

**Local Government Bill Exposure Draft**

**MAV Submission**

**March 2018**

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**EXPOSURE DRAFT – LOCAL GOVERNMENT BILL 2018**

MAV developed a draft discussion paper to encourage sector consultation and input on the Local Government Bill exposure draft. The initial draft was developed around the “Snapshot of Major Changes by Part” set out on pages 18-22 of the explanatory memorandum titled “A New Local Government Act for Victoria”. The content in the second and third columns of this submission is a direct lift from pages 18-22 of the explanatory memorandum. The fourth column sets out some background and discussion points. The fifth column is the MAV sector position on the particular provisions. The items numbered in our submission from 52 onwards are not from pages 18-22. They are matters that have been raised during consultation.

The MAV sector position has been developed following 6 sector consultation sessions held at Traralgon, Ballarat, Bendigo, Melbourne (2 sessions) and Benalla. Well over 200 Mayors, Councillors and officers attended these sessions. The various positions put in this submission represent the strong majority view of those people who attended the sessions.

In making this submission, MAV would like to highlight a number of priority issues of concern. These are identified below as well as being elaborated on in the body of this submission.

* Regulation – One of the fundamental changes in the exposure draft is the intent to use regulation and guidance (best practice guidelines) rather than detail through the Act. This is a fundamental shift in that it minimises Parliament’s determination of practice in the sector and places it with the Minister. There is the prospect that much of the detail stripped out of the Bill (compare the LGA 1989 of 531 pages with the LG Bill of 308 pages) will re-emerge in some amended form in regulations. This concern is exacerbated by the absence of knowing what regulations will be enacted and the content of those regulations.
* Electoral structures – The removal of mixed multi-member wards (say 2x2x2x3) and the combination of multi-member and single member wards is opposed. These two electoral structures currently exist at a number of councils. They have been used to provide appropriate representation models in rural areas with populations that are both dispersed regionally and concentrated in towns. This change will also require electoral structure reviews to be undertaken at those councils that currently have these structures. The associated costs will be a further financial impost on these councils.
* New suite of strategic documents – A council will be required to develop a suite of strategic documents between the elections in October 2020 and the following 30 June 2021. The development of these strategic documents (Council vision, council plan, annual budget, four year budget, 10 year financial plan, 10 year asset plan, 4 year rating and revenue plan) will place an enormous workload on councillors and council officers. In relation to Councillors, this workload will be in addition to the induction for new Councillors, the need to review the Municipal Strategic Statement, Health and Wellbeing Plan, Delegations and the Councillor Code of Conduct as well as developing new policies. Councillors are remunerated with an allowance because they are not expected to be fulltime – the workload envisaged after the 2020 elections in such a short period of time is totally impractical and unworkable. Transition arrangements are imperative in order to spread the workload over a more realistic timeframe.
* Senior officer contracts – the requirements for senior officers to be on contracts has been removed. This has potential industrial relations issues for senior officers at numerous councils. In most cases senior officers will not be covered by a council’s Enterprise Agreement. There is no policy justification for this change nor transition arrangements discussed in the explanatory memorandum. There seems to be the potential for some councils to continue with senior officers on contract and others to have them as permanent employees. MAV is seeking to have the senior officer provisions in the LGA 1989 retained in the LG Bill.
* New Conflict of Interest provisions – There is a real concern, particularly in the rural sector, that the new provision of a “general conflict of interest” is too broad and will result in councillors declaring conflicts in numerous and unintended situations. Retention of the LGA 1989 provisions are sought, albeit with further amendment in consultation with the sector.
* Workforce plan – The CEO will be required to develop a workforce plan. A Council and the CEO must, in giving effect to gender equity, comply with any processes and requirements prescribed by the regulations. The explanatory memorandum refers to gender equity targets in the regulations. While the sector is supportive of gender equity principles, it is considered that local government should be subject to the same provisions as State Government departments and agencies. Rural councils have expressed their concern with the difficulty of attracting qualified staff of either gender, particularly in the more remote areas.
* Drainage – It seems that the drainage provisions will be transferred to the Water Act, although there is no mention of this in the explanatory memorandum. It is considered that a matter of this dimension involving assets valued at approximately $11.4 billion, warrants careful and comprehensive consideration of the implications of transferring it to the Water Act. MAV contends that it should be retained in the LG Bill until such time as work that is underway in other quarters is completed. Councils are rightfully concerned that there might be new obligations and cost implications that deserve full and detailed consultation with the sector.
* Rating provisions – Rates are the single biggest component of a council’s income stream. The review raised the spectre of a comprehensive review of the rating provisions. The rating paper that was commissioned by the Government was not circulated to the sector – only amongst the working group. The only change in the LG Bill is to the rating of land used for mining. This falls well short of the sector’s hopes and expectations. This review has been a missed opportunity in a once in a generation review of the Act. The sector is seeking further consultation 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.
* Mayoral provisions – The first concern is the provision enabling a council to remove a mayor during their term of office. The second relates to the power of the mayor to appoint the chairs of delegated committees and to even override a decision of the council on such appointments. These matters were not raised in the Discussion Paper or the Directions Paper nor were they sought by the sector. The sector is strongly opposed to both provisions.
* Temporary administration – This provision enables the Minister to suspend a council if there are multiple extraordinary vacancies and the Minister is reasonably satisfied that the extraordinary vacancies could restrict the ability of the council to provide good governance (until the vacancies are filled). This seems to be a pre-emptive strike against a democratically elected council. The Minister already has the power to suspend a council where it is not providing good governance. Specific powers in this instance are not necessary and are opposed by the sector.
* Voting method – The Act currently provides the discretion for a council to decide whether to use attendance voting or postal voting for its elections. The new provisions vest this power in the Minister. The sector supports the discretion to choose the voting method continuing to reside with individual councils.
* What is missing? – This submission proposes that certain of the provisions that have been omitted from the LGA 1989 be reinstated because of the need to provide consistency across the sector on some key provisions. What is not clear is what other provisions have been omitted that should be retained. The explanatory memorandum does not enable councils to track the movement (retention, amendment or omission) of provisions between the LGA 1989 and the LG Bill. The sector has no assurance that the Bill comprehensively captures all essential provisions. The short time available to review the Bill exacerbates this concern. More time should be taken to ensure that we get the Bill right.

Thank you for the opportunity to make a submission.

ROB SPENCE

Chief Executive Officer

**Part 2 – Councils**

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| **#** | **Existing Local Government Act 1989** | **New Local Government Draft Bill 2018** | **Commentary including MAV’s position on the Directions Paper** | **MAV Position** |
| 1 | How councils exercise powers and perform roles minutely defined in legislation as part of the Local Government Charter. | Councils exercise powers and perform their role in accordance with the overarching governance principles. | MAV’s submission supported the overarching principles in the Directions Paper subject to the “need for deliberative community engagement processes” being amended to provide for “appropriate community engagement processes”. It has been changed to provide that “the municipal community is to be engaged in strategic planning and strategic decision making”. Elsewhere the exposure draft provides for councils to develop their own community engagement policy to give effect to the community engagement principles. Councils can tailor their policy to their local community situation and resources. The proposed role of a council has been broadened and addresses the concerns expressed in the MAV submission.  There is no mention in the role and powers of a council nor in the overarching governance principles, of a council’s advocacy role. It is considered that this is significant enough to specify. | The provisions are supported subject to specific reference being made to a council’s advocacy role. |
| 2 | Councils may be unsubdivided, all single wards, uniform multi-member wards, non-uniform multi-member wards, mixed single and multi-member wards. | Councils may be unsubdivided, all single wards, or uniform multi-member wards. | The Directions Paper provided for two options. Option 1 was for two representative structures being unsubdivided or uniform multi-member wards. Option 2 comprised three representative structures being unsubdivided, entirely uniform multi-member wards or entirely single-member wards. MAV’s submission supported retention of the current range of options provided in the LGA 1989 because of the flexibility to apply a structure that better suits local circumstance and communities of interest. The new provisions will require the VEC to conduct representation reviews to arrive at new structures for those councils that do not have uniform multi-member wards or have a mix of multi-member and single member wards. | The retention of the current range of representative structures set out in the LGA 1989 is strongly supported. |
| 3 | Mayors serve a one year term, with an option for a second year (noting the exceptions of the Cities of Melbourne and Geelong). | Unchanged. A new provision will enable the elected council to vote out a mayor mid-term if 75% of councillors agree. | The MAV’s submission opposed the proposal to elect mayors for two-year terms. The exposure draft proposes to retain the provisions in the LGA 1989 (councils have discretion to elect a mayor for either a one or two year term).  There is a new provision that will enable the elected council to vote out a mayor mid-term if 75% of councillors agree. This proposition was not raised in the Discussion Paper or in the Directions Paper and has not been discussed by the sector (nor identified as an issue). This provision introduces the prospect of removing a mayor during their term of office and has the potential to be destablising for a mayor and for a council (even if a motion to remove a mayor is defeated). It is proposed that this proposal be opposed.  If the power to remove a mayor is to be retained, the requirement to enable a motion to be placed before the council should be the same as the requirement for a successful vote i.e. “a majority of at least three-quarters of all of the Councillors in office”. | The:   * retention of the election of a mayor for a one or two year term at the discretion of the council is supported. * provision to enable a council to vote a mayor out of office during their term is opposed.   If the power to remove a mayor is to be retained, the requirement to enable a motion to be placed before the council should be the same as the requirement for a successful vote i.e. “a majority of at least three-quarters of all of the Councillors in office”. |
| 4 | All mayors except City of Melbourne are elected by and from the councillors | Retained. | The MAV’s submission supported retention of the current provisions for the election of mayors by their fellow councillors and that any consideration of direct election of a mayor be subject to an in-depth consideration of the proposal including extensive consultation with the sector and the wider community. | This provision is supported. |
| 5 | Deputy Mayor role optional for councils. | Mandatory for councils to appoint a Deputy Mayor. | The MAV’s submission was that the position of deputy mayor should not be mandated and councils should continue to have the discretion to decide whether or not to appoint a deputy mayor. The new provisions also provide that the deputy mayor must perform the role of the mayor and may exercise any of the powers of the mayor if:   * The mayor is unable to attend a council meeting or part thereof * Is incapable of performing the duties of the office of mayor for any reason including illness * The office of mayor is vacant.   Given that the provisions provide a role for the deputy mayor in certain circumstances, it would be preferable for this to be consistent across the sector. And further given the extent to which councils across the sector have chosen to elect deputy mayors, it is proposed that this proposal be supported. | This provision is supported. |
| 6 | Councils are not required to have a CEO Remuneration Policy. | All councils will have a CEO Employment and Remuneration Policy which is consistent with principles in the Public Sector Commission’s Policy on Executive Remuneration for Public Entities. | MAV’s submission was:   * To support the proposed requirement to have a CEO remuneration policy * To support in principle the requirement that the audit and risk committee monitor and report on a council’s performance against the remuneration policy * That the requirement for a council to obtain independent advice in relation to CEO matters be at the discretion of the council instead of being mandated   The new provisions still require a CEO Employment and Remuneration Policy to provide for the council to obtain independent professional advice in relation to the matters dealt with in the Policy. The obtaining of independent advice means that a council incurs additional costs. The benefit of independent professional advice is that it provides an impartial assessment of performance monitoring, annual review and contract terms and conditions. It is proposed to support the proposed provision, despite the additional costs.  The provisions provide for the Policy to be consistent with the principles in the Public Sector Commission’s Policy on Executive Remuneration for Public Entities. The applicability of the PSC’s policy to local government is questionable. For example, the policy enables a performance bonus of up to 20%. | The proposed provision is supported subject to the removal of the reference to the PSC’s Policy on Executive Remuneration for Public Entities. |
| 7 | Council CEOs not required by the Act to have a workforce plan. | CEOs to develop and maintain workforce plans that describe the organisational structure, specify expected staffing requirements for at least the next four years and set out measures to ensure gender equity, diversity and inclusiveness in relation to council staff. | Proposed directions 25, 26 and 27 in the Directions Paper were to:  “25. Remove matters about employing council staff from the Act  26. Require the CEO to establish a workforce plan that describes the council’s staffing structure including future needs; that the plan include a requirement that it can only be changed in consultation with staff; and that the plan be available to the mayor and to staff  27. Require a council CEO to consult the staff if there is a major organisational restructure”  MAV’s submission was that:   * The removal of those staffing matters that are duplications of other legislation be supported in principle * The provisions relating to the CEO and senior officers in relation to contracts be retained in the new Act * The requirement for the CEO to establish a workforce plan is supported in principle subject to removal of the requirements that it can only be changed in consultation with staff, and reference to consultation with and the plan be available to the mayor * Direction 27 is not considered warranted as its intent will already be covered in a council’s EBA provisions   The provisions of the current Act in relation to senior officer contracts will no longer apply. There are no arguments advanced to support the removal of the provisions around senior officer contracts. The draft is silent on the status of existing senior officer contracts. Are existing contracts null and void as at the commencement of the new Act? Do existing contracts continue to have full force and effect until their expiry date? Can the existing contracts be terminated by mutual consent? There are further issues with respect to annual performance reviews and remuneration reviews. Not all EBA’s provide for senior officer to be covered by the terms and conditions of such agreements so there is no default position for existing senior officers who are not covered by an EBA. These matters need to be addressed in a sunset clause or by some other mechanism. There is a prospect that some councils will continue to employ senior staff on contracts while others will employ them as permanent members of staff. Consistency across the sector would be preferable.  S45(4) provides that the CEO must develop and maintain a workforce plan. The explanatory memorandum says that “the workforce plan will promote gender equity, diversity and inclusiveness”. CEO’s must specify gender equity targets for the employment of all senior staff in their workforce plans. Reference to gender equity targets seems to relate to s45 (5) which requires compliance with any processes and requirements prescribed by the regulations for the purposes of this subsection. While gender equity across senior staff is a commendable objective, the notion of gender equity targets has not been discussed with the sector. There are two fundamental concerns. The first relates to how this would work in relation to the practice of appointing persons based on merit. The second is the practical difficulty in rural areas of attracting qualified staff of either gender. It is worth noting that the removal of provisions for senior officer contracts may have the effect of reducing staff turnover at the senior level, given that staff turnover will be a critical component in achieving gender equity. This issue warrants further consultation with the sector. It is considered that the legislation proposed to be applied to State Government bodies in relation to gender equity should also apply to the local government sector.  This section refers to projected staffing requirements in the workforce plan. It is not clear whether these projections reflect possible or potential staffing establishments or definite decisions made by the CEO in relation to staffing matters. This issue is critical to the compliance by council with its obligations under the Fair Work Act as they relate to consultation. Councils must comply with the provisions of the Fair Work Act as they relate to modern awards and the provisions that must be included in any Enterprise Bargaining Agreement.  Under clause 8 – Consultation of the Victorian Local Government Award 2015 sub-clause 8.1 (a) – Employer to notify – it is a requirement that “Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the employees who may be effected by the proposed changes and their representatives, if any”. Councils that enter into EBAs under the Fair Work Act are required to include a “consultation” clause in such agreements as a pre-condition of gaining approval from the Commission. The Act includes a “model clause” that can be used for this purpose. It is considered that any conflicts between the requirements of the workforce plan and a council’s Fair Work Act obligations need to be resolved. The provisions should clarify that:   * The workforce plan projections reflect knowledge available at the time and do not reflect a definite decision of council in relation to such projections * Prior to adopting any staffing proposals in the workforce plan the CEO must formally approve a decision to implement the projection and comply with a council’s obligations under the Fair Work Act * The workforce plan can be amended at any time * Where a change to the workforce plan is required in circumstances that were not projected this can occur by way of an amendment to the plan (e.g. a council cannot clearly project staffing changes that may arise as part of the full implementation of the NDIS).   Section 47 deals with members of council staff. It provides that a CEO may appoint as many members of council staff as are required under the workforce plan to enable the functions of the council to be performed. This is considered to be superfluous to the functions of the CEO set out in s.45(3)(b). It implies that unless a position has been projected in a workforce plan then the CEO cannot make an appointment. This places an unnecessary limitation on the CEO to perform his/her role. It is proposed that this be removed. | The provisions relating to the CEO and senior officers in relation to contracts in the LGA 1989 should be retained in the new Act. If this is not the case, the status of senior officer contracts and other related matters needs to be addressed.  That in relation to the workforce plan:   * Further consultation should take place with the sector on the function and operation of the plan * Any conflicts between a council’s obligations under the Fair Work Act and the new LGA provisions need to be clarified and resolved * Gender equity principles are strongly supported and that the legislative provisions to be applied to State Government bodies be applied to the local government sector.   Section 47 (1) should be removed as it places an unnecessary impediment on the CEO in performing his/her role and functions. |

**Part 3 - Policy and Decision-Making**

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| **#** | **Existing Local Government Act 1989** | **New Local Government Draft Bill 2018** | **Commentary including MAV’s position on the Directions Paper** | **MAV Position** |
| 8 | The Council Plan and Budget may be developed with minimal reference to the local community. | Councils must have an engagement policy and must engage their community in a deliberative process to inform the Council Plan and Budget. | The Directions Paper proposed that a council prepare and adopt a four-year council plan by 31 December of the second year after a general election. MAV’s submission opposed this proposal because a council would be without a council plan for 6 months of its council term and because of the disconnect it would cause with the council budget. The exposure draft restores the synchronisation between the budget and council plan.  In relation to an engagement policy, MAV’s submission opposed the prescription of a deliberative community engagement process in the preparation of the council plan because it would result in a delayed council plan and a disconnect between the council plan and budget. MAV’s submission asserted that a council should have full discretion in the development of its community engagement policy and have discretion to undertake a community engagement process during the life of the council plan (as part of its annual review of the council plan) as it sees fit. As indicated above, the exposure draft provides for councils to develop their own community engagement policy to give effect to the community engagement principles. Councils can tailor their policy to their local community situation and resources. This addresses MAV’s concerns.  The other issue that arises is the requirement for a council to develop between the 2020 election and the start of the 2021 financial year:   * A long term community vision * A four year council plan * A four year budget * A ten year financial plan * A ten year assets plan * A revenue and rating plan   These plans and documents will require extensive consultation. While the value of these documents is not disputed (with the exception of the 4 year budget), the primary concern is the workload and resources required to deliver them. This is further exacerbated:   * In councils where there is a significant changeover in councillors after an election * By existing workload and plans that need to be reviewed e.g. the Municipal Strategic Statement, Health and Wellbeing Plan, etc., councillor induction requirements and new policy requirements * The rate cap   Two things that came out very strongly from the MAV sector consultation was:   1. The enormous workload on councillors (who are not fulltime like members of parliament) in such a short period of time after the elections 2. The potential for consultation fatigue in the community with so much consultation in such a short period of time (notwithstanding that some of the consultation could be done concurrently)   It is proposed that councils be required to develop:   * The council plan and the annual (one year) budget by 30 June 2021 (as per the existing requirements) * The financial plan, assets plan and revenue and rating plan by the financial year commencing 1 July 2022   The council vision and four year budget are dealt with separately below.  This would enable those councils who have the resources and capacity to develop their full suite of plans (or already have some or all of these plans developed) to do so for the 2021 financial year. Other councils would have the discretion to develop their plans once their new councillors have settled in with the workload and resources spread over two financial years. There are also issues to be discussed in relation to the periodic review of each of these plans. After future council elections, the incoming council will have existing documents available. The workload to review these documents will be less than what is required for their original development. | That in view of the enormous workload on councillors and the prospect of consultation fatigue in the local community if all of the strategic documents are required to be developed by 30 June 2021, transition arrangements should be implemented so that councils are required to develop:   * The council plan and the annual (one year) budget by 30 June 2021 (as per the existing requirements) * The financial plan, assets plan and revenue and rating plan by the financial year commencing 1 July 2022.   *(Note that it is proposed that the community vision be developed within the term of each council and that the four year budget is opposed.)* |
| 9 | Meeting rules are included in council local laws based on extensive prescription in the Act. | Each council will be required to adopt and apply governance rules that describe the way they will conduct council meetings and make decisions consistent with the overarching governance principles. | MAV’s submission supported the retention of the existing provisions for council decision-making processes because:   * They have generally served the sector well by providing a statutory framework for meeting procedures that are consistent across the sector and support good governance practice * The statutory framework provides a high level of autonomy within which councils can tailor their detailed decision-making arrangements   Under the existing framework, local laws could not be changed opportunistically? It appears that the governance rules will be able to be changed on a simple motion of the council. This may expose the rules to opportunistic changes when some members of the council are absent. It is considered that there should be some safeguards built in to this process. This could involve a set period of time being required to give notice of an intention to amend the governance rules.  There was strong feedback from the MAV sector consultation sessions supporting retention of overarching provisions in the Act. There was also strong support for maintaining meetings local laws.  Proposed direction 79 was to “explore an alternative method for handling instances of a majority of councillors having a conflict of interest preventing them from voting on a planning scheme amendment”. This was to be instead of councils applying for Ministerial exemptions. MAV’s submission offered no objection in relation to the exploration of an alternative method subject to further sector consultation on the details of any new proposal. S.64 of the exposure draft provides for council decision making where a quorum cannot be maintained because of the number of councillors who have a conflict of interest. It proposes two options. One is to split the matter up so that it can be dealt with while maintaining a quorum. If this is not possible, it proposes that the council establish a delegated committee to make the decision. The delegated committee comprises the councillors who have not disclosed a conflict of interest and any other person(s) that the council considers suitable. It would seem that the council can’t make a decision on the delegated committee and other persons if it can’t maintain a quorum. It may be that an exemption is needed for those councillors who have declared a conflict of interest to participate in the appointment of the delegated committee. This could be picked up as one of the exemptions for conflict of interest. This could however, enable councillors who have declared a conflict of interest to appoint other members to the delegated committee who share their position on the matter. This exposure needs to be considered.  Section 58 (1)(c) provides for a council to have governance rules for the conduct of joint meetings of councils. It is not clear how these rules will line up with the rules adopted by the other council with whom they are conducting a joint meeting.  It seems to be the intention that the provisions in s.79 of the LGA 1989 relating to disclosures of conflicts of interest are intended to be provided for in governance rules. This means that there will be different arrangements across councils. Given that people can be prosecuted for not disclosing conflicts of interests it is considered that there should be clear procedures for how disclosures are made. | The overarching provisions contained in the LGA 1989 should be retained to provide high-level consistency across the sector. The retention of local laws to govern meeting procedure is also supported. In the event that the proposals in the exposure draft proceed:   * It is requested that safeguards be considered to prevent opportunistic changes to governance rules * the adoption of governance rules for joint meetings are opposed (refer to item 11 below).   The arrangements for the appointment of a delegated committee where a quorum cannot be maintained need to be reviewed.  The intention that the provisions in the LGA 1989 (s79) for disclosing conflicts of interest be incorporated in governance rules is opposed. The arrangements for disclosing conflicts of interest should be consistent across the sector and should be provided for in the new Act as per s.79 of the LGA 1989. |
| 10 | The circumstances in which council meetings may be closed are weakly defined. | Council meetings should be open to the public. Councils will be able to close a meeting to the public to consider information that is confidential. The nature of confidential information will be specifically defined and will mainly relate to the types of information that would be exempt from disclosure under the *Freedom of Information Act 1982*. | MAV’s submission supported the proposed direction in principle subject to further consideration of the treatment of acceptance of tenders and the ability for a council to debate the merits of dealing with a matter confidentially in closed session.  The new provision for what constitutes confidential information is set out in the definitions section of the exposure draft. The provision also provides for further information to be prescribed as confidential in regulations. The provision does not enable a council to go into closed session to debate the merits of dealing with a matter in closed session which is provided in the current Act under s.89(2)i. The issue with tenders seems to be resolved. | The provision is supported subject to the retention of an equivalent provision to s89(2)i in the current Act. (Refer to item 57 below in relation to concerns with how an item is rendered confidential.) |
| 11 | Collaboration between councils is constrained by the Act. | Council collaboration is encouraged and underpinned by a new power for joint council meetings and a requirement to consider opportunities for joint procurement. | The proposition of joint council meetings was not raised in the discussion paper. It is proposed that council collaboration is reinforced by a new capacity to hold joint council meetings. The new provisions provide for a joint meeting to comply with any requirements prescribed by the regulations. There are a number of issues that arise. How is the chairperson elected? What constitutes a quorum? Whose governance rules prevail? How would a rescission motion work? More fundamentally, it is unclear as to what value joint council meetings would provide. Councils can and do collaborate now. Many organisations collaborate without their Boards having joint Board meetings. There was strong feedback from the MAV sector consultation sessions that a power for joint council meetings was unnecessary.  In relation to opportunities for joint procurement:   * a council’s procurement policy must include a description of how the council will seek collaboration with other councils and public bodies in the procurement of goods and services * the CEO must ensure that any report to the council that recommends entering into a procurement agreement includes information in relation to any opportunities for collaboration with other councils or public bodies which may be available (s.148(2)   The provisions in s.148(2) are unnecessary. If a council wishes to have the CEO report in this regard it is a matter than can be included in the council’s procurement policy.  Item No. 34 also relates to this item in relation to procurement. It is proposed to support this provision. | The provision for joint council meetings is opposed as is considered to be unnecessary as councils have sufficient means of collaboration without the need for joint meetings.  The procurement provisions are supported subject to the deletion of section 148(2) which is a matter for a council’s procurement policy and not legislation. |
| 12 | Local laws are developed with minimal limitations and penalty units cannot be indexed. | Local laws require consultation with the community and must be certified by a legally trained ‘qualified’ person. Penalties are automatically indexed in the Sentencing Act consistent with state legislated penalties. | MAV’s submission supported proposed directions 28-33 in principle with strong support for:   * The development of best practice local laws * The local certification process being carried out by the Victorian Government Solicitor at no cost to councils * Urgent review of the value of a penalty unit   A council must make a local law in accordance with its community engagement policy. Before a council makes a local law its must obtain a certificate from a practicing lawyer that the proposed local law is consistent with the local law requirements. This is likely to be an extension of the involvement of legal practitioners in drafting/reviewing council local laws.  The indexing of penalties is long overdue and has been the subject of much advocacy over the years. | These provisions are supported. |
| 13 | Councils are largely dependent on the Act in order to meet legislative requirements. | Ministerial good practice guidelines will assist councils comply with the Act and these will be published on the Department’s website. While councils will not be bound to implement guidelines, adherence to the guidelines may be used as evidence of compliance with the corresponding provisions in the Act or Regulations. | MAV’s submission supported the development of best-practice guidelines and versions of essential documents to assist councils. These guidelines and documents need to be developed in consultation with the sector well in advance of respective compliance deadlines. | The development of best-practice guidelines and documents is supported on the understanding that they will be developed in conjunction with the sector and be available well in advance of respective statutory compliance dates. |

**Part 4 - Planning and Financial Management**

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| **#** | **Existing Local Government Act 1989** | **New Local Government Draft Bill 2018** | **Commentary including MAV’s position on the Directions Paper** | **MAV Position** |
| 14 | Limited requirement for existing strategic planning documents to be integrated and consistent. | An integrated planning and reporting framework which locates the Council Plan and Budget at the centre of strategic decision making and accountability. | MAV’s submission supported this framework. That is why, as mentioned earlier, we opposed the disconnect between the council plan and budget as proposed in the Directions Paper. | The integrated planning and reporting framework is supported. |
| 15 | The Budget runs for one year. | The Budget, like the Council Plan, will run for four years as for state budgets, but an expectation of annual review of the Budget. | Proposed directions 92 to 94 required a council to prepare an annual budget and to review it mid cycle, proposed that a clearer definition of material variation be provided in order to clarify when a revised budget must be struck and to remove the requirement to submit a copy of the adopted budget to the Minister. MAV’s submission supported these proposals.  The development of 4-year budgets was not proposed in the Directions Paper. It has not been the subject of sector consideration and consultation. The explanatory memorandum does not provide detailed arguments to support a 4-year budget. It says “giving both the (council) plan and the budget a four-year timeframe enables deep community engagement to be undertaken to inform both simultaneously with both core planning documents struck by 30 June in the year after the election”. It is not clear how a four-year budget would enable deep community engagement. Much of the outer years (2-4) will be generalized because of unknowns and variables including council plan action plans (typically done annually), workforce plan, the rate cap, supplementary valuations, volume of planning and building activity, provisions of EA’s, investment returns, carry over funds from previous years, and new and emerging issues, etc.  While it may be terminology, the 4 year budget will not be the same as the annual budget because, amongst other things, it will not have a rate in the dollar. The 4-year rolling budget will be out of synch with the Council Plan from the second year onwards as the Council Plan is set for 4 years. Many councils prepare working documents to project ahead. Councils can continue to prepare these documents but they do not need to be legislated and should not be the subject of “deep community engagement”. | The proposition of a 4 year budget is opposed because at best it represents indicative projections and is not suitable for community consultation. It will also be out of synch with the Council Plan from year 2 onwards. Councils should continue to have discretion to prepare their own forward projections and working papers as they deem appropriate. |
| 16 | No requirement for a long-term community vision. | Mandated community vision of at least 10 years developed with the local community. | Proposed direction 84 was to “require a council to prepare and adopt a rolling community plan of at least 10 years by 31 December of the second year after a general election to guide strategic planning and inform the preparation of the council plan. Require preparation of the community plan to be informed by the deliberative community engagement process that also underpins the council plan”.  MAV’s submission was that the adoption of a community plan of at least 10 years by 31 December of the second year after a general election is supported noting that there is no imperative to develop a community plan at the same time a council plan is developed. As with the council plan, a council should have full discretion in the development of its community engagement policy to incorporate a community engagement process.  There is scant detail in relation to the community vision in the exposure draft. The community vision must be for at least 10 years. A number of councils currently have community plans of more than 10 years. It is considered that because of the workload and community engagement involved in their development, they should not be rolling annual plans. It would be more appropriate for the plans to be required to be reviewed during the term of each successive council. Councils could, of their own volition review them more frequently if they so choose. | The community vision is supported subject to the vision being required to be developed during the term of the council elected in October 2020 and reviewed at least once during the term of each successive council. |
| 17 | No requirement for an Asset Plan. | Mandated Asset Plan of 10 years. | Item number 8 above, provides commentary on the workload and resourcing required for the various strategic documents proposed to be developed by the commencement of the 2021 financial year. Those comments also apply to the 10 year asset plan.  MAV’s submission supported the proposed directions regarding an asset plan in principle subject to the removal of the requirement for a deliberative community engagement process. | Being mindful of the workload issues, this provision is supported subject to transition arrangements allowing for councils to develop the strategic plans (including the 10 year asset plan) by the commencement of the 2022 financial year. |
| 18 | Strategic resource Plan of 4 years underpins the Council Plan but no requirement for a long- term Financial Plan. | Mandated Financial Plan of 10 years. | Item number 8 above, provides commentary on the workload and resourcing required for the various strategic documents proposed to be developed by the commencement of the 2021 financial year. Those comments also apply to the 10 year financial plan.  MAV’s submission was:   * “while a 10 year financial plan proposed under direction 86 is supported in principle the proposal to adopt it by 31 December means that it will be out of phase with the budget cycle and is not supported * The value of the 10 year financial plan will be compromised by the uncertainty introduced by the rate capping regime currently in place”   The exposure draft now has the financial plan and the budget synchronized. | Being mindful of the workload issues, this provision is supported subject to transition arrangements allowing for councils to develop the strategic plans (including the 10 year financial plan) by the commencement of the 2022 financial year. |
| 19 | Four-year Council Plan must be finalised by 30 June in the year after the council election. | No change to timeline for finalising Council Plan. | Item number 8 above, provides commentary on the workload and resourcing required for the various strategic documents proposed to be developed by the commencement of the 2021 financial year. Those comments also apply to the council plan.  MAV’s submission was:   * “the proposition that a council adopt a four-year council plan by 31 December of the second year after a general election be opposed because a council will be without a council plan for 6 months of its council term and because of the disconnect it causes with the council budget * The current timetable for the adoption of the council plan be retained in the new Act”   Although the timeline issue has been remedied in the exposure draft, the decision to develop a 4-year budget raises other concerns. These issues are raised under item number 15. | Retention of the timing in the LGA 1989 for the development of the Council Plan is supported. |
| 20 | Council submits annual report to the Minister. | Council publishes Annual Report. | MAV’s submission was that “the removal of the obsolete requirement to submit a copy of the annual report to the minister is supported”. | This change is supported. |
| 21 | No requirement to report progress against the Council Plan. | Mayor is required to publicly report annual progress against the Council Plan. | Proposed Direction 100 was to require a council to present its annual report at an annual general meeting at which the mayor must report progress on implementing the council plan. MAV’s submission indicated “It is not clear what this means and how it would work. The closest thing that a council has to an AGM is when it elects the mayor around November. This may be a new mayor and would not be relevant to the past council plan under the former mayor. As mentioned earlier in this submission, the council plan is the product of the council not just the mayor. The purpose, value and timing of this proposed direction needs further clarification”. MAV’s position was that “further clarification of the purpose, value and timing of the proposed direction is required for the sector to form a view on this matter”. The exposure draft provides for the mayor to report on the implementation of the council plan by presenting the annual report to a council meeting open to the public. The meeting must be held in an election year on a day prior to election day and in any other year, within 4 months of the end of the financial year. The proposed arrangements overcome MAV’s earlier concerns. | This provision is supported. |
| 22 | Councils not required to adopt a Revenue and Rating plan. | Councils required to adopt a Revenue and Rating plan. | Proposed Directions 120 and 121 provided for:  “120. Require a council to prepare a revenue and rating strategy that:   * Is for at least 4 years * Outlines its pricing policy for services * Outlines the amount it will raise through rates and charges * Outlines the rating structure it will use to allocate the rate burden to properties   121. Require a council to align the strategy to its financial plan and to review and adopt it after each general valuation of properties.”  At the time, general valuations were every two years. MAV’s submission was “That the requirement to prepare a revenue and rating strategy is supported in principle because it is a critical component in the development of a financial plan. It must be emphasized, however, that the integrity and value of a revenue and rating strategy is compromised in a Fair Go Rates System environment in the absence of forward rate cap projections.”  It is proposed that the revenue and rating strategy should be reviewed and adopted by 30 June in the second year after each council general elections. Where a council proposes to amend its revenue and rating strategy prior to the statutory review it should be subject to community consultation in accordance with a council’s community engagement policy. | This provision is supported subject to:   * the revenue and rating strategy being reviewed and adopted by 30 June in the second year after each council general elections.   Where a council proposes to amend its revenue and rating strategy prior to the statutory review, it should be subject to community consultation in accordance with a council’s community engagement policy. |
| 23 | Limitations restrict investment types available to councils to mitigate the likelihood of high risk investments which may compromise the financial sustainability of a council. | Retained. | Proposed Directions 111 and 112 were:  “111. Require councils to develop and adopt an investment policy in accordance with the principles of sound financial management and require all council investment decisions to be made in accordance with that policy.  112. Require the audit and risk committee to review compliance with the investment policy and require a council to report any non-compliance with its investment policy in its annual report.”  The Directions Paper noted that the range of council investment vehicles allowed in Victoria is much narrower than in other states and may result in lower returns for Victorian councils.  MAV’s submission supported proposed directions 111 and 112 subject to issues with the expanded role and capacity of an audit committee being subject to a cost-benefit analysis.  The exposure draft has moved away from the proposals in the Directions Paper and has retained the provisions in the LGA 1989. There is no explanation of why. | This provision is supported. |
| 24 | Comparable performance reporting transparently captured through the Know Your Council website. | Retained. | This matter was not raised in the Directions Paper. It is proposed to reiterate previous advocacy to streamline council reporting requirements. | This provision is supported in principle subject to the State Government reviewing and streamlining local government reporting requirements. |

**Part 5 - Rates and Charges**

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| **#** | **Existing Local Government Act 1989** | **New Local Government Draft Bill 2018** | **Commentary including MAV’s position on the Directions Paper** | **MAV Position** |
| 25 | Rating of land is exempted when used for charitable purposes, religious purposes and veterans. | Rating exemptions essentially retained but more clearly defined. | As part of the Act review, the LGV commissioned a paper on rating. MAV’s position was that:   * While a comprehensive and detailed review of the current rating provisions is supported, it is considered premature to comment on proposed directions 122 and 123 pending the preparation and release of the rating paper. Further consultation needs to take place with the sector informed by the rating paper * As a matter of policy it is considered that rate exempt land used for commercial purposes should be rateable and that councils should be provided a specific power to rate any premises operating electronic gaming machines   The sector has not had the opportunity to review and discuss the rating paper. This once in a generation review of the Local Government Act is the optimum time to comprehensively review the rates income stream. While land used exclusively for mining (refer to next item) will become rateable, the failure to conduct a comprehensive review with the sector is a missed opportunity. MAV's position on rate exempt land used for commercial purposes and rating of premises operating electronic gaming machines has not been addressed. | MAV wishes to express its disappointment with the missed opportunity to fully engage the sector in the review of the rating provisions. It is 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.. |
| 26 | Mining exempted from rates. | Land used exclusively for mining becomes rateable. | Refer to the preceding item. MAV’s position was that it was premature to comment on exemptions for rateable land pending the development and release of the rating paper commissioned by LGV. The Directions Paper noted that all other jurisdictions rate mining operations recognizing the impacts of mining on local government infrastructure, services and the environment. It is proposed that the proposition that land used exclusively for mining be ratable be supported. | This provision is supported in principle subject to more comprehensive review. |
| 27 | Councils may use one of three methods to value land for rates (capital improved value, site value or net annual value). | All councils except the City of Melbourne must use capital improved value to value land for rating purposes. | The Directions Paper indicated that 73 councils use CIV and the remaining 6 councils use NAV. It argued that there is a strong case for adopting CIV as a uniform system for valuing land as almost all Victorian councils use it, it includes all improvements in the valuation, it reflects more closely the capacity-to-pay principle and is more transparent in that the public finds the concept of market value of a property easier to understand than NAV or site value.  MAV’s submission:   * Opposed the proposal because there were no compelling reasons for dispensing with the current provisions which provide the flexibility for councils to use the valuation system which best suits their local circumstance * Was that councils that choose to use NAV should have the capacity to levy differential rates.   It is proposed that the position previously advocated be reiterated. There was strong feedback from the MAV sector consultation sessions that councils should have the discretion to use the valuation system that best suits their local situation. | The move to a single valuation system (CIV) is opposed. Councils should be able to choose the valuation system that best suits their local circumstance. |
| 28 | A differential rate declared by a council may be no more than four times the lowest differential rate in the municipality. | Retained. | The Directions Paper proposed to “Retain the requirement that the highest differential rate must be no more than four times the lowest differential rate.” The Directions Paper noted that a council must consider any relevant ministerial guidelines before declaring a differential rate.  MAV’s position was:  “That the retention of differential rates be supported in their current form subject to further consultation with the sector on the Ministerial guidelines.”  The State Council resolved at its October 2017 meeting "that the MAV advocate to the State Government to consider changing the Ministerial Guidelines for Differential Rating to allow a differential rate for venues with electronic gaming machines under section 161 of the LGA 1989”. It is proposed to seek this change. | Retention of the differential rate provisions in the LGA 1989 is supported subject to further consultation taking place with the sector on the Ministerial guidelines. The Minister is requested to include provision for differential rates for venues with electronic gaming machines in the guidelines. |
| 29 | A municipal charge (a general administrative charge levied at a flat rate against all ratepayers) is limited to 20% of the total revenue from rates and charges. | A municipal charge (referred to as the fixed component of municipal rates) is limited to 10% of the total revenue from rates and charges. | The current Act provides that the municipal charge cannot exceed 20% of total revenue from municipal charges and general rates. The Directions Paper stated that the average proportion of revenue derived from municipal charges for all councils in the 2015-16 municipal year was 9.1%. This suggests a number of councils may have seen fit to levy a charge in excess of 10%. There were no compelling arguments advanced in the Directions Paper for reducing the maximum municipal charge to 10%.  MAV’s submission was that the proposed direction not be supported in the absence of compelling reasons to reduce the maximum charge from 20% to 10%. It is proposed to maintain this position. | Retention of the provisions in the LGA 1989 is supported in the absence of any policy base for limiting the municipal charge to 10% of total revenue from rates and charges. |
| 30 | The Fair Go Rates system caps rates at CPI, with an opportunity for councils to seek a variation. | Retained. | Proposed direction 74 was to “Bring all provisions (and all other elements) of the Fair Go Rates System into the new Act consistent with the legislative hierarchy in Chapter 10”.  MAV indicated in its submission that the principle of consolidating legislation applying to local government in one place is strongly supported. It indicated that the Fair Go Rates System was in direct conflict with the notion of broad enabling powers and greater autonomy for local government. MAV’s position was that the proposed direction was opposed on the basis that the continued operation of the Fair Go Rates System is strongly opposed. It is proposed to maintain this position.  MAV State Council adopted the following motion:  “That MAV advocates for the creation of a “growth rate category” to form part of a review into the Victorian Government’s Fair Go Rates System framework. This category would consider factors that impact upon the service delivery capacity of councils through rate capping in the deliberations of the ESC when councils seek a rate rise exemption or when the Minister sets rates each year.”  It is proposed to advocate this together with a request to reconsider the onerous process involved in applying for a variation. | The sector remains strongly opposed to the Fair Go Rates System.  Reconsideration of the arrangements applying to growth councils is sought together with a review and streamlining of the application process for a variation to the cap. |
| 31 | Environmental upgrade agreements enable council-based financing mechanisms to help businesses access funding for building works to improve energy efficiency, reduce waste and cut water use. | Environmental upgrade provisions strengthened in the new Act to make clear benefits extend to the owners of residential land. | This matter was not raised in the Directions Paper. The expansion of environmental upgrade agreements to include residential land is supported in principle. The new provisions provide for the Minister administering the Energy Efficiency Target Act 2007, after consultation with the Minister for Local Government, to publish guidelines specifying the types of works to be funded by an environmental upgrade agreement. | This provision is supported subject to further consultation with the sector on the content of guidelines. |

**Part 6 - Council Operations**

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| **#** | **Existing Local Government Act 1989** | **New Local Government Draft Bill 2018** | **Commentary including MAV’s position on the Directions Paper** | **MAV Position** |
| 32 | No specific service performance principles or requirements. | The Draft Bill introduces service performance principles in recognition that councils deliver over $7B in services each year. The Draft Bill requires councils to take account of these principles, which will mandate equitable, responsive, accessible, value added service delivery for the local community. | The inclusion of service performance principles were not a specific recommendation in the Directions Paper. Proposed direction 104 was to remove the current best value principles. The new service performance principles are not dissimilar to the best value principles. There is no objection to the inclusion of service performance principles in the new Act. It should be noted that one of the principles is for a council to seek to continuously improve service delivery to the municipal community. The current financial constraints on councils may, in fact, lead to the removal or reduction of some services. | No objection is offered to the inclusion of service performance principles while recognizing that financial imperatives may necessitate the removal or reduction in some services by councils. |
| 33 | No complaints policy is mandated. | The Draft Bill defines ‘complaint’ and requires each council to have a complaints policy relating to operational delivery that defines its approach and includes an independent review mechanism. | The Directions Paper proposed a definition of customer complaint, the development of a customer complaints policy including an avenue for independent review.  MAV’s submission was that:   * The definition of complaint should be subject to further discussions with the sector while acknowledging that the requirement that the customer be directly affected is an improvement over the Ombudsman’s definition * Proposed direction 55 for a council to develop a customer complaints policy be supported subject to no prescription in relation to policy content (independent review) and all decisions of the council being exempt from the policy   The provisions in the exposure draft seem reasonable and address MAV’s earlier concerns. | This provision is supported. |
| 34 | Council procurement subject to rigid, one size tender thresholds under the Act. | Councils set their own procurement and investment policies consistent with principles of sound financial management and opportunities for collaboration and which ensure fair and open competition. | The Directions Paper proposed to:   * Require a council at the start of a council term to develop and adopt a procurement policy that is consistent with the principles of sound financial management and require that all procurement practices and contracts comply with this policy * Specify in Regulations what must be included in a procurement policy, including when council will go to tender for the provision of goods and services (including thresholds), the process for going to tender and what collaborative arrangements have been explored to deliver value for money.   MAV’s submission was:   * “Providing councils with greater autonomy in the development of their procurement arrangements is consistent with providing more autonomy to councils and is supported * Proposed direction 106 to specify in Regulations what must be included in a procurement policy is supported in the interests of consistency across the sector, subject to a full cost-benefit analysis.   The provisions of the new Act accord with the Directions Paper. They require a procurement policy to seek to promote open and fair competition. A council must review its policy at least once in each term of council. The matters that will ultimately be prescribed in Regulations are unknown at this point.  The proposed arrangements present a challenge in relation to consistency of procedures across this sector. This could have an unintended impact on providers and suppliers to the sector.  Even though councils have different size budgets for goods and services, the market views the value of a good or service the same way regardless of a council’s size. There is value in a consistent approach to procurement across the sector. While there are shortcomings with the LGA 1989 provisions (most notably in relation to cumulative spend over time) it is helpful for the sector to have a common approach to public tendering so that the market and the community understand the rules and the expectations for transparency and competition. If councils are able to set their own thresholds this may make collaboration between councils more difficult and may result in fewer public tenders and less competitive outcomes for goods and services.  If thresholds are to be specified in regulation, they need to be set at an appropriate level (the LGA 1989 has remained unaltered for many years) and periodically reviewed to retain currency. There is an argument that the regulations could also provide for exemptions from the thresholds for (say):   * Insurance * Upgrades of proprietary software   Councils would retain the discretion to go to tender below the thresholds where considered beneficial. | This provision is supported in principle subject to:   * Thresholds being specified in regulations to provide for consistency and transparency across the sector, such thresholds being subject to regular periodic review to maintain their currency * Exemptions from the thresholds being provided for in the regulations for, amongst other things:   + Insurance   + Upgrades of proprietary software * The treatment of cumulative spend with one supplier across years being clarified |
| 35 | Limited powers for collaboration with other councils, other arms of government and private partners. | Greater powers for councils to engage in beneficial enterprises; co-operative business opportunities which deliver public value. Councils may establish a beneficial enterprise with other councils, other levels of government or private sector organisations so long as the enterprise is consistent with the role of a council as defined in Part 2 Division 2 of the Draft Bill. | Proposed direction 119 was to “Remove the entrepreneurial powers in the Act and include revised powers to allow councils to participate in the formation and operation of an entity (such as a corporation, trust, partnership or other body) in collaboration with other councils, organisations or in their own right for the delivery of any activity consistent with the revised role of a council under the Act”.  MAV’s submission was:   * “The proposed direction 119 be supported in principle in relation to encouraging and facilitating collaborative arrangements between councils and service providers to deliver more efficient services with less cumbersome structural arrangements * Appropriate processes should continue to be specified in the Act to ensure a rigorous assessment process for commercial and speculative activity that involves significant financial risk is undertaken, including a ministerial approval process (above a specified trigger point based on a set % of a council’s budget) to protect and safeguard a council’s and community’s financial assets”   The new provisions provide that a council must in participating in a beneficial enterprise assess the total investment involved and the total risk exposure and ensure that its total risk exposure does not exceed its total investment. The new provisions should be subject to further consultation including what mechanisms are proposed to ensure compliance.  The Bill does not include specific provisions for regional libraries as does the LGA 1989. This was not flagged in the Directions Paper. Advice from LGV is that the final version of the Bill will include a transitional provision preserving arrangements for existing regional library corporations. Future regional library arrangements may be established by agreement between councils under the “Beneficial Enterprises” provisions in the Bill. It is considered that the transitional provisions for existing library corporations should be indefinite provided that the library corporations continue to operate with their existing structures and in accordance with the provisions of the LGA 1989. Compliance with the beneficial enterprise provisions for existing library corporations would involve a significant and unnecessary workload for no gain. | This provision is supported in principle subject to:   * further consultation on monitoring and compliance mechanisms * the transitional provisions preserving the existing library corporation provisions in the LGA 1989 indefinitely |
| 36 | A council must conduct a public consultation process on the proposed sale of land. | Retained. | The Directions Paper proposed:   * “116. Require councils to expressly provide in their budgets any intention to sell, exchange or lease land. This will enable consultation with the community during the budget process. * 117. Remove the requirement for a council to allow a person to make a submission under the Act in relation to the sale, exchange or lease of land where the matter has been considered as part of the budget consultation.”   MAV’s submission was:  “That the proposed directions be opposed because the current provisions provide for appropriate levels of community consultation and transparency for the sale, lease and exchange of community assets. The inclusion of details in the budget would be both cumbersome and would not provide increased transparency for the community.”  The exposure draft provides that before selling or exchanging land the council publish notice of its intention to do so on the council’s website and in any manner prescribed by Regulations and undertake public consultation in accordance with its community engagement policy. For leases a council must include proposals for certain leases in the budget for that year. If the proposed lease is not included in the budget it is subject to consultation in accordance with a council’s community engagement policy. The new provisions address MAV’s earlier concerns. | The provision is supported. |

**Part 7 - Council Integrity**

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| **#** | **Existing Local Government Act 1989** | **New Local Government Draft Bill 2018** | **Commentary including MAV’s position on the Directions Paper** | **MAV Position** |
| 37 | The *Local Government (Improved Governance) Act 2015* redefined the councillor conduct framework in the current Act. | Retained. | In the period before the release of the exposure draft, the MAV Board was considering the provisions in the current Act relating to:   * The operation of the internal resolution procedure in the Councillor Code of Conduct; and * The suspension and dismissal of a council.   This occurred because of approaches to the President and members of the MAV Board expressing concern about the operation of the internal resolution procedure. It is considered that sufficient time has now passed since the introduction of the councillor conduct framework to warrant a review of the provisions in consultation with the sector. | That LGV undertake sector wide consultation on the councillor conduct framework and the operation of the internal resolution procedure. |
| 38 | The range of possible conflicts of interest are voluminously described in the Act. | New rules define two types of conflicts of interest which apply to councillors, delegated committee members and council staff:   * A *material conflict of interest* exists where a councillor or staff member or a person with whom they have a defined relationship stands to gain or lose as a result of a decision. A failure to disclose such a conflict and step aside from the decision is a criminal offence.   A *general conflict of interest* exists where an impartial, fair-minded person would consider that the private interests of a councillor or staff member could result in them acting contrary to their public duty. This is not a criminal offence, but a breach may be the subject of disciplinary action. | The Direction Paper proposed two types of conflict – a material conflict of interest and a general conflict of interest.  MAV put the view that the conflict of interest provisions have been changed a number of times over the years. Each change requires councillors, council staff and the community to understand and become familiar with a new set of rules. The current provisions have evolved in response to the variety of issues that have arisen over the years. Anecdotal feedback from the sector suggests that the current provisions are operating effectively.  MAV’s submission was that “the current conflict of interest provisions be retained in the new Act with any changes following consultation on the detail with the sector”.  The exposure draft has (at s168) a list of exemptions (such as the matter being so remote) that are similar to the provisions in 77A (4), (5) and (6) of the current Act. These are considered appropriate.  However, section 79C of the current Act lists a number of circumstances where a councillor is not taken to have a conflict of interest (e.g. for the election of mayor). This is not included in the new Act. It is considered that it should be.  The exposure draft sets out at s.169 arrangements for the disclosure of a conflict of interest at a council meeting or a meeting of a delegated committee. It provides for a person with a conflict of interest to disclose the interest and to exclude themselves from any discussion or vote on the matter. S. 170 provides for the disclosure of conflicts of interest at other meetings. A councillor at such a meeting must disclose the conflict of interest and, if required by a majority of the other persons at the meeting, leave the meeting while the matter is being considered. This puts the onus on the other members present to determine whether or not the councillor stays and can vote on the matter. It is not appropriate for a councillor to vote on a matter where they have a conflict. If there is to be different arrangements for council and delegated committee meetings and other meetings, the councillor could be permitted to participate in discussion but leave for the vote.  It is proposed to strongly advocate for reinstatement of the provisions in the LGA 1989. In relation to COI, the public interest is to best ensure that people who have a conflict of interest do not participate in that decision-making. The objective should be to develop a legislative framework that enables people to identify when (and when they do not) have a conflict of interest in a matter. The provisions in the 1989 Act provide a methodology for people to systematically work through to identify whether they have a conflict. The provisions in the 1989 Act better serve the public interest in that they assist people to work through the various aspects that might apply to a conflict of interest.  There was strong feedback at the MAV consultation sessions that the provisions for a general conflict of interest were too wide open and would lead to increased and unnecessary disclosures (this was of particular concern to rural councillors). There was concern that the general conflict of interest would be confusing to the public and open to political assertion that may be damaging to the reputation of a councillor. There was strong support for retaining the provisions in the LGA 1989 while recognizing that they might benefit from further review. | Retention of the conflict of interest provisions contained in the LGA 1989 is strongly supported subject to further review with the sector.  If the new provisions are to be adopted they should be amended to provide for:   * The inclusion of the list of circumstances (appropriately amended) where a councillor is not taken to have a conflict of interest as per s.79C of the current Act * Meetings other than council and delegated committee meetings to have the same arrangements for disclosure of conflicts of interest as council meetings or for a councillor to be able to remain for discussion but leave for the vote. |
| 39 | Councillors undertake a two-step process in declaring that they will abide by the Councillor Code of Conduct: first making a declaration; then within three months revising the code and, if amendments are made, making a second declaration. | Councillors make a single declaration to abide by the Code of Conduct within three months of their election. The manner and form of words of the declaration to abide by the Code of Conduct is integrated into the oath of office (made at the outset of a councillor’s term) and is prescribed in the legislation to remove ambiguity in the wording. | This matter was not raised in the Directions Paper. Given the issues that arose when the declaration to abide by the Councillor Code of Conduct was introduced, this is a sound initiative.  It is also proposed that the provisions around the content of a Councillor Code of Conduct also require the identification of obligations placed on councillors by other Acts. Councillors will then be fully aware of their obligations when making their declaration. | This provision is supported. A provision is sought requiring Councillor Codes of Conduct to include reference to obligations placed on councillors by other Acts for completeness. |
| 40 | Misconduct and Serious Misconduct is heard by Councillor Conduct Panels and Gross Misconduct is heard by VCAT. | Retained. | This matter was not raised in the Directions Paper. Retention of the current arrangements is supported. | This provision is supported. |
| 41 | Councils not required to have a gifts policy. | Councils required to have in place a publicly transparent gifts policy, covering acceptance and disposal of gifts by councillors and a gift register. | This matter was not raised in the Directions Paper. Many councils have a standalone gifts policy or incorporate it in other policy documents. This is considered to be a sound good governance process. | This provision is supported. |

**Part 8 - Ministerial Oversight**

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| **#** | **Existing Local Government Act 1989** | **New Local Government Draft Bill 2018** | **Commentary including MAV’s position on the Directions Paper** | **MAV Position** |
| 42 | No capacity to exempt high performing councils who exceed minimum requirements from baseline Regulations. | The Draft Bill recognises that councils have the capacity to develop and adopt arrangements that significantly exceed minimum requirements in Regulations. To recognise and encourage the adoption of higher standards, provision has been made for high performing councils to apply for and obtain exemptions from particular Regulations. | Proposed direction 142 was to “Empower the Minister to release a council from the processes set out in Regulations if the council can show it is successfully discharging its obligations under the Act using different processes”.  MAV’s submission indicated that it was not clear how this would work in practice. A council may need to seek a release before it does not comply with the Regulations. It may be in breach of the Regulations if the Minister does not release the council where the Minister is not satisfied that it has discharged its obligations under the Act using different processes. MAV’s position was to support this direction in principle subject to clarification of how the process would operate.  The exposure draft provides for a council to apply to the Minister for a compliance exemption from a regulatory requirement under this Act or the regulations. A council must provide evidence that the granting of the exemption will not limit the ability of the council to provide good governance and would be in the public interest. The Minister may grant an exemption subject to any terms and conditions and for any period.  As this provides an avenue for a council to discharge it obligations using different processes, it is proposed that it be supported. | This provision is supported. |
| 43 | Minister can stand down an individual councillor (with pay). | Minister can suspend a councillor (without pay) subject to receiving clear evidence provided by a monitor, the CMI, the Ombudsman, IBAC or a Commission of Inquiry that the councillor is causing or contributing to governance failures or is breaching the Act and that without intervention the problem will persist. | Proposed direction 69 of the Directions Paper provided for:  “69. Empower the minister to recommend that a councillor be suspended by an order in council where the councillor is contributing to or causing serious governance failures at council. This power is only to be exercisable in exceptional circumstances in that:   * The councillor has caused or substantially contributed to a breach of the Act or Regulations by the council or to a failure by the council to deliver good government **and** * A council (by resolution), a municipal monitor, the CMI, the Ombudsman or the Independent Broad-based Anti-corruption Commission have recommended that the Minister suspend the councillor (and the Minister is satisfied that if the councillor is not suspended that there is an unreasonable risk that the council will continue to breach the Act or continue to be unable to provide good government for its constituents).   MAV’s submission supported the proposed direction subject to the inclusion of appropriate procedural fairness provisions, including the right of appeal or review, in relation to the suspension.  The exposure draft provides that the Minister may make a recommendation if satisfied that the councillor has caused or contributed to:   * The creation of a serious risk to the health and safety of a councillor or a member of council staff * A failure by the council to provide good governance * A failure by the council to comply with a governance direction   The current Act is limited to a report by a municipal monitor whereas the new provisions extend to the CMI, Ombudsman, IBAC or a Commission of Inquiry (but not the council as proposed in the Directions Paper). The new provisions provide for the MM etc. to provide the councillor with detailed reasons for the recommendation that the councillor be suspended and an opportunity to respond to the recommendation. The provisions in the current Act provide for the MM to provide a copy of the report to the councillor and for the councillor to be able to give a response to the report to the Minister within 5 days. It is considered that the new provisions should specifically provide for a councillor to have the opportunity to provide a response to the Minister.  Currently, on the recommendation of the Minister the Governor in Council may by order in council stand down a councillor. The new provisions provide for the order in council to be laid before both Houses of Parliament. The order may be disallowed by either House. This is analogous to the process for suspension of all councillors and is proposed to be supported. | This provision is supported subject to a councillor being provided with the opportunity to respond to a proposed suspension direct to the Minister. |
| 44 | Act provides for a range of inquiry instruments with a diverse range of powers for a range of different purposes. | Minister will have authority to appoint a Commission of Inquiry to conduct an inquiry into any matter relating to the affairs of a council or more than one council. Commission powers will be aligned to the Inquiries Act. | Proposed direction 71 was to:  “71. Streamline the Minister’s power to conduct enquiries into councils into a single power to appoint commissions of inquiry consisting of one or more commissioners to inquire into and make recommendations to the Minister about any matter as requested by the Minister. This will include, but not be limited to:   * Governance issues * Financial probity issues * Disputes between councils and between councils and other parties“.   The current Act provides the Minister with a range of mechanisms (boards of inquiry, commissions and local government panels). The proposal sought to streamline these arrangements.  MAV’s submission supported the proposal. | This provision is supported. |
| 45 | The Minister has the power to suspend an entire council where there is evidence of significant governance failures or breaches of the law. | Retained. | Under the Bill, the Minister maintains the existing power to suspend an entire council where there is evidence of significant governance failures. The current provisions in the LGA1989 do not require the Minister to give a council a show cause notice before proceeding to suspend or dismiss a council. Providing an opportunity for a council and its councillors to make submissions to the Minister before a decision is taken to suspend or dismiss a council would accord with the accepted principle of natural justice. Similar provisions existing in most other Australian jurisdictions. | This provision is supported subject to a council being provided with an opportunity to make a submission to the Minister where the Minister is considering suspending the council. |
| 46 | The dismissal of a council requires the passage of a Bill through both houses of the Victorian Parliament. | Retained. | The dismissal of a council will continue to require the approval and passage of an Act through both houses of Parliament. The current provisions in the LGA1989 do not require the Minister to give a council a show cause notice before proceeding to suspend or dismiss a council. Providing an opportunity for a council and its councillors to make submissions to the Minister before a decision is taken to suspend or dismiss a council would accord with the accepted principle of natural justice. Similar provisions existing in most other Australian jurisdictions. Given that the decision to dismiss a council rests with Parliament it is proposed to seek the opportunity for any member of that council to address the Parliament directly. | That:   * a council be provided with an opportunity to make a submission to the Minister where the Minister is considering dismissing a council * An opportunity be provided for any member of the council to address the Parliament |

**Part 9 - Council Elections**

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| **#** | **Existing Local Government Act 1989** | **New Local Government Draft Bill 2018** | **Commentary including MAV’s position on the Directions Paper** | **MAV Position** |
| 47 | Voter franchise includes citizens on the state roll and property franchise voters. | No change to voting entitlement. | Proposed direction 41 had two options as follows:  “41 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. (Option1)  Maintain the existing franchise but cease automatic enrolment of property owners and require these voters to apply to enroll for future council elections if they choose to do so. Institute compulsory voting for all enrolled voters. (Option2).”  MAV’s 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 accords with MAV’s position. | Retention of the existing voter franchise is supported. |
| 48 | Elections may be conducted by post or attendance at the discretion of the council. | The Minister determines a uniform election method (post, attendance or other method) at least 12 months before the general elections based on advice from the VEC. | Proposed direction 44 was to:  “44. Require adoption of a uniform voting method for council elections as determined by the Minister after receiving advice from the VEC. Have the Minister publish the method to be used in the government gazette 12 months before the general elections.”  MAV’s submission was to support the retention of both postal and attendance voting in the new Act. The new provisions also provide for another method such as electronic voting in the future. There was strong feedback from the MAV sector consultation sessions that individual councils should be able to choose the most suitable method of voting depending on local circumstances. | The voting method should continue to be at the discretion of individual councils. |
| 49 | Countbacks only consider the votes of the vacating councillor. | Countbacks recount all votes cast in the election until a candidate is elected. Continuing councillors are not affected by this process because their positions are expressly protected by the legislation. | Proposed direction 39 was to:  “39. Implement a countback method to fill casual vacancies between general elections by which all valid votes cast at the general election would be counted, not just those of the vacating councillor (excluding the votes that made up the quotas of the continuing councillors).”  This proposal was advocated by MAV in its submission on the discussion paper. MAV’s submission on the Directions Paper was to support proposed direction 39 for filling casual vacancies for multi-member wards. | This provision is supported. |
| 50 | The Magistrates Court conducts reviews of disputed elections. | VCAT will review disputed elections. | This matter was not raised in the Directions Paper. The current process involves electoral disputes being heard by a Magistrate appointed by the Minister. This process has been subject to lengthy delays in having matters heard in the past. It is proposed that this new provision be supported. | This provision is supported. |
| 51 | Candidates must submit their campaign donation declarations to the CEO of the Council within 40 days after the conclusion of an election. | The rigour of the campaign donation regime will be reinforced with a requirement that returns be lodged with the Chief Municipal Inspector within 21 days of receipt of each donation. | This matter was not raised in the Directions paper. This initiative transfers responsibility for collecting and reporting on campaign donation returns from a council CEO to the CMI. Returns need to be provided by candidates no later than 21 days after the candidate receives the donation. The CMI will be required to publish the details of campaign donations on the CMI internet site within 2 days of a return being lodged. This arrangement will provide voters with more timely advice of financial supporters of candidates. It is an improvement over the existing arrangements.  It seems that there is no time prescribed for the lodgment of submissions where a candidate has no donations to declare.  There is also a concern that some candidates (both successful and unsuccessful) receive campaign donations after the person ceases to be a candidate (30 days after the election day). Consideration needs to be given to whether such donations are prohibited or are required to be captured in a supplementary campaign donation return. | This provision is supported subject to review of the arrangements for the lodgement of a nil return.  Further consideration needs to be given to the arrangements to deal with campaign donations received after candidates cease to be candidates (30 days after the day of the election). |

**Miscellaneous issues**

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| **#** | **Other issues** | **Commentary including MAV’s position on the Directions Paper** | | **MAV Position** |
| 52 | Drainage | Proposed direction 153 dealt with harmonisation of legislation relating to the Water Act 1989. The direction proposed:  “153. Clarify the role of councils in local drainage, waterways and flood management. Consult about whether these are included in the new Act or in the Water Act 1989.”  MAV’s submission explained the complexity of the issue and adopted the following position:  “That as the implications of this proposed direction may be extensive, this is not supported at this time pending full and detailed consultation with the sector.”  Full and detailed consultation has not taken place. The magnitude of this issue needs to be appreciated. In the order of $11.4 billion worth of assets are involved with some 32,000 kilometres of drainage pipes and 1.4 million storm water pits.  This matter has significant implications for council operations and finances. | The drainage provisions in the LGA 1989 need to be transferred across to the new Act pending the outcome of the Melbourne Urban Stormwater Institutional Arrangements Project expected to be in 2019. The outcome of the Project should form the basis for consultation with the local government sector on greater prescription and the appropriateness of including provisions in the Water Act. Continuing consultation is also required in respect of the administrative role being proposed for councils for drainage on private rural land in the draft Victorian Rural Drainage Strategy. For example, section 111 may need to include specific mention of a council being able to declare a special purpose charge where it has agreed to collect a levy on behalf of a rural drainage committee. This is particularly relevant if the proposed role for councils in rural drainage results in one council charging levies to landowners outside their municipality on behalf of a community drainage committee formed under s.246 of the Water Act 1989. | |
| 53 | Regulations | Section 340 of the Bill provides the power for making regulations. Section 341 expands on this in relation to regulations on electoral matters. The Local Government Act 1989 is 531 pages long. The Bill, albeit without transition provisions and consequential amendments, is some 308 pages in length. This is indicative of the Bill providing significantly less content in the Act than the LGA 1989. There is the prospect that much of the detail stripped out of the Act will re-emerge in some form in regulations. There will also be further detail developed in Best Practice Guidelines. This is a fundamental shift in that it minimises Parliament’s determination of practice in the sector and places it with the Minister. This gives rise to the concern that Parliamentary protection evident in the LGA 1989 is dissipated with additional power and autonomy vested in the Minister. The provisions in section 341 relating to electoral regulations seem to provide for wide powers to be exercised in relation to a range of electoral matters. | The shift from providing detailed provisions in the Act with the imprimatur of Parliament towards increased regulation is a matter of concern to the sector. This concern is exacerbated in the absence of knowing what regulations will be enacted and what the content of those regulations will be. The content of regulations should be the subject of deliberative consultation with the sector. | |
| 54 | Schedules to the Act | The current Act has 12 Schedules that address a variety of matters incorporated in the Act. The Directions Paper proposed under harmonisation of legislation that Division 2 and schedules 10 and 11 of the current Act will be incorporated into the Roads Management Act. The incorporation of the roads and traffic matters in the Road Management Act should be the subject of consultation with the sector. Matters in the other Schedules that are still relevant and have not been incorporated in the draft Bill will presumably be included in regulations. | Matters covered in the Schedules to the LGA 1989 should be subject to further consultation with the sector either in relation to their incorporation in regulations or in other Acts. | |
| 55 | Mayoral role and powers | The Directions Paper proposed to expand the role of the mayor to include the power to appoint chairs of council committees and appoint councillors to external committees that seek council representation. MAV’s submission was that appointments to chairs of committees and external committees should have the support of council and should be made by the council. The exposure draft provides for the mayor to appoint a councillor to be the chair of a delegated committee. Appointments of chairs can have political connotations. It is proposed to oppose this provision. There was strong opposition at the MAV sector consultation sessions to this provision. | This provision is opposed. | |
| 56 | Community Asset Committee | Proposed direction 22 was:  “22. Allow councils to establish administrative committees to manage halls and reserves, with limited delegated powers including limits on expenditure and procurement; and for councils to approve annually committee rules that specify the roles and obligations of administrative committee members”.  MAV’s submission supported this in principle. | This provision is supported. | |
| 57 | Confidential information | What constitutes confidential information is set out in the definitions section of the exposure draft. Section 63 addresses when a council can close a meeting to the public. There seems to be no provisions as to how a document is rendered confidential as section 77(2) does in the current Act. It is considered that an equivalent provision to section 77(2) should be included in the Bill to ensure that confidential documents/information can be readily identified and there are consistent processes in place across the sector for handling confidential material. | Provisions should be incorporated in the new Act as to how a document is rendered confidential. | |
| 58 | Local laws | There are new provisions for making a local law. There does not seem to be anything that preserves the existing local laws or clarifies their status. | Transition provisions need to be included in the Bill to preserve the existing local laws. | |
| 59 | Temporary administration if multiple extraordinary vacancies | This is a new provision. It provides for the Minister if the Minister is reasonably satisfied that the number of extraordinary vacancies created in the offices of councillors of a council could restrict the ability of the council to provide good governance, to appoint a temporary administrator. At the latest, the period of temporary administration ends when all vacancies have been filled. There is no obligation on the Minister to consult with the council before reaching a decision to recommend the appointment of a temporary administrator. It is consider that the council should, at the very least, be advised of the Minister’s intention to appoint a temporary administrator and have an opportunity to respond to the proposal. There was strong support at the MAV sector consultations for removal of this provision. It was considered that the Minister has sufficient powers to suspend a council that is not delivering good governance (including where the council would be unable to maintain a quorum because of insufficient numbers). The potential to remove democratically elected councillors because of extraordinary vacancies in their number was not supported. | This provision is opposed on the grounds that the Minister has sufficient powers to suspend a council that is not delivering good governance. | |
| 60 | Electoral material | Section 301 deals with printing and publication of printed electoral material. Section 304 deals with the identification of authors of various types of printed electoral material. These provisions do not deal with electronic material and the identification of authors. This has been an issue raised during the past few elections by officers and candidates alike. The VEC has arrangements in place in relation to candidates at State elections. It is proposed that similar arrangements be considered for council elections. | Further consideration should be given to developing provisions in relation to electronic election material along the lines of those applying for State Government elections. | |
| 61 | Local Government Mayoral Advisory Panel | The Directions Paper proposed to:  “7. Formalise the status of the Local Government Mayoral Advisory Panel by making it a statutory advisory board to the minister under the Local Government Act”.  MAV’s submission was that:   * “The formalisation of the mayoral advisory panel is strongly opposed as it is politically appointed and unrepresentative of the local government sector * The Minister conduct consultation through the Municipal Association of Victoria as the representative sector body”   The provisions state that “the role of the panel is to provide advice to the minister on matters relating to local government in Victoria referred by the Minister”. It is proposed to reiterate opposition to this provision. | This provision is opposed. | |
| 62 | Allowances for mayors, deputy mayors and councillors | The new provisions provide for the Minister to set the allowances by publication of a notice in the government gazette. There is no requirement for the council to deal with these matters by resolution. This is considered an improvement over the existing arrangements and should be supported. 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. | This provision is supported subject to the annual review of the allowances being undertaken by the Victorian Independent Remuneration Tribunal. | |
| 63 | Delegations | Section 10 of the exposure draft provides for a council to delegate any power, duty or function under this Act or any other Act to the CEO. Section 10(2)(a) seems to provide that the CEO cannot delegate any of these powers, duties or functions. Section 46(1) specifically provides for the CEO to delegate powers, duties and functions that have been delegated to the CEO by the council. It is proposed to seek clarification of the intent and effect of s.10(2)(a) on the CEO’s powers of delegation. | It is proposed to seek clarification of the intent and effect of s. 10(2)(a) on the powers of the CEO to delegate functions that have been delegated to the CEO by the Council. | |
| 64 | Authorised officers | The LGA 1989 provides for a council to appoint an authorised officer for the administration and enforcement of any Act, regulations or local laws which relate to the functions of a council. It further provides for an authorised officer to enter any land or building in the municipal district at any reasonable time to carry out and enforce this or any other Act or any regulation or local law.  The new provisions (s. 326) restrict the administration and enforcement and the powers of the authorised officer to enter land and buildings to this act or any regulations or local law. There is no reason given for the omission of “any other Act”. As an example, the new provisions would remove the power for a Municipal Fire Prevention Officer to enter properties to conduct fire hazard inspections. It is proposed to seek reinstatement of the provisions in the 1989 Act. | Reinstatement of the provisions of the 1989 Act is sought to enable an authorised officer to administer and enforce any Act which relates to the functions of a council. | |
| 65 | Conduct of Chief Executive Officer | Sections 103 to 110 of the LGA 1989 deal with how a complaint about the CEO alleging bullying, victimisation or harassment, including sexual harassment is to be handled. These provisions have not been retained in the exposure draft. It is considered that they should be. | Equivalent provisions to sections 103 to 110 of the LGA 1989 should be retained in the new Act. | |
| 66 | Rating provisions | Section 101(5) relates to section 101(1) which identifies land that is not rateable. The current provisions in the LGA 1989 and the proposed provisions do not sufficiently clarify “charitable purposes”. It is proposed that a part (c) be added to section 101(4) to the effect “(c) it is used for the sale of goods and services”.  Section 120(4) provides for rates instalment notices to be issued at least 28 days before the due date. The LGA 1989 provides for a period of 14 days. Councils normally issue the annual notice in advance of 28 days. The reminder notices are usually issued between 15 and 20 days due to:   * Changes in the data (sales, changes of address, general maintenance and journals) * Supplementary changes * Waste charge amendments * Objections * Subdivisions.   This proposal introduces logistical problems. Councils will need to have the data file ready about 6 weeks out, contend with Australia Post delivery times, leading to the data being out of date by the time the notices are received.  Many councils have transitioned to offering payment of rates by instalment. Where a person wants to pay in full, they need to make the payment by 30 September being the due date for the first instalment. This generates a much smoother cash flow for councils rather than having to wait for a payment in full date in mid-February. Waiting 7.5 months into the year to receive rates for services being provided from day one is not appropriate. The provisions in the Bill will:   * Will change a process that is accepted by the community and well entrenched * Removes autonomy from councils to determine their payment arrangements * In some cases, increase the likelihood of some low income earners ignoring the first and second instalment notices and then getting into financial difficulty when they can’t raise the full rate amount in (presumably) February * Increase costs and administration with a February payment in full date and the issue and postage of reminder notices * Increase costs in relation to software changes * Cause cash flow problems   It is proposed to oppose this change. | Section 101(4) should be amended to clarify the situation for the sale of goods and services.  Section 120(4) should be amended to provide for rates instalment notices to be issued 14 days in advance as per the existing provisions of the LGA 1989.  The proposition that payment of rates be made in full on a date fixed by the Minister and published in the Government Gazette is opposed. | |
| 67 | Acting CEO appointments | Section 10(2)(c) provides that a council cannot delegate the power to appoint the Chief Executive Officer, whether on a permanent or acting basis. Section 43(4) provides that the council must appoint a person to be the Acting Chief Executive Officer. There will be situations where the CEO will take leave or be absent for medical reasons at short notice. It is considered that there should be provision for a CEO to appoint an acting CEO for short term periods of time. The council would then be able to make an appointment (if the absence is continuing) at the next meeting of the council. | The current provisions in the Bill should be amended to enable the CEO to appoint an Acting CEO for short periods of time that fall between ordinary council meetings. | |
| 68 | Election of mayor | Section 25 (4) provides for a mayor to be elected by an absolute majority of the councillors. This means a majority of all of the councillors not just those present at the meeting. This has potential implications where councillors are absent from the meeting and has the potential to be manipulated for political ends. The provision should provide for a mayor to be elected by a simple majority of those present at the meeting. | Section 25(4) and by extension section 25(5) are opposed in favour of a provision for election by a simple majority of those members present at the meeting. | |