curriculum and delivery methodology is unlikely to be useful. While the discussion paper does not describe the level of Regulatory definition of the training methodology, the VLGA submits that this should be left to each Council’s Chief Executive Officer.

The VLGA submits that the scope of the professional development training modules “Victoria’s Statutory Planning System” and “Council Policies and Procedures in Relation to Statutory planning” requires reconsideration. A Council’s role in urban planning extends beyond that of a statutory decision-maker, and includes strategic planning, heritage policy, conservation of distinct areas, housing affordability and compliance with the Yarra Strategic Plan, to name just a few. The broadening of these modules to include all of Council’s planning responsibilities and to focus on the strategic rather than operational role of the Council is a more useful approach.

The VLGA further submits that the final year of a Council’s term warrants special consideration. While it may be that many existing Councillors will be returned at the election, it also needs to be acknowledged that many Councillors will choose not to seek reelection, or be unsuccessful in their attempt.

By the time the fourth year of a Council term arrives, we would like to think that Councillors are already suitably equipped with an understanding of their roles and responsibilities, and have developed their skills in their governance and financial management obligations. It is difficult to see the benefit of undertaking further development or even ‘refresher’ training at this late stage. That said, the final year does provide an opportunity for Councillors to receive training in elements relevant to the conduct of Council elections that are relevant both to Councillors who intend to stand as a

candidate and those who do not. Care should be taken though, to ensure that the mandatory training does not include matters designed to assist or support Councillors as election candidates, with such matters best left to optional training provided by Councils, peak bodies and others to the public at large.

Further, it will be necessary to introduce a deadline for the final year's training program that is before the election day, in order to ensure that there is a consequence for a failure to complete it. This deadline must be before the final payment of Councillor allowance is made in respect of the term of office.

RECOMMENDATIONS

The VLGA recommends that:

3. Responsibility for determining the precise content of each training module and the method of delivery rest with the Chief Executive Officer.
4. The proposed training topics on statutory planning be expanded to include a Council's responsibility for strategic planning matters.
5. The final year in each term be subject to a different training syllabus, including the Council's election period policy, election period considerations, the use of Council resources for election purposes and Councillor integrity in relation to the election.
6. A deadline for completion of the training program in the final year of the training program be set on or before the opening of nominations for the Council election.

Internal Resolution Procedure

The VLGA would have liked to have seen a more detailed paper on the internal resolution procedure, including either some more prescription about the necessary steps involved or a model policy to be adopted. While we appreciate the commitment to the principles-based Act, it is difficult to see how an internal resolution procedure would need to differ between Councils.

We submit that an outcome that will likely see a substantial number of Councils adopt their existing internal resolution procedure (taken from their current Councillor Code of Conduct) as a stand-alone document will not move the dial when it comes to early resolution of disputes. With only one fifth of Victoria's Councillor believing that their current dispute resolution procedures are fit for purpose (see VLGA Councillor Census above), an outcome that will likely see those process remain in place cannot be supported.

Instead, the VLGA would have liked to have seen a more prescriptive approach, with a clearer expectation that parties to a dispute engage in good faith and work toward resolution. While it is acknowledged that participation in such a process remains voluntary, a standard approach across the sector would make it more difficult for Councillors to refuse to engage on the basis of a perceived



procedural failing, and enable Arbiters to more easily consider a Councillor's level of participation in the process when reaching a later conclusion.

In response to the lack of further guidance, the VLGA is currently developing a model *Internal Resolution Procedure* for use by our membership. This issue is discussed in more detail under 'Implementation' below.

In our submission to the Local Government Culture Review in March 2022, the VLGA identified an opportunity for an independent body to be established to enable a Council to seek confidential advice, as well as conciliation and mediation assistance to resolve disputes. Our position in this regard has not changed. Failing this though, we submit that the establishment of a panel of accredited mediators would significantly assist the sector. Council could call on a member of such a panel (at their cost) to assist them in the early resolution of disputes. While this would not always be necessary, it may be particularly useful for disputes where the Mayor is unable to facilitate the process (such as when they are a party to a dispute or have a conflict of interest). Given an effective early intervention process will lead to a reduced workload for the Principal Councillor Conduct Registrar and Councillor Conduct Panels, then the investment involved in establishing such a central register is likely to pay for itself.

RECOMMENDATIONS

The VLGA recommends that:

7. Local Government Victoria consider the establishment and maintenance of a panel of accredited mediators, which Councils could draw on as part of their internal resolution procedures.

Implementation

With the election period ahead of the 2024 Council election almost upon us, little time remains for Councils to put in place the necessary changes ahead of the changes to the Local Government Act 2020 to commence on 26 October 2024. The most challenging of these obligations is the requirement for Councils to adopt:

- a Councillor social media policy (under section 54A of the Act)
- a Councillor information policy (under section 54A of the Act)
- an internal resolution procedure (under section 140 of the Act)

The fact that adoption of policy cannot be delegated by virtue of section 11(2)(g) of the Act and requires a resolution of Council, together with the limitations on decision-making due to the election period, makes it extremely difficult for Councils to have these policies in place ahead of the election.

To assist the sector, the VLGA is currently preparing model policies that will satisfy the legislative obligations and represent best practice in good governance. These model policies will be available to our membership in coming weeks. It would greatly assist the sector if these model policies, once

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finalised, could be formally recognised as satisfying a Council's legislative obligations and representing good governance practice. As well as giving Councils comfort that they are compliant with their new obligations, this would also likely lead to a greater uptake of model policies, leading to more consistency across the sector.

Of course, it is always open for a Council to develop their own policy (or make amendments to a model policy) as is consistent with the principles-based approach to regulation of the sector, but making model policies available will, in our view, greatly assist the sector.

The final matter that the VLGA wishes to raise, again relates to the challenge of the short timeframe available to implement the reforms. With the commencement of the amendments due on 26 October 2024, the head of power for the existing Councillor Codes of Conduct will disappear, effectively rendering those documents meaningless. Given at most Councils they contain the existing internal resolution procedure to be used for Councillor disputes, and it is unlikely that Councils will have adopted a new procedure under section 140 of the Act by that date, it is necessary to ensure that a savings provision be included to ensure that Councils are not without a procedure in place. Consideration may also need to be given to how the transition from one regime to another will impact on matters already afoot.

RECOMMENDATIONS

The VLGA recommends that:

8. The Regulations that require the adoption of a Council confidentiality policy, Councillor social media policy and an internal resolution procedure include an implementation period to enable sufficient time to for newly elected Councils to develop and adopt these policies (likely sometime in early/mid 2025).
9. Local Government Victoria review the model policies being developed by the VLGA and confirm for the sector that they satisfy the new legislative obligations.
10. The Minister issue good practice guidelines under section 87 of the Act with respect to the adoption by a Council of a Model Council confidentiality policy, Model Councillor social media policy and a Model internal resolution procedure.
11. If possible, a 'savings' provision be built into the Regulations (or some other guidance be issued to the sector) to ensure that any internal resolution procedure currently contained in a Council's Councillor Code of Conduct serve as the internal resolution procedure until such a time as one is adopted under section 140 of the Act.



Thank you again for the opportunity to make a submission in relation to the implementation of the Local Government Amendment (Governance and Integrity) Act 2024. The VLGA is committed to working closely with our members to support good governance for their local communities, and is pleased to provide support to any reform that will go some way to fostering a more constructive working environment for Victoria's Councillors.

While we offer a number of recommendations in this submission and trust that they will be given due consideration, we firmly believe that a desire for perfection should not stand in the way of change for the better, and look forward to playing our part in the implementation of these reforms.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K Arndt', written in a cursive style.

Kathryn Arndt
Chief Executive Officer

ⁱ All references to 'the Act' in this submission refer to the Local Government Act (Vic) 2020, including the amendments to commence on 26 October 2024.