MUNICIPAL ASSOCIATION OF VICTORIA

MAV Submission to the Local Government Bill Proposed Reforms

July 2019

Introduction

The State's *Local Government Bill 2019 – A reform proposal* and *Reform Proposal Overview* were released on Monday 17 June 2019 with a requirement that feedback be provided on the reforms by no later than 17 July 2019.

On 5 July 2019 the MAV wrote to the Minister for Local Government conveying the sector's concerns both about the content and the lack of due process in relation to the reform proposals. The MAV proposed that the *Local Government Bill 2018* be reintroduced, and the latest reform proposals be deferred for 12-18 months to enable appropriate examination of the issues, including cost impacts and consideration of options in consultation with the sector. The MAV also sought a one-month extension to the feedback period.

We thank the Minister for the extension for feedback to 31 July. However, this constricted timeframe, together with the lack of detail regarding the reform proposals, still prevents proper consultation on possible changes that are likely to have significant, negative consequences for councils, councillors and their communities.

We would appreciate the evidence to support the introduction of reforms of such consequence, including mandated single member wards and voter petitions. The lack of an Exposure Draft means it is impossible for the MAV, councils and communities to understand the detail of what is being proposed.

For these reasons, the MAV maintains its position that the *Local Government Bill 2018* should be reintroduced, and the latest reform proposals deferred for 12-18 months to enable appropriate examination of the issues, including cost impacts and consideration of options in consultation with the sector.

We understand it is the Minister's intention that the *Local Government Bill 2019* be introduced to Parliament later this year and many of the reforms included in the 2018 Bill will be fast tracked for implementation. The MAV and the sector have previously emphasised that the original indicative implementation schedule for new policies, plans and budgets was unfeasible for councils and newly elected councillors. Any further erosion of the time period for implementation will exacerbate the issue.

The MAV calls on the State to take no further steps on the proposed reforms and to provide an appropriate period for sector consultation on a circulated *Local Government Bill 2019 Exposure Draft* preferably together with draft regulations. Proper consultation would enable the sector to give considered input on the new reforms as well as identifying any unintended consequences that often result from an expedited legislative reform process.

Successive Labor governments have confirmed their commitment to strengthening state-local government relations by building a collaborative working relationship between state and local government and improving communication and consultation. We believe the approach taken in relation to the 2019 Proposed Reforms is not consistent with these commitments.

The MAV's submission has been informed by feedback from 47 councils.

The following specific feedback on the latest reform proposals does not address the proposed reforms that are specific to the City of Melbourne.

State's 2019 Proposed Reforms

Voter's Petition – Commission of Inquiry

The State has proposed that a Commission of Inquiry capable of making findings that a councillor has caused, or has contributed to, failure in council governance, be formed on the basis of a voter petition of more than 25% of eligible voters. The MAV does not support this proposal. The objective seems to be to provide a mechanism for members of the local community (whether well-meaning, disaffected, politically motivated, personally motivated, or with malicious intent) to initiate a process with the intent of removing a democratically elected councillor during their term of office. This concept is fraught.

There are a number of other mechanisms in the legislation (including those brought forward from the 1989 Act) designed to deal with councillor misconduct. These involve Commissions of Inquiry, Councillor Conduct Panels, investigations by the Local Government Inspectorate which now include public interest complaints, and appointment of a monitor. We are concerned there is no analysis or discussion on the inadequacies of these mechanisms that would necessitate the provision of a voter petition.

The notion of a 'recall election', which is generally similar to voter petitions, was carefully considered in NSW in 2011 in the context of an election promise by the O'Farrell Government. Research undertaken by Associate Professor Anne Twomey, of the *Constitutional Reform Unit Sydney Law School 'The Recall and Citizens' Initiated Elections Options for New South Wales* analyses, amongst other things, how a system of recall might be implemented in NSW and the potential problems that would need to be addressed.

Recall elections have different purposes. They may be aimed at removing elected representatives who:

- are corrupt, who have committed criminal acts or other forms of misconduct;
- exercise their vote in a manner with which the majority of their constituents disagree;
- no longer hold majority constituent support.

The lack of detail on the proposed reform results in the need to make assumptions based on limited detail. The rationale provided for this reform appears to be that it provides an additional, independent process which, should it result in a finding that a councillor has caused or contributed to a failure in council governance, automatically disqualifies the councillor from being a councillor for a period of four years.

If the genesis for this reform proposal is to prevent a recurrence of the situation that recently occurred at South Gippsland Shire Council, it is difficult to foresee how a voter petition process would have done so.

If it is intended that a voter petition could also result in an Inquiry that considers whether councillors have voted in a manner with which there is majority constituent disagreement or councillors no longer hold majority support, this may lead to;

- councillors voting only in favour of measures which are popular rather than necessary, unpopular measures that are in the best interests of the municipality
- unstable councils, if councils cannot make difficult decisions within their term.

This approach would result in councillors being mere agents of their constituents, unable to exercise initiative or leadership in the best interests of the municipality and contrary both to the fundamental objective of responsible government and to the mandatory oath of office

required to be taken by a councillor following election.

In these circumstances, a petition may arise from the result of a carefully considered and difficult decision by a council. An example would be where a council resolved to propose an increase in rates in order to preserve council services and maintain infrastructure. A decision to exceed the rate cap may, despite approval by the Essential Services Commission, be sufficiently unpalatable to more than 25 per cent of eligible voters to result in a valid voter's petition. Another vexed issue for many councils revolves around differential rates. This issue can often lead to a significant proportion of the community feeling that they are shouldering a disproportionate amount of the rate burden. Other examples include service level changes (library service hours, swimming pools closures) made in order to manage limited resources or controversial planning decisions after community input. The council would then be subject to a Commission of Inquiry, need to divert resources to respond to the Inquiry and pay the costs of the Inquiry. This would be an unacceptable use of scarce resources.

If the objective of the proposal is to provide a process solely to remove councillors who, by their misconduct, have contributed to a council governance failure then it is a process that may be subject to significant abuse, particularly given there is no vetting process in relation to the application and the 200 word 'grounds'.

The process may be used as a political tactic to:

- cause political instability
- distract a councillor from their role
- damage the reputation of a councillor
- enable the publication of unfounded allegations against a councillor
- require financial investment by a councillor in the form of legal fees or other costs
- change the composition of the council e.g. to remove a non-aligned councillor or one who has voted in a particular way.

There is even the potential for individuals or pressure groups to threaten a councillor(s) with the initiation of a voter petition if they do not vote in a particular way or support a particular proposition or project.

There is the potential for the influence of money, with wealthy individuals and corporations mobilising their resources to gather the signatures and / or to invest in campaigns that support the petition and provide targeted support during the Inquiry process. Further commentary is provided below in relation to concerns regarding funding and donations.

In addition, individuals and corporations with the capacity to harness media, including social media to manipulate the process could do so.

These influential individuals, through wealth or media capacity, may have an agenda that is promoted by the process, irrespective of the outcome. For example, if a petition related to a councillor generally opposed to development then the mere fact of the petition being made by a developer would prevent the councillor from voting on matters relating to the developer as a consequence of administrative law requirements of impartiality and, possibly, conflicts of interest obligations. In this example it is likely that a councillor would be prevented from voting on a relevant matter from the date the petition application was made to the VEC, and possibly, from the date the proposed application was known by the relevant councillor/s. This impact of exclusion may extend to the matters relating to the authorised representatives of the applicant and, indeed, the signatories themselves.

If the objective of the proposal is, as stated, to provide a further avenue by which a councillor may be disqualified, it is anomalous that it is the council itself, and not the councillor, that must

provide a statement in response to the application. It is also difficult to understand why it is the council that is likely to be the subject of a costs order by the Commission of Inquiry.

There is no detail on whether the grounds for the petition could reference specific councillors, which would create a nexus with the objective of the proposal but would inevitably result in reputational detriment to a councillor. The petition process, including the publication of the grounds by the VEC, the collection of signatories by the applicant and the promotion of the petition via social media would also likely result in impacts on the wellbeing of a councillor. There would be no prospect of the councillor clearing his or her name for 3-6 months after which the damage could not be repaired, even with a complete 'exoneration' by the Commission of Inquiry. There is also the equally concerning situation where a voter petition is commenced but does not obtain the required 25% of signatories. Although the petition does not proceed, the allegations contained in the "grounds" will not be tested and will be left hanging. The subject councillor will have their reputation besmirched with no avenue to seek exoneration. It is not hard to envisage both stress claims arising from this drawn out process and cross claims of some sort, e.g. defamation or injunctive relief.

It is also concerning that a petition may be initiated six months prior to an election and would, inevitably become politicised.

Procedural concerns
Even with the limited information available, there are a number of procedural concerns that arise. These procedural concerns are elaborated on below.

The serious nature, and significant costs, of an Inquiry are not reflected in the obligations imposed on an applicant. At this time, we do not know what information, other than the 200 word 'grounds', needs to be provided by the applicant. 200 words is the same length as a candidate's statement. What process, if any, is followed to assess the purported "grounds" and where will that responsibility lie? The absence of clarity around this issue is of the utmost concern.

It is also unclear whether all other governance and/or conduct-related processes including the new internal dispute arbitration process, a Councillor Conduct Panel or an investigation by the Municipal Inspectorate would continue or could be brought during the course of the petition and any inquiry process.

It is also unknown as to how the reform interacts with the *Local Government Bill 2018* expansion of the functions of the Chief Municipal Inspector to investigate *public interest complaints* made against councillor or council staff. *Public interest complaints* are more broadly defined than *protected disclosure complaints*, which required the wrongdoing to constitute a criminal offence or grounds for dismissal. It would be highly preferable, from a public policy perspective, to provide that the misconduct which this reform is intended to address is caught within the definition of '*public interest complaint'*. The Inspectorate is capable of investigating and assessing such complaints and building a body of knowledge and expertise which would avoid the necessity for the Minister to establish impermanent Commissions of Inquiry.

It is not clear how the 25% of eligible voters will work in practice. Presumably, eligible voters include those voters that are not on the most current roll but would be eligible if a roll was prepared at that time. This seems to be complicated by the proposed franchise reforms. Are those people who could have made application to go on the roll but did not do so, still counted as eligible voters? It is not clear how the number that would represent 25% is actually calculated.

It is also unclear what other material may be permitted to be distributed by the applicant for the voter petition, the council or a councillor in addition to the 200 word "grounds" and the council response. Will there be any controls around what can be distributed and around the veracity of the material? In this age of social media, inaccurate information or misinformation can be widely distributed very easily. What controls would there be to prevent other parties distributing vexatious or malicious material during the petition period? There is a real prospect that a councillor will be tried "in the court of public opinion" long before the petition is finalised and/or results in a Commission of Inquiry. Such an environment is likely to discourage rather than encourage people to stand for council.

It is proposed that the applicant and nominated representatives must, in collecting signatures, reasonably believe that the persons signing the petition are enrolled, or are entitled to be enrolled in the municipal district. Will the applicant and nominated representatives be provided with or receive copies of council rolls? What protections will apply to these rolls, including protections for silent voters? It is not clear, how the collectors of signatures will be able to establish whether a person is entitled to be enrolled (refer to earlier comments in relation to changed franchise arrangements).

Further, a process to address the potential for multiple petitions occurring contemporaneously or in a staggered way appears necessary. Can the one petition apply to more than one councillor? If so, does the 200-word limit still apply or is it 200 words per named councillor?

What funding controls will apply to an applicant? Will the costs of managing the petition, including advertising costs and other campaign/promotional material be subject to disclosure? Will an applicant be able to receive donations towards the petition and will these donations be subject to disclosure? How will prospective signatories to the petition be aware of donors and their donations prior to signing the petition?

This proposed reform coupled with the proposed default single member wards reform could together fundamentally shift the nature of governance of councils, placing too much emphasis on individual councillors rather than collective decision-making in the interests of the municipality. These are significant changes that require extensive discussion within the sector. To take one hypothetical example, if a council happens to be divided into majority and minority groupings, and a Voter Petition is encouraged by a councillor against a councillor in the other grouping in order to bring about the possibility of a by-election rather than for genuine reasons related to councillor conduct, the process would nevertheless be triggered. The reputational damage to the targeted councillor and to the council as a whole would be significant, unfair and distracting from the good governance of the council.

The MAV wonders why the State Government proposes to apply elected representative recall mechanisms (Voter Petitions) to local government while not proposing to do the same for State Parliamentarians. As stated earlier, Recall and Citizens' Initiated Elections were considered by the O'Farrell Government. Expert advice was given by both Associate Professor Anne Twomey and Professor George Williams. Associate Professor Twomey said the prospect of a petition would prevent hard decisions from being made while Professor Williams said the petition process will most likely be used by groups able to employ signature gathers.

MAV's Position

This is a significant reform that has not been the subject of previous discussion or consultation. MAV is most concerned at the lack of detail provided and the potential implications for councils and councillors both in terms of damage to reputation and the costs of being involved in a Commission of Inquiry. In addition, there is the potential that the new

public interest complaint process could be used to address the misconduct intended to be the subject of a Commission of Inquiry. For these reasons, and the detail provided above, the MAV seeks either that the proposal be abandoned. If the State insists on pursuing the proposal, a full and proper consultation with the sector on this reform is necessary, including the alternative public interest complaint process and safeguards to prevent unintended consequences, prior to any action by the State to legislate.

Single Member Wards

State's Proposal
The State's proposal is that one electoral structure of single member wards apply to councils unless it is impractical to subdivide a council into single wards (i.e. some rural councils with small populations and large areas).

The State contends that the proposal enables residents to more effectively receive direct representation and results in greater accountability of councillors to local communities, fostering true 'local' government. It further contends that the model has the benefit that councillors will be elected with equal vote shares within their council and the process more closely reflects the way members of parliament are elected.

The proposal is neither accompanied by any evidence base nor public policy reasons. The immediate contradiction to this proposal is the State's continuation of an unsubdivided structure for the City of Melbourne, an exception for which no rationale has been provided.

While it is accepted that single wards result in councillors being elected with the same share of votes (albeit with minor disparity caused by variations in numbers of voters between wards), this is not considered to be compelling enough to override other more pertinent considerations.

It needs to be emphasised from the outset that this submission is not meant to, in any way, denigrate the value of single member wards. In arguing for the restoration of the full suite of electoral structures currently available rather than the mandating of single member wards, it may appear that our submission is opposed to single member wards. Let it be very clear that the MAV is strongly supportive of single member wards being part of a range of electoral structures that are available to councils and their communities when determining a structure that best responds to local needs and circumstance.

This submission addresses both the State's arguments for mandated single member wards and the letter to the MAV, dated 12 July 2019, in which the Minister wrote:

I understand that the councillors who make up the MAV's Board and membership will have concerns about changing to a different electoral structure. Councillors and other publicly elected officials, including Members of Parliament, will always support a structure they were elected under. I ask that MAV as a peak body for the local government sector focus on the public policy reasons for single member wards and provide evidence as to why it does not achieve greater accountability, equity and grass roots democracy.

In relation to the Minister's letter, neither councils nor councillors choose their electoral structure. This is the jurisdiction of the Minister on the recommendation of the VEC. MAV's submission is not advocating for one single electoral structure that suits particular councils but is seeking to preserve a range of structures.

The onus for evidence to support a new model must also be on the agent of change; in this case, the State.

Local Government Act 1989- Victorian Electoral Commission
Firstly, while Members of Parliament determine the electoral structure under which they are elected that is not the case for councillors. The electoral structure of each council is approved by the Minister following a comprehensive review process by an independent and expert body, that being the Victorian Electoral Commission (VEC).

The purpose of electoral representation reviews (ERRs) is:
*...to provide for independent reviews of electoral representation by all Councils on a regular basis to provide for **fair and equitable** representation. (s219A Local Government Act 1989, MAV emphasis)*

Local Government Electoral Review Panel
Secondly, the State's *Local Government Electoral Review Panel*, chaired by Petro Georgiou, after a thorough, consultative process commencing in September 2013 with a Discussion Paper, and concluding in July 2014 with a Stage 2 Report included the following recommendations:

The discontinuation of the current practice of having 'mixed wards', where municipalities contain a mix of single-member wards and multi-member-wards or a mix of non-uniform multi-member wards….

*Under this recommendation, the **fairness and consistency** of the system would be strengthened by ensuring the candidates in each council election in the one municipality would require the same quota to be elected. Furthermore, each elected councillor would come to council having secured the same minimum level of community support.*

*That to inform the evaluation of which electoral structure provides the **best fit** for a municipality, the review authority should consistently apply the following considerations:*
- *communities of interest*
- *municipality's population, growth and geographic dispersal*
- *accessibility of councillors to the community.*

(MAV emphasis)

In the *Local Government Electoral Review Panel's Stage 2 (Final) Report* it found that:

Multi-member wards with equal numbers of councillors provide a viable structure for council governance that can meet the conditions for good representation under a wide range of challenging geographic and growth conditions.

It concluded that:

Given the vast diversity in municipal structures, there would be no one single electoral structure that could cater to the representation needs across Victorian municipalities.
(MAV emphasis)

The process undertaken by the Panel included;
- release of a Discussion Paper
- public hearings held in 13 locations across Victoria
- transcripts of public hearings being made available on the department's website
- email survey to council CEOs
- a submission process that resulted in 164 submissions

We are unaware if the proposed reform to mandate single-member wards has considered the thorough work of the Panel which also heard anecdotal evidence regarding the advantages of each of the types of structures.

Commission of Inquiry into Greater Geelong City Council

The State appointed independent *Commission of Inquiry into Greater Geelong City Council (Geelong Commission)* prepared a report on 31 March 2016 following a process which

included a series of public and private hearings and the consideration of written submissions. The report included general and specific findings in addition to recommendations on the council's governance arrangements.

The Commission considered the impact of the single-member ward model on council governance under the heading *'My Patch'-the Lone Councillor*. It noted that single member wards had been in place for more than 10 years and made the following observations:

The single ward Councillor heavily favours the role of the Councillor as the representative of a particular community. It places a singularly onerous burden [on the councillor]…

The experience in other Councils is that multi-councillor wards provide the opportunity for discussion and shared responsibilities between Councillors.

The findings included:

A significant number of Councillors appear to be ***preoccupied with their individual ward interests rather than the city as a whole****, and have shown little capacity to work constructively together*.

Replacement of single councillor wards by multi-councillor wards *supported by mechanisms to ensure strategic, whole of municipality planning and delivery* ***would strengthen council leadership, corporate behaviour and decision making****.*

(MAV emphasis)

The report contains 12 recommendations, the recommendation relating to wards was:

The individual Councillor ward electoral system be replaced with multi-councillor wards to share representative responsibilities.

The then Local Government Minister, Natalie Hutchins, reinforced these findings and gave the State Government's strong support to the multi-member ward structure endorsed by local residents following the inquiry's report, saying in a media release dated 9 June 2017 that:

"Geelong will have the council structure it wants…"

"…the ward structure will create a more cooperative council that delivers for the community's priorities."

"The multi-member ward structure also means better representation of local needs, increased accessibility of voters to Councillors and greater collaboration between Councillors."

Two years later, the State Government is now arguing the opposite case.

Council Case Studies

Northern Grampians Shire

The current structure comprises 3 councillors representing the major population centre of Stawell, 2 councillors representing St Arnaud and surrounds, one councillor representing the Shire's rural centre including 3 small townships and 1 councillor representing 2 larger towns

and their surrounds.

The demographic and geographic profile of Northern Grampians Shire Council would make single-member wards inappropriate.

The un-subdivided alternative could result in disproportionate representation of councillors from the two major population centres in Stawell and St Arnaud.

The current structure is a sophisticated, fair and equitable division of a municipality that covers 5,918 square kilometres, resulting in each community having an elected representative and with an average equal number of voters represented by each councillor.

Glen Eira City Council

In the 2005 electoral review the structure of 3 multi-member wards, each with 3 members was found to be accepted by the community, satisfied legislative voting number requirements, provided for clear boundaries and reflected communities of interest.

The single-member ward structure was raised by a submitter and as a result the VEC modelled a nine-ward structure. In relation to the single-member structure the VEC's report advised;

In creating the model, the VEC was aware that within dense metropolitan municipalities, satisfying legislative voter number requirements while simultaneously accommodating existing communities of interest can be a difficult task. The VEC was able to create wards which satisfied legislative voter number requirements but the wards which were created fragmented and divided the City's existing communities of interest. Various localities including Caulfield, Caulfield North, Caulfield South and McKinnon were split by ward boundaries. For this reason, the VEC rejected the nine-ward option.

Moyne Shire Council

The recent VEC Electoral Representation Review concluded that the un-subdivided structure for Moyne Shire should be retained following considerable public consultation and the consideration of a number of public submissions.

No guidance has been provided on what constitutes a small rural council which would qualify for an un-subdivided structure,

Port Phillip City Council

The VEC's rationale, in 2015, for the move from single-member wards to uniform multi-member wards included:

- multi-member wards are less vulnerable to population shifts because growth and other areas can be combined in the same ward
- disparate growth rates can be more easily accommodated in a larger area
- greater number of voters per councillor means it takes a more significant change in population to result in a ward deviation and a subdivision review

Accordingly, the multi-member structure is more stable over a longer period for municipalities where the population is growing rapidly and unevenly, such as City of Port Phillip.

In 2003, 43 councils had a single-member ward electoral structure. By 2019, the number of

councils with single member wards had decreased to seven. This reduction in the number of councils with single member wards followed electoral representation review processes undertaken by the VEC, an independent, impartial, expert statutory authority, aimed at ensuring all voters in a council are fairly and equitably represented, had resulted in alternative electoral structures that were approved by successive Local Government Ministers.

The VEC's *Local Council Representation Review – Submission Guide* identifies the matters it takes into account in formulating a recommendation. These are:

- internal research specifically relating to the council under review, including analyses of statistics collected by the Australian Bureau of Statistics,
- the VEC's experience conducting previous electoral representation reviews of councils and contributing to redivisions of state electoral districts
- the VEC's expertise in spatial analysis, demography and local government elections
- careful consideration of all input from the public in written and verbal submissions received during the review
- advice from consultants with extensive experience in local government administration.

These processes recognise that a range of electoral structures are necessary in order to ensure the optimum representation outcome for voters in any particular council.
The VEC's processes, the Local Government Electoral Review, the Commission of Inquiry into Geelong and the council case studies are further evidence that one size does not fit all councils. The State itself has acknowledged this by identifying that it may be *'impractical to subdivide into wards'* and that a single-member ward model may not be appropriate for small, rural councils and that it is not appropriate for the City of Melbourne,

We would welcome detail on the criteria which will determine which small, rural councils may apply for exemption and the application process.

The basis for the State's proposal is that;

- single member wards enable residents to more effectively receive direct representation
- Councillors will be more accountable to local communities
- Councillors will be elected under the same system with equal vote share
- More closely reflects the way Members of Parliament are elected
- Single member wards are the best way to ensure representation is genuinely local.

The evidence does not support the majority of these statements.

Members of Parliament are elected to the representative lower house on the preferential system and to the upper house on a proportional representation system. This bi-cameral structure ensures that the house of review includes the voices of minority parties and independents. It is unclear why a structure that more closely reflects the way Members of Parliament are elected to the lower house is a positive for a very different tier of government where the council is the single decision making body.

The potential disadvantages of the single-member ward structure identified by the VEC include:

- Councillors may be elected on minor or parochial issues and lack a council-wide perspective
- Voters may have a restricted choice of candidates in elections for individual wards

- Where major groups support candidates in multiple wards, it is possible that one group can dominate the council.

(VEC's *Local Council Representation Review – Submission Guide)*

One third of councillors 'elected' to single-member wards were unopposed compared to only 3% of councillors elected to multi-member wards. In an uncontested election, voters do not have an opportunity to exercise their vote. The more candidates that nominate, the greater the voter choice.

Where the ward councillor does not share the views of the voters in their ward it is difficult to see how such diversity will be directly represented. It is more probable that diverse views will find direct representation in a multi-member ward.

There was insufficient time for a thorough analysis of the 2016 election data to consider democratic engagement and outcomes from differing electoral structure. The following example, drawn from a council submission, shows that single wards will not always produce the same level of democratic engagement and participation as is found in different electoral structures, and do not give a voice to those holding significant minority views in local communities. The example, examines the outcome of four neighbouring municipalities at the 2016 elections (the figures are taken from the VEC website):

Four neighbouring municipalities, 2016

	Banyule	**Boroondara**	**Darebin**	**Yarra**
Structure (wards x vacancy per ward)	7 x 1	10 x 1	3 x 3	3 x 3
Voting method	Attendance	Postal	Postal	Attendance
Counting method	Preferential	Preferential	PR-STV	PR-STV
Candidates per vacancy	2.7	3.3	6.7	3.6
Candidates per election	2.7	3.3	20.0	10.7
Uncontested elections	2 of 7	1 of 10	0 of 9	0 of 9
% electors without chance to vote *	27.0 %	9.5 %	0.0 %	0.0 %
% primary vote recipients elected **	51 %	48 %	48 %	64 %
% votes electing a Councillor ***	61 %	57 %	76 %	76 %

* *This figure represents the proportion of voters located in an uncontested ward.*

** *This figure is derived by taking the total of the primary votes received by each successful candidate, and dividing it the total number of formal votes cast. It represents the proportion of voters who saw their first preference candidate get elected.*

*** *This figure is derived by taking the total number of votes allocated to each successful candidate at the time of election and dividing it by the number of formal votes cast. It represents the proportion of formal voters whose vote played a role in the election of a Councillor.*

In summary, in this example, when compared to single member wards, multi-member wards have:

- Higher numbers of candidates competing for each vacancy
- Higher number of candidates to choose from on each ballot paper
- Fewer uncontested elections
- Fewer constituents who don't get a chance to vote
- A higher chance that a voters' first preference will be elected
- A greater proportion of voters playing a part in the election of a councillor

The uncontested elections across Victoria at the 2016 elections are also instructive. Of the 99 single member elections, 33 were uncontested meaning the councillor was elected unopposed. In the 159 multi-member elections, only 5 were uncontested. The example above and the rates of uncontested elections would appear to suggest that there is no clear evidence that single-member wards deliver increased electoral competition.

The State's position that single-member wards result in 'more effective direct representation, 'local community accountability' and "genuinely local representation' does not extend to a requirement that the candidate have an entitlement within the relevant ward.

The State's current position also fails to recognise that many issues (if not the vast majority) dealt with by councillors at a council meeting relate to council-wide issues that transcend ward boundaries. A myopic ward view has been rejected by the VEC and is at odds with the role of a councillor set out in section 28 of the Local Government Bill 2018, which includes:

- To represent the interests of the municipal community …
- To contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan
- To consider the diversity of interests and needs of the municipal community

Councillors are not remunerated like State Parliamentarians. Councillors receive an allowance (as opposed to a salary) for performing their role which is expected to be part-time. Unsubdivided municipalities and multi-member wards enable councillors to divide and share some of the workload.

Under the single-member ward structure a range of representation issues arise. Where a councillor is absent, for personal reasons, with or without a leave of absence the local community will have no 'direct representation' by the ward councillor. Where a councillor is suspended, which, under the *Bill*, may occur for a period of up to 12 months, there will be a need for the councillor role to be 'back filled' in some way, presumably by other councillor/s with more support from within the council administration. Representation issues also arise where the single ward councillor has a conflict of interest in a matter and must not participate in any discussion or vote.

It is concerning that the State has not provided modelling on the impacts of their single member ward proposal. Given the State's commitment to achieving gender equity in elected representatives in local government by 2025, the gender impacts of any electoral structure change deserves close investigation and analysis. This is a significant reform and communities are entitled to know the impacts given that it is being put forward as the preferred option.

In contrast, the current electoral structure reviews conducted by the VEC are comprehensive, involve affected councils and communities, and put forward analysis

detailing the impacts of proposed electoral structures. Any proposed changes to these processed should only occur after appropriate sector and community consultation.

Under the State's proposal, unless the population within a municipality is very evenly distributed, artificial ward boundaries will be needed in order to achieve wards with the allowable councillor-voter variance. Regional councils with towns or a city and otherwise dispersed populations will likely need ward boundaries that cut though the town resulting in advantages to candidates with greater profiles within the populated areas and detrimentally affecting other candidates. Single member wards are likely to lead to much more frequent subdivision reviews to bring wards back within the plus or minus 10% voter numbers. In many instances, particularly in growth areas ward boundaries might change for each election. Ward boundaries will also be affected by the change in franchise arrangements because the number of enrolled voters will not be known until applications close.

A by-election will be necessary if an extraordinary vacancy occurs in a single member ward. The ward will be unrepresented from the time the vacancy occurs until such time as the new councillor is sworn in. By-elections take longer to conduct than countbacks, are more expensive than countbacks and are a cost to Council, a cost ultimately borne by ratepayers. The 2018 Bill provided for changes to the countback system requiring the counting of all votes cast as opposed to a count of the votes of the successful candidate only to better reflect the intentions of voters. In the event the proposed reform is implemented, the State should increase recurrent funding to the VEC to provide for additional Electoral Representation Reviews, more frequent subdivision reviews and by-elections to offset council costs.

We also recognise that the *Bill's* requirement for uniform multi-member wards will be problematic for a number of councils that currently have a mix of ward structures.

Some communities and councils will continue to support single-member wards as an option that works best for them. Some communities and councils will continue to support multi-member wards, or a mix of multi-member and single-member wards, as the most suitable option.

Above all, the State should not be removing the choice, and the autonomy of communities to strongly influence their preferred models. To do so is to remove community accountability, the opposite of the stated aims of the State Government.

The State's position on electoral structure in 2018 was well researched, widely consulted on, and was met with wide support.

MAV's Position

For the reasons above, the reform is strongly opposed. It is not a reform that has had any support from independent experts including those specifically commissioned by the State to consider electoral structures and no evidence-base or credible public policy reasons have been put forward in support of the reform.

The *Local Government Bill 2018* provided for unsubdivided or uniform wards, reflecting the recommendation of the State's independent *Local Government Electoral Review Panel* and is supported by the MAV. Victorian local government comprises 79 unique councils and flexibility in electoral structure is essential to effectively respond to local needs. Electoral structures available to respond to local needs should include unsubdivided municipalities, single member wards and multi-member wards.

Voter Franchise

The State's reform proposal is described as simplifying the electoral franchise. In reality, all entitlements to be on the electoral roll that currently apply will be retained. The difference occurs in relation to those categories of voters that will be automatically enrolled and those that will be required to make application for enrolment. Only those voters on the State electoral roll will automatically be enrolled to vote in council elections. All non-resident people who pay rates will need to apply for enrolment in order to vote. It is proposed that current electoral rights are grandfathered for the 2020 general election.

Non-resident ratepayers will need to apply to be enrolled in the same way business occupiers, corporation nominees and resident owners not on the State roll must now apply.

The effect of the changed franchise arrangements is likely to be that many people who would be entitled to make application to be enrolled will not do so.

In the 2016 general elections non-resident ratepayers comprised 14 per cent of the voters across all councils. The number of voters in 2016 was nearly 4,428,000 and accordingly, on 2016 figures, around 620,000 non-resident ratepayers would be affected by the proposed change and will need to apply for enrolment.

It will be essential that any change is accompanied by timely information directed to these ratepayers about their right to apply for enrolment. In the absence of a carefully coordinated and properly funded communication campaign the 'simplification' may, by virtue of the additional application step, become a barrier that disenfranchises non-resident property owners.

The State Government's Directions Paper had two options:

- Option 1: "Make the entitlement to vote in a council election to be on the register of electors for the Victorian Legislative Assembly (the State roll) for an address in their municipality. Grandfather the voting entitlements of existing property-franchise voters in that municipality. Institute compulsory voting for all enrolled voters."

- Option 2: "Maintain the existing franchise but cease automatic enrolment of property owners and require these voters to apply to enrol for future council elections if they choose to do so. Institute compulsory voting for all enrolled voters."

MAV's 2018 submission was that "options 1 and 2 be opposed because they disenfranchise key stakeholders in the municipality and that retention of the franchise provisions in the current Act be supported." The exposure draft accorded with MAV's position.

The State Government's rationale for changing the franchise for councils, but not for the City of Melbourne specifically, is absent. Unfortunately, the reform introduces another step in the process for non-resident property owners (and others) who do not appear on the State electoral roll. Any reform of the voter franchise should aim to enfranchise, rather than disenfranchise, local residents and ratepayers. It should be recognised that Australian citizens who own property are automatically on the State and Commonwealth roles by virtue of their citizenship. The same will not apply to local government under the new franchise. It is considered that if a ratepayer lives, works or contributes to the community economically

they should have the right to be automatically be enrolled and not have to opt in. This is consistent with the role of council to represent all stakeholders in the municipality. Section 3 of the Local Government Bill 2018 provides that the "municipal community" includes:

- People who live in the municipal district of the Council
- People and bodies who are ratepayers of the Council
- Traditional owners of land in the municipal district of the Council
- People and bodies who conduct activities in the municipal district of the Council

No modelling has been provided on the impact of this change in those municipalities with a large number of non-resident property owners and, particularly, the impact of this change in relation to the other proposed reforms. Where a council has a significant number of non-resident property owners in one or more wards, the number who apply to vote may result in the breach of the 10% variation tolerance, particularly in single-member wards where tolerances are smaller and impact the principle of 'one vote one value'.

We have not seen any analysis of the additional cost to councils of administering the new proposal. Councils will have responsibility for writing to all non-resident ratepayers and, presumably, ensuring that applicants are not on the State Electoral Roll and thus already entitled to vote.

The Borough of Queenscliffe comprises 55% non-resident property owners. The costs associated with the proposal would be a considerable impost. In the context of Queenscliffe the voter petition would require only 2,000 votes to result in a Commission of Inquiry in the absence of non-resident property owner voters.

MAV's Position

MAV's position is that the existing voter franchise should be maintained until such time as this proposed reform is subject to full and proper sector and community consultation.

Mandatory Candidate Training

The State's proposal is that all candidates for council elections will be required to undertake mandatory training as a pre- condition to the VEC accepting a nomination.

The State's rationale is that candidates may have limited understanding of the role of councillor, the level of commitment necessary to undertake the role and what a councillor can legally do. The new training requirements are designed to improve competency, skills and transparency

The need for candidates to have an understanding of the role of and commitment necessary to be a councillor underpinned the MAV `Stand for Council' program which we have delivered prior to the last three general elections. The 'Stand for Council' campaign objectives were to raise awareness of the elections, encourage members of the community to stand for council and provide information on the election process, the role of a councillor and expectations of councillors. A key objective of the most recent campaign was to boost overall candidate participation and, in particular, under-represented groups while profiling the role of local government. One specific focus in 2016 was to reach a broad constituency and encourage cultural and religious diversity, improved gender balance and a better mix of participation across age groups.

The 2016 `Stand for Council' program was delivered by the MAV on behalf of councils to 1,400 participants across 87 sessions provided at 74 councils.

MAV supports the continued provision of appropriate information to candidates prior to standing for election. It is imperative that the VEC is fully involved in these information sessions to provide information on the electoral process. The information sessions will need to be completed by nominations day which is approximately two months prior to the election day.

Attendance at information sessions should not be a hurdle for prospective candidates. These information sessions need to be free of charge and accessible to all candidates across the State. If attendance at a session is a mandatory pre-condition for nominating, consideration needs to be given to how this will be managed and enforced.

The material does not specifically address what the requirements will be for existing councillors (or former councillors) who are proposing to recontest the elections. It is also silent on what would occur in relation to by-elections.

MAV's Position

The MAV supports the provision of appropriate information to candidates prior to standing for election.

MAV considers candidate training should be provided in the context of raising awareness about local government elections and should continue to be provided by the MAV with support from the VEC, with a state- wide consistent format. This would enable an auditable attendance record that to be provided to the VEC.

Mandatory Councillor Training

The State proposes that CEO arranged councillor induction training addressing the role of a councillor, the councillor Code of Conduct, conflicts of interest and any other matters to be included in regulations must be undertaken within six months. If the training is not undertaken within this time the councillor allowance is withheld until the training is complete at which time the allowance is refunded. MAV supports the provision of training for councillors because this is common practice across the sector.

Mandatory training is intended to improve councillor standards and capability to meet the requirements of office. The State contends that councillors not understanding the role of councillor contributes to diminished operational effectiveness in many councils.

The underlying rationale for MAV's Councillor Professional Development Program is a recognition that councillor induction, ongoing councillor training and professional development are vital additions to the skills, knowledge and competencies that councillors bring with them to their role. The increasingly complex and ever changing regulatory and operational landscape means that properly considered and focussed training and development should occur throughout a councillor's term.

The proposal that critical knowledge requirements be required to be arranged by a CEO for delivery to each councillor within a six-month period is supported. It should be noted that the 2018 Bill places a heavy workload on councillors in relation to budget, council plan, financial plans and policies in the first 6 to 7 months of their term in office.

The combined workload on councillors, who are expected to be part-time elected representatives will be comprised of normal council business, new budgets, plans and policies and training. This is a particularly onerous workload for new councillors let alone returning councillors. This has been flagged in earlier submissions but does not seem to have been seriously considered.

MAV's Position

The MAV:

- supports mandatory councillor training and will work with the sector to establish a training program that can be tailored by each council to minimise the costs associated with this proposal. The program will be developed prior to the 2020 general elections
- reiterates its general concerns with the workload being placed on councillors by the provisions of the new Bill

Donation reform/Gift disclosure threshold

The State is proposing that a number of recent changes to the electoral campaign donation arrangements in Victorian parliamentary elections are to be extended to local government elections. Foreign donations will be banned; individual donations will be capped at $1,000; the gift disclosure threshold will be lowered from $500 to $250 and; councils will be required to have a gift register and publicly transparent gift policy.

The rationale is the disclosure of election funding is important for ensuring transparency in democratic elections. Voters have a right to know where candidates are obtaining their funding and to know elected members are not improperly favouring people who donated to their election campaign. The current disclosure threshold of $500 is considered too high for proper transparency in local government elections where overall expenditure is generally low.

The issue of foreign donations at the Federal and State levels has been topical for some time. MAV often espouses that the local government sector should, where appropriate, be treated in a similar way to the situations that apply at the State Government level. For this reason, it is considered that the prohibition of foreign donations is reasonable and appropriate. However, there seems to be an anomaly in that non-Australian citizens who reside in a municipality are entitled to apply to be on a municipal electoral roll but are prohibited from making campaign donations. This may warrant further consideration.

The reduction in the gift disclosure threshold to $250 will ensure increased transparency of donations and is supported.

The funding arrangements for State elections are quite different to those applying to local government candidates. To achieve a major reduction in the reliance on private donations in Victorian State elections, recent legislative amendments provide for increased public funding paid to reimburse registered political parties and candidates' campaign expenses. There is no public funding provided to local government candidates. There are no supporting arguments advanced for adopting a cap of $1,000, noting that the cap for the City of Melbourne will be $4,000.

Given that donations above $250 will be transparent there seems to be no compelling reason why this cap could not be higher given the cost of running an election campaign. Many metropolitan councils and some rural cities have populations well in excess of the City of Melbourne and rural councillors have considerably larger geographical areas. Both population numbers and geographical size are key elements in the cost of running an election campaign.

MAV's Position:

The prohibition on foreign donations, the reduction in the gift disclosure threshold to $250 and the requirement for a gift register and gift policy are all supported.

MAV considers that the cap of $1,000 per donation is too low and should be reconsidered in line with the cap to be applied to the City of Melbourne.

Prescribed standards of conduct

The Bill will no longer include the Councillor Conduct Principles. Each council will be required 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 have discretion to include additional material in their codes – but not material that relates to the standards of conduct.

The State's rationale is that an examination of the existing codes has highlighted areas of concern with a lack of consistent standards to which councillors can be held accountable. Many codes contain matters that are internal procedures with limited connection to standards of behaviour. The standards will be clearly defined and apply universally to councillors.

There are standards of conduct prescribed in regulation in other Australian jurisdictions. The proposal enables a council to include additional material in its code in addition to the matters prescribed in regulation but not material that deals with standards of conduct. Consistency in the standards prescribed for councillor behaviour across the sector is welcomed. This will enable standards of behaviour to be covered more fully as part of the mandatory candidate training. These arrangements will also provide further clarity on the types of matters that may be referred to the Internal Arbitration process.

The MAV welcomes a regulated model of Councillor Conduct Principles.

MAV's Position

The proposal is supported in principle subject to further consultation with the sector on the detailed standards of conduct to be prescribed in regulation.

Internal Arbitration process

Under the State's proposal the arbitration process will become a legislated process managed by the Principal Councillor Conduct Registrar rather than requiring each council to develop and adopt its own process. An application for an Internal Arbitration Process must be made within 3 months of the alleged breach occurring. An application must be made to the Principal Councillor Conduct Registrar (PCCR).

The internal resolution procedures were introduced in 2016 to enable councils to deal with low-level misconduct locally and to resolve matters more quickly than resorting to Councillor Conduct Panels. The current Act provides for internal resolution procedures to deal with interpersonal disputes as well as allegations of misbehaviour. The State contends that interpersonal disputes between councillors do not require legislative resolution and that the current arrangements for councils to deal with the findings of an arbitrator can be problematic.

The exposure draft for the 2018 Bill proposed to retain the existing provisions relating to the internal resolution procedure. In its submission on the exposure draft, MAV flagged members concerns with the operation of the internal resolution procedure. MAV's position was that LGV should undertake sector-wide consultation on the councillor conduct framework and the operation of the internal resolution procedure. While we are disappointed that this did not happen, the proposal is considered to be an improvement on the existing legislative provisions.

The proposal removes matters relating to disputes between councillors from the internal arbitration process. Disputes between councillors will be expected to be resolved by mediation and counselling. MAV agrees that the arbitration process is not an appropriate forum to resolve disputes between councillors.

The proposal involves an application being made to the PCCR in accordance with the process prescribed in regulations (still to be developed). The PCCR will determine whether there is sufficient evidence to support an application for misconduct. This will align the application process for the Internal Arbitration Process with the Councillor Conduct Panel process. Instead of the council considering the findings of an arbiter and deciding on any penalties to apply to a councillor, the arbiter will now apply any penalties deemed appropriate. The penalties that can be applied are similar to those that can currently be imposed by a council. The vetting of internal resolution procedure applications by the PCCR is supported because it introduces an impartial assessment of evidence into the process. MAV supports the proposition that the arbiter makes a finding on an application and then determines any penalties that should apply taking the application of penalties out of the hands of the council.

The proposed regulations should be subject to consultation with the sector.

MAV's Position

The proposal is supported in principle subject to further consultation with the sector on the content of the regulations.

Repeated serious misconduct disqualification

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. The State is proposing that if a panel makes a finding of serious misconduct against a councillor twice within 8 years, that councillor will be automatically disqualified. A disqualified councillor will be ineligible to contest another council election for the next four years.

The State's rationale is that where 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. It is contended that the existing mechanisms that depend on a decision in VCAT or a court are inadequate for some situations.

MAV supported retention of the existing provisions in the *Local Government Act 1989* in relation to misconduct and serious misconduct allegations being heard by Councillor Conduct Panels and gross misconduct being heard by VCAT. Where a panel makes a finding of serious misconduct, the finding may be appealed at VCAT. This provides the opportunity for the councillor to have the matter reviewed. Because of the gravity of matters covered by serious misconduct that are heard by Councillor Conduct Panels, it is considered that automatic disqualification for a councillor who is subject to two findings of serious misconduct is warranted.

MAV's Position
That the proposal is supported.

Rates and charges

It is proposed to retain the existing rating provisions in the *Local Government Act 1989* in the new Bill for the time being. New rating provisions are proposed to be enacted after the Victorian Local Government Rating System Review has been completed in March 2020.

It is reasonable and appropriate to await the outcome of the Rating System Review to inform changes to the rating provisions.

In relation to rating exemptions in the exposure draft, MAV expressed its disappointment with the missed opportunity to fully engage the sector in the review of the rating provisions. It requested that further consultation be undertaken with the sector on the rating provisions, including rate exempt land used for commercial purposes and operating electronic gaming machines as well as land used for solar farms, desalination plants, etc. We are disappointed that this did not happen.

In relation to the Fair Go Rates System, MAV indicated that the sector remains strongly opposed to the Fair Go Rates System and that reconsideration of the arrangements is sought together with a review and streamlining of the application process for a variation to the cap.

In relation to a municipal charge, MAV supported retention of the provisions in the *Local Government Act 1989* in the absence of any policy base for limiting the municipal charge to 10 per cent of total revenue from rates and charges.

In relation to service charges, MAV has advocated that the proposed changes that appeared in the *Local Government Bill 2018* should not proceed as they threaten council's ability to sensibly and reasonably manage costs, including waste management costs.

The sector will make submissions to the Rating System Review.

MAV's Position

The State Government is requested to undertake detailed consultation with the sector on the outcomes of the Rating System Review together with a broader Local Government Funding Review as part of the development of amending legislation.

Councillor Allowance Proposal

It is proposed that the Minister will no longer set mayoral and councillor allowances and that they will be set by an Independent Remuneration Tribunal.

The MAV's response to the proposal for the Minister to set allowances by publication of a notice in the Government Gazette, contained in the Directions Paper and the exposure draft of the *Local Government Bill 2018* was:

In relation to the setting of the amounts for the allowances, it is considered that these should be set based on the advice of the Victorian Independent Remuneration Tribunal in the same way that Parliamentary salaries and allowances are set.

It is not clear that mayoral and councillor allowances will be reviewed by the Tribunal on an annual basis. It is imperative that this occurs. In addition, councillors currently receive an amount in lieu of superannuation. The new arrangements need to ensure that this continues.

MAV's Position
The MAV supports mayoral and councillor allowances being set by the Independent Remuneration Tribunal subject to the reviews being conducted annually and the continuation of arrangements for payment in lieu of the superannuation guarantee amount.

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FURTHER INFORMATION
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