Local Government Bill – A reform proposal

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Ministerial foreword

Councils are part of our communities, providing infrastructure and services we rely on every day.

To be able to meet the expectations of Victorians, our Councils need to be supported by legislation that empowers them to provide first class services and ensures they are accountable to the communities they serve.

The Andrews Labor Government is committed to deliver a new Local Government Bill this year.

The new Bill has been developed through rigorous consultation with the community, councils and peak bodies and builds on the reforms presented in 2018.

The Labor Government is looking at further reforming electoral laws, making councils more accountable to their communities between elections, improving councillor behaviour and lifting standards by introducing mandatory training for candidates and councillors.

This is an important step in creating strong, effective local councils.

I would like to thank everyone who contributed their time and feedback to develop the new Bill, and I look forward to working together to deliver a modern, effective Act that will help communities better understand and have confidence in their council.

Hon Adem Somyurek MP
Minister for Local Government

Local Government Bill 2019

A Bill intended to become the new Local Government Act for Victorian councils was introduced into Parliament in May 2018. The Local Government Bill 2018 (the 2018 Bill) was passed by the Legislative Assembly but lapsed in the Legislative Council when Parliament expired before the November 2018 Victorian election.

It is proposed that a new Bill be presented to Parliament in 2019. The new Bill will retain the substance of accountability and provision of services and include some additional reforms designed to further improve and strengthen the 2018 Bill.

As the independent review into the local government rating system will provide its recommendations to government by 31 March 2020, previously proposed changes to the rates and charges provisions in the *Local Government Act 1989* (LG Act) will not be introduced in the new Bill. The provisions relating to rates and charges will continue to operate under the LG Act until the rating system review has been completed. The only exception to this will be that the new Bill will amend the LG Act to provide for Environmental Upgrade Agreements to be available to residential properties.

This Paper considers the background to the 2018 Bill. It also describes the proposed additional reforms.

2018 Bill

- Enhanced leadership roles and responsibilities for Mayors
- Each council to formally elect a Mayor and a Deputy Mayor
- Community engagement policy
- Integrated strategic planning and reporting processes
- Community Vision statement to inform the Council Plan
- 10-year financial plans and asset plans
- An emphasis on financial viability of councils, with overarching principles emphasising financial sustainability and collaboration with other councils and public bodies

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New reforms

- Simplified franchise
- Standardised electoral structures
- Training
  - > Candidate training
  - > Councillor induction training
- Donation reform
- Improved conduct
  - > Codes of conduct
  - > Arbitration process
- Community accountability
  - > Disqualification
  - > Community initiated Commission of Inquiry

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Local Government Bill 2019

Part 1 – Background

Victoria's councils need to be equipped to deliver a range of services and infrastructure for the diverse communities they represent.

This is why the Victorian Government has spent the past four years reforming the LG Act, the legislative framework that support councils' key functions. The Victorian Government embarked on a local government reform agenda in 2015 with the aim of developing a new principal Act for local government.

Since the current LG Act was made law in 1989, local government in Victoria has undergone significant changes. The 210 relatively small councils in 1989 have been incorporated into 79 larger, more capable organisations. Democratic processes have changed and the functions performed by councils have increased and diversified. Councils now manage over $90 billion of public infrastructure and deliver services valued at more than $7 billion each year.

The Victorian Government is working to produce an open, transparent and balanced piece of legislation to ensure councils are more engaged with and accountable to their community, improving the standards and behaviours of councillors and strengthening community confidence with the election process. Communities will also know that action can be taken to hold councillors and councils to account.

The new Local Government Bill 2019 will provide a framework that will revitalise local democracy and improve council governance.

The Bill underpins how Victoria's 79 councils function, and through the LG Act review process the Victorian Government has consulted widely with councils, peak bodies and the wider community to shape an Act that will empower councils to support their communities now and in the future.

The Reform Process

It is the first comprehensive review of the LGA in a quarter of a century, and it responds to calls from the local government sector for legislative reform after over 100 amending acts have resulted in hundreds of individual amendments to the Act in the past 25 years.

The LG Act was reviewed in four stages to ensure the local government sector and wider community were engaged in creating and shaping the new Bill.

- **Stage 1** started with identifying issues, commissioning research papers and forming an advisory committee.
- **Stage 2** involved exploring reform ideas. Six technical working groups made up of local government specialists, explored a range of options at 10 community forums held around the State. These ideas informed the discussion paper, which was published in September 2015 and received 348 submissions in response.
- **Stage 3** saw a detailed examination of specific policy directions. A Directions Paper was released in June 2016 which outlined 157 potential reform directions. Responses to these included 333 written submissions and direct feedback in 18 community forums involving Mayors, council Chief Executive Officers (CEOs) and community members. Further work was then undertaken in technical working groups and meetings with key stakeholder groups from the sector and the community.
- **At stage 4**, the government released an Exposure Draft of the proposed Bill in December 2017. Extensive briefings and public meetings were held to socialise the Exposure Draft. One hundred and ninety submissions were received and analysed in the process of preparing a final Bill for Parliament.

Following extensive consultation, the 2018 Bill was introduced into the Victorian Parliament, proposing significant changes to how councils are governed and the legislative framework. The Bill lapsed when Parliament expired before the November 2018 Victorian election.

However, the work done over the past four years will not be wasted, with the Local Government Bill 2019 expected to be presented to Parliament in 2019. Once passed through Parliament, the Act will be implemented in various stages, over a two year period.

Part 2

Reform Themes

The new Local Government Act will improve the democracy, accountability and service delivery of Victoria's Councils.

A NEW RELATIONSHIP

Example
Minister will no longer set Mayor and Councillor allowances.

To support **a new relationship** between State and local government and the community by removing unnecessary Ministerial approvals and arbitrary powers. Autonomy is provided to councils to develop and adopt their own policies and procedures in accordance with principles of transparency, accountability and sound financial management.

COMMUNITY CONFIDENCE

Improve community confidence through reforms to election processes, electoral structures and candidate requirements. A balanced legislative framework will be provided that gives power back to the local community and makes councils and councillors directly accountable.

Example
Electoral campaign donations to individual candidates and candidate groups from a single donor will be capped and foreign donations banned.

IMPROVE CONDUCT

Example
A Councillor no longer being qualified to be a Councillor if they are the subject of two or more findings of serious misconduct.

Improved service delivery through deliberative engagement and principles to support councils in delivering effective essential services.

IMPROVED SERVICE DELIVERY

Example
The development of long term plans and increased scope for Council co-operation.

STRONG LOCAL DEMOCRACY

Strengthen local democracy by making councillors directly accountable to their community.

Example
To provide for more direct accountability it is proposed to move to single member wards for all Councils with the exception of smaller rural shires.

Improved conduct by providing clear standards of behaviour in regulations and stronger mechanisms for conduct breaches, including requiring Councillors to complete training and providing arbiters powers to address misconduct. New mandatory standards of conduct will be prescribed to assist councillors to clearly understand what acceptable conduct is.

Part 3

Proposed Reforms

REFORM 1

Simplified Franchise

It is proposed to make council electoral rolls more closely aligned with the State electoral roll. Voters whose only entitlement is as an owner or lessee of a property in the municipality will be required to lodge an enrolment form to vote in that municipality's election if they want to vote.

Voter Franchise

Council voters' rolls are a complex mix of state enrolled residents and property based voters. Currently, voters may have elected to be on a roll or may have been enrolled without application.

Why is this proposed?

The proposed arrangement is for people on the State electoral roll to be directly enrolled to vote in their council election and for other people who pay council rates to have a right to apply for enrolment. This type of system is commonly used in other Australian states.

The proposed arrangement will more closely align council electoral rolls with the State electoral roll. This will simplify the council elections process.

Separate arrangements will apply for Melbourne City Council reflecting its unique status.

Under current legislation, the council prepares a list of ratepayer voters and the Victorian Electoral Commission (VEC) combines that list with the State roll to form the Municipal voters' roll. The list of ratepayer voters automatically includes one or two owners for a rateable property.

There are problems with this system. In many cases property owners are already on the State electoral roll, so the VEC must go through every council's list of ratepayers to remove the duplicated voters. This is a difficult and imprecise task.

A further issue is that voting is compulsory for residents on the State electoral roll but not for property-based voters. In practice, voter participation by non-residents is historically low. Well over three quarters of residents on the State roll vote in their council elections whereas less than half the non-resident ratepayers vote.

How will it work?

Changing the voter franchise is proposed to be done in two stages over two election cycles. There are two reasons for this:

- firstly, it will allow time to ensure every person with a voting entitlement has a reasonable opportunity to exercise their rights; and
- secondly, it will allow time to review electoral structures to address changes in the distribution of voters between the wards of some councils.

Stage 1

The voter franchise for the Victorian local government 2020 elections, and any subsequent by-elections, would be as follows:

- State electoral roll voters would continue to be directly enrolled.
- Non-resident property owners who were enrolled would retain their enrolment status as an interim arrangement.
- Non-resident new property owners not previously enrolled will be entitled to apply for enrolment and will not be directly enrolled without application.
- Commercial lessees and company representatives will continue to be entitled to apply for enrolment.

Stage 2

For the 2024 Victorian Local Government elections, the final stage of the reform will come into effect. Non-resident property owners will no longer be directly enrolled to vote in council elections. Owners will be entitled to apply for enrolment if they wish to vote. Each affected person will be notified of the change and provided an opportunity to enrol.

Compulsory voting will continue to apply only to residents on the State roll in 2020. From 2024 however, it will become compulsory for all enrolled voters to vote.

Melbourne City Council Reforms

Melbourne City Council has separate voter franchise arrangements. At that Council, direct enrolment of non-resident owners will continue with one exception. It is proposed to remove the requirement for the Melbourne City Council to directly enroll property owners and corporation representatives whose primary residence is outside Australia. Overseas owners/representatives will retain the right to apply for enrolment. The changes through amendments to the *City of Melbourne Act 2001* will be fully implemented for the 2020 election.

REFORM
2

Electoral Structures

Representative structures and election processes are to be simplified and made consistent.

Electoral Structure

Representative structures and election processes are to be simplified and made consistent. It is proposed to move to a single consistent model of single member wards, unless it is impractical to subdivide a council into wards.

Currently Victorian councils may be constituted in one of five structural models.

Why is this proposed?

Single member wards for each council enable residents to more effectively receive direct representation. Councillors will be more accountable to local communities, fostering true 'local' government.

Consistent application of this model also ensures that all councillors are elected under the same system with equal vote shares within their council. This more closely reflects the way members of Parliament are elected.

How will it work?

It is proposed that an unsubdivided municipality model option will be available to those councils whose demographic profile make division into wards inappropriate, e.g. councils with large geographical areas and small populations (such as some rural councils). It is intended that the Electoral Representation Advisory Panel will investigate and advise the Minister in relation to structures for those councils that are of the type specified by the Minister as being potentially permitted for unsubdivided arrangements.

The option for councils to be constituted as multi-member wards will be removed.

REFORM
3

Training

Communities deserve the highest calibre councillors representing local community issues. It is proposed to introduce new requirements on candidates and councillors to improve competency, skills and transparency.

Election Candidates – Mandatory Training

All candidates for council elections will be required to undertake mandatory training as a condition of their candidature. The level of training required will be carefully balanced against the need to not create an unnecessary barrier to participation.

Since 2016 all candidates for local government elections have been able to choose to outline what training they have completed relevant to the councillor role in the Candidate Questionnaire published on the VEC website. Many councils provide access to free training sessions for potential candidates prior to council elections.

Almost 50 per cent of all candidates for the 2016 general election said they undertook training.

Within the first nine months in office councillors are required to make major strategic decisions and develop council and financial plans, a budget, and other matters. Councillors who come into office with a strong understanding of the strategic decision-making role a councillor must perform, will be better equipped to contribute to this important work.

Why is this proposed?

People nominating as candidates in local council elections sometimes have limited understanding of the role they are putting themselves forward for. Concerns also exist about candidates' understanding of the level of commitment required to undertake the role of councillor. In addition, many people don't understand what a councillor can legally do in their role.

How will it work?

All candidates in council elections will be required to demonstrate that they have undertaken relevant training. The VEC will reject any nominations that fail this test.

The nature of the mandatory training will be the subject of further consultation with the local government sector and then prescribed in Regulations.

Councillor Induction Training

Why is this proposed?

Requiring all councillors to complete mandatory training will improve their standards and capability to meet the requirements of office. A lack of understanding of the requirement of the role of councillor has been identified as a cause of diminished operational effectiveness in many councils.

How will it work?

Councillor induction training will be arranged by the Chief Executive Officer for councillors within six months of being elected. It will contain information relating to the role of a councillor, the Councillor Code of Conduct, conflicts of interest and any other prescribed matters, and will be subsequently prescribed in Regulations.

If a councillor fails to take the councillor induction training within the specified time, their allowance will be withheld until such time the councillor has taken the training, at which point the allowance will be refunded.

REFORM
4

Donation Reform

A number of recent changes to the electoral campaign donations arrangements in Victorian Parliamentary elections will be extended to local government elections.

Why is this proposed?

Controlling electoral donations and gifts will improve the integrity and transparency of the donations process. This will increase community confidence in council decision making by making sure that decisions are made purely on merits.

How will it work?

- Foreign donations will be banned. Donors will need to be an Australian citizen or resident, or a business with an Australian Business Number.
- Electoral campaign donations to individual candidates and candidate groups from a single donor will be capped at an aggregated amount of $1000 for Victorian local government elections, in respect of each 'donation period' – that is, commencing 30 days after the last general election or 30 days after the last election for which a candidate was required to give a return (whichever is later), and 30 days after the election day of the current election.
- The 'gift disclosure threshold' which applies to campaign donations and other gifts received by councillors, subject to requirements of the Bill, will change from the $500 proposed in the 2018 Bill, to $250 for all councils.
- All councils will be required to have a gift register and a publicly transparent gift policy covering the acceptance and disposal of gifts by councillors and staff.

Melbourne City Council Reform

- Electoral campaign donations to individual candidates and candidate groups from a single donor will be capped at an aggregated amount of $4,000 for Melbourne City Council elections.
- The 'gift disclosure threshold' which applies to campaign donations and other gifts received by councillors will remaining at $500 for the Melbourne City Council.

REFORM
5

Improved Conduct

Councillor conduct is an ongoing challenge for the local government sector. It is proposed to introduce mandatory standards of conduct, a clear and consistent arbitration process and provide the arbiter powers to impose sanctions.

Prescribed standards of conduct

Why is this proposed?

Consultation with the local government sector and community groups has revealed that councils need more assistance in developing and enforcing their codes of conduct. To date, councils have had to develop and adopt their codes of conduct with limited guidance. As a result, codes vary widely in size, scope and content. An examination of existing councillor codes of conduct shows that they vary in size from three pages to 145 pages and that most only deal with conduct standards in broad terms. Many include internal council procedures with limited connection to conduct standards.

Most councils include the Councillor Conduct Principles in their codes. These Principles are specified in the LG Act and, while they may have been contemporary when first legislated in 2008, they have proven to be too general in nature to be a practical benchmark for good conduct. Councils not including the Principles generally include other material of a similar nature in their Codes.

Councils have internal resolution procedures whereby an independent arbiter can assess whether a councillor has followed the code of conduct. More specific standards of conduct need to be applied for this process to work effectively.

How will it work?

Under this proposal, the 2019 Bill will no longer include the Councillor Conduct Principles. Instead it will require each council to adopt a councillor code of conduct that includes the standards of conduct prescribed in Regulations.

The standards will define specific acts and omissions of behaviour that apply to all councillors in all councils. Councils will retain discretion to include additional material in their codes (but not to the standards of conduct). The standards of conduct will be developed in consultation with the local government sector and the community.

This will provide a clearer understanding of what is required of councillors and support arbiters when investigating alleged breaches of the standards.

Internal arbitration process

The arbitration process will become a legislated process managed by the Principal Councillor Conduct Registrar (PCCR) rather than requiring each council to develop and adopt its own process.

Why is this proposed?

Internal resolution procedures were introduced in 2016 for councils to deal with low-level misconduct locally and to resolve matters more quickly than through Councillor Conduct Panels. In practice, councils have struggled to deal with this obligation, with many adopting a multi-step approach that draws out the dispute and is costly to implement.

The LG Act currently requires internal resolution procedures to deal with interpersonal disputes as well as allegations of misbehaviour. This is unnecessarily complicated. Arguably, interpersonal disputes between councillors do not require a legislative resolution as there are various forms of mediation and counselling available when needed. Legislation should focus on allegations of misconduct where consequences may need to be imposed.

Some practical aspects of the current internal resolution procedures have proven problematic:

- It can sometimes be difficult for councils to find and appoint an independent arbiter. This can result in delays for matters being heard. Appointing arbiters from a central list managed by the PCCR will remove this problem. It will also help lead to more standardised responses to types of misconduct.
- Councils do not always deal well with adverse findings of arbitration. This can include keeping the findings confidential or not imposing sanctions where they appear warranted. It is therefore desirable that arbiters have some capacity to directly impose forms of discipline.

How will it work?

It is proposed the 2019 Bill will replace internal resolution procedures developed by councils with internal arbitration processes. The 2019 Bill will specify that the internal arbitration processes will include:

- the appointment of an arbiter by the PCCR from a pre-approved list of qualified arbiters;
- an application fee that will be refunded at the end of the arbitration process unless the application is deemed frivolous, vexatious, misconceived or lacking in substance; and
- arbiters being empowered to directly impose minor disciplinary penalties, such as requiring an apology or imposing a one-month suspension.

The terminology of the Act will change to accommodate these reforms:

- A finding by an arbiter that a councillor has breached the standards of conduct will be a finding of 'misconduct'.
- Any adverse finding by a Councillor Conduct Panel against a councillor will be a finding of 'serious misconduct'.

The term 'gross misconduct' will continue to relate only to a finding of the Victorian Civil and Administrative Tribunal that results in the disqualification of a councillor.

REFORM
6

Community Accountability

It is proposed to make councillors more accountable through stronger sanctions for serious conduct violations and the introduction of a community initiated Commission of Inquiry.

There will be two clear new pathways that can lead to disqualification, these are:

1. where a councillor has been subject to a finding of Serious Misconduct on two occasions over an eight year period; or
2. where a community initiated Commission of Inquiry, appointed as a result of a petition, makes a finding that a councillor has caused or contributed to:
   a. a failure by the council to provide good governance; or
   b. a failure by the council to comply with a governance direction.

Disqualification - conduct

Why is this proposed?

Occasionally, a councillor acts in ways that seriously inhibits the ability of a council to function effectively or repeatedly acts in ways that are unacceptable in public office. It is in the interests of the community that a person who acts this way be removed from office.

The 2018 Bill proposed that the Minister have powers to suspend a councillor who was preventing the council from providing good government. While this could only be done on the recommendation of an integrity body, it placed a Minister elected at one level of government in a position of having to decide whether to remove an elected member at another level of government.

A better approach is to limit the removal from office of a councillor to independent processes and/or give the community who elected the councillor the power to seek review or dismissal of the councillor.

How will it work?

Two new processes will be able to result in a councillor being removed from office and prohibited from being a councillor of any council for a period of four years.

Disqualification – Repeated Serious Misconduct

Councillor Conduct Panels hear allegations of serious misconduct against councillors. Serious misconduct can relate to bullying, conflicts of interest, improper direction of council staff, disclosing confidential information, sexual harassment or failing to comply with an arbitration process. If a panel makes a finding of serious misconduct against a councillor twice within eight years, that councillor will be automatically disqualified.

A disqualified councillor will be ineligible to contest another council election for the next four years.

Community initiated Commission of inquiry

Under the *LG Act* the Minister may appoint a Commissioner to conduct an inquiry into the affairs of a Council or councils. This power was included in the 2018 Bill along with some minor changes to ensure the powers of the commission align to the *Inquiries Act 2014*.

It is intended to create a second pathway for a Commission of Inquiry above the powers proposed in the 2018 Bill. Under this pathway, the Minister must appoint a Commission of Inquiry into a Council on receiving a petition signed by eligible voters in the municipal district, whose total numbers are greater than 25 per cent of the total enrolment number on the voters' roll prepared at the council's most recent general election (see **petition process** below).

In setting the terms of reference for the Commission of Inquiry the Minister must have regard to the reasons included in the application for the petition.

The Commission of Inquiry may make a finding that a councillor has significantly caused or contributed to:

- a failure by the council to provide good governance; or
- a failure by the council to comply with a governance direction.

Before a Commission proposes to make an adverse finding, that councillor must have an opportunity to respond to those matters. The Commission must consider the response before making the finding. If a Commission of Inquiry appointed as a result of a petition, makes a finding that a councillor should be disqualified, the subject councillor will be disqualified from being a councillor for four years (subject to the report being tabled in Parliament).

The Minister must provide notice of the outcome of a petition for a Commission of Inquiry to the applicant, the VEC and the council. The VEC must publish notice of the outcome in a manner prescribed in regulation.

The Minister maintains the discretion to appoint a Commission of Inquiry into the affairs of Council. Where a Commission of Inquiry (appointed at the Minister's discretion) makes a finding against a councillor, the Minister has the discretion to take appropriate action, including issue a governance direction, suspend or dismiss a Council. However, the Minister will not have the power to disqualify a Councillor under these circumstances.

Petition process

The process for petition will be set through regulations. The process is outlined below.

The requirements for a petition will be treated as seriously as an election. An application for a petition will be made to the VEC accompanied by the prescribed fee. This application will require specific information including a statement of up to 200 words providing grounds for why a petition is sought.

Applications will be limited to people who are enrolled or entitled to be enrolled on the voters' roll for the municipal district. Councillors, members of staff of the council and people who have previously been an applicant or nominated representative during the current council term will not be permitted to receive approval for a petition.

The VEC will provide a copy to the council named in the petition for a response of up to 200 words.
The VEC will provide public notice of the petition and include the relevant response, if any. The applicant and nominated representatives will be allowed to collect signatures to the petition for 60 days from the date of the public notice.

The applicant and nominated representatives must collect signatures in the prescribed manner and must reasonably believe that the persons signing the petition are enrolled, or entitled to be enrolled, in the municipal district and are providing informed consent to be included in the petition.

The applicant may lodge a petition with the Minister within five days of the end of the 60-day period. Upon receipt of a petition, the Minister must provide it to the VEC to provide advice on validity and percentage of signatures represented by the petition.