

LOCAL GOVERNMENT BILL

EXPOSURE DRAFT

SNAPSHOT OF MAJOR CHANGES BY PART

Local Government Victoria

December 2017

DRAFT MAROONDAH RESPONSES – FEBRUARY 2018

No.	Existing Local Government Act 1989	New Local Government Draft Bill 2018	Support/ Not Support/Neutral Comments
Part 2 - Councils			
2.1	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.	Support / Not Support / Neutral
2.2	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.	Support / Not Support / Neutral Currently too many options and simplifies with only 3
2.3	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.	Support / Not Support / Neutral The new provision adds an accountability on the Mayor to perform in their role to statutory, Council and community expectations
2.4	All mayors except City of Melbourne are elected by and from the councillors.	Retained.	Support / Not Support / Neutral

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2.5	Deputy Mayor role optional for councils.	Mandatory for councils to appoint a Deputy Mayor.	Support / Not Support / Neutral Maroondah adopted this appointment as from November 2016. Seek clarification as to the level of remuneration intended.
	Councils are not required to have a CEO Remuneration Policy.	a) 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. b) Councils will also have an independent advisory mechanism to guide recruitment, contractual arrangements and performance monitoring of the CEO	Both a) & b) Support / Not Support / Neutral The new approach may prove beneficial in demonstrating back to the community and state government, that appropriate and more transparent governance structures are in place.
	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.	Support / Not Support / Neutral This item supports strengthening what is already a Council requirement in the Council Plan, the Strategic Resource Plan – Human Resource Plan. Council already measures information relevant to gender equity, diversity and inclusiveness.
Part 3 - Policy and Decision-Making			
3.1	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.	Support / Not Support / Neutral Maroondah has an adopted Community Engagement Policy in place. The principle of incorporating community engagement in developing a four-year Council Plan is supported; however, the term ‘deliberative’ requires clearer definition.

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3.2	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.	Support / Not Support / Neutral In theory will provide greater flexibility in making any warranted changes to meeting procedures than current processes re local laws
3.3	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 <i>Freedom of Information Act 1982</i> .	Support / Not Support / Neutral Maroondah not a great deal of change as under FOI the most commonly used exemptions pertain to privacy or commercial in confidence. The latter covering the awarding of contracts in confidential.
3.4	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.	Support / Not Support / Neutral Currently entrepreneurial provisions of the Act are onerous and prohibitive. Eastern Regional Group of Councils proposes to advance collaboration and partnering and therefore an enabling provision along these lines would be welcome.
3.5	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.	Support / Not Support / Neutral Maroondah currently obtains legal advice on local laws
3.6	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.	Support / Not Support / Neutral States the current reality. Would also create a great opportunity for sector organisation such as MAV and LGPro to develop best practice guidelines and take responsibility for self-regulation.
Part 4 - Planning and Financial Management			

No.	Existing Local Government Act 1989	New Local Government Draft Bill 2018	Support/ Not Support/Neutral Comments
4.1	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.	Support / Not Support / Neutral This is aligned to Council's current approach as part of our Integrated Planning Framework.
4.2	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.	Support (Provisional) / Not Support / Neutral Support provisional on the form of the Budget being simplified/streamlined. A four year rolling budget presumably would replace the need for a separate strategic resource plan in the Council Plan.
4.3	No requirement for a long-term community vision.	Mandated community vision of at least 10 years developed with the local community.	Support / Not Support / Neutral This is consistent with Council's current approach with our Maroondah 2040 Community Vision.
4.4	No requirement for an Asset Plan.	Mandated Asset Plan of 10 years.	Support / Not Support / Neutral Long term plan is reasonable given the focus on a 10-year financial strategy and the magnitude of the task of asset management/renewal. Maroondah currently prepares Asset Management plans for 20-year period.
4.5	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.	Support / Not Support / Neutral As a Council, we already achieve this, so support this as being mandated as it does provide value to Council and the users of the report.
4.6	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.	Support / Not Support / Neutral This is supported assuming the definition of 'deliberative' engagement is broad and can be customised per municipality
4.7	Council submits annual report to the Minister.	Council publishes Annual Report.	Support / Not Support / Neutral

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			This change formalises existing practice of publishing the Annual Report via Council’s website, and in hardcopy via service centres.
4.8	No requirement to report progress against the Council Plan.	Mayor is required to publicly report annual progress against the Council Plan.	Support / Not Support / Neutral Council already publishes annual progress on the Council Plan through the Annual Report and quarterly progress to Council Meetings. This requirement would simply formalise our existing approach, with the inclusion of a Mayor’s message in support of the report.
4.9	Councils not required to adopt a Revenue and Rating plan.	Councils required to adopt a Revenue and Rating plan.	Support / Not Support / Neutral
4.10	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.	Support / Not Support / Neutral As a Council, one should expect Council’s to manage their own level of risk and risk appetite. It shouldn’t need direction from the Act to achieve that. In saying that, neutral in the sense that, not fretted either way. Just making the point that Council’s governance is to manage its own levels of risk, additionally, it is also why audits are undertaken and why there is an independent Audit Committee engaged and communicated with frequently.
4.11	Comparable performance reporting transparently captured through the Know Your Council website.	Retained.	Support / Not Support / Neutral This simply retains requirements introduced in 2014 through the Local Government (Planning and Reporting) Regulations 2014.

Part 5 - Rates and Charges

No.	Existing Local Government Act 1989	New Local Government Draft Bill 2018	Support/ Not Support/Neutral Comments
5.1	Rating of land is exempted when used for charitable purposes, religious purposes and veterans.	Rating exemptions essentially retained but more clearly defined.	Support / Not Support / Neutral
5.2	Mining exempted from rates.	Land used exclusively for mining becomes rateable.	Support / Not Support / Neutral
5.3	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.	Support / Not Support / Neutral
5.4	A differential rate declared by a council may be no more than four times the lowest differential rate in the municipality.	Retained.	Support / Not Support / Neutral
5.5	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.	Support / Not Support / Neutral
5.6	The Fair Go Rates system caps rates at CPI, with an opportunity for councils to seek a variation.	Retained.	Support / Not Support / Neutral
5.7	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.	Support / Not Support / Neutral This simply retains requirements introduced in 2014 through the Local Government (Planning and Reporting) Regulations 2014.
Part 6 - Council Operations			
6.1	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.	Support / Not Support / Neutral Whilst the concept of service performance principles is supported, Maroondah would encourage further consultation with the local government sector before they are mandated as part of the Local Government

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			Act. Once included in the Act, provision of guidance and support from Local Government Victoria will also be required to assist the sector in implementing these principles into service delivery.
6.2	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.	<p>Support / Not Support / Neutral</p> <p>Seek further clarification from LGV as to what constitutes "a review that is independent" of-</p> <ul style="list-style-type: none"> (a) The person who took the action; and (b) The person who made the decision; and (c) The person who provided the service. <p>Does this mean Councils will require an officer that is removed from all Council service areas similar to the FOI officer or perhaps a "complaints" review panel independent of the service provided that is subject to the complaint.</p>
6.3	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.	<p>Support / Not Support / Neutral</p> <p>Fully support – encourages greater levels of collaboration and not a one-size fits all approach. Will open current barriers, which should result in overall improvement in procurement processes and initiatives and greater levels of Council collaboration.</p> <p>I think we are mature enough to set our own threshold.</p> <p>This will be particularly handy for instances when there may be a mandatory sole supplier (SP Ausnet) and to seek a ministerial exemption or go to tender for the sake of the current threshold, costs Council</p>

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			additional dollars.
6.4	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.	Support / Not Support / Neutral
6.5	A council must conduct a public consultation process on the proposed sale of land.	Retained.	Support / Not Support / Neutral
Part 7 - Council Integrity			
7.1	The <i>Local Government (Improved Governance) Act 2015</i> redefined the councillor conduct framework in the current Act.	Retained.	Support / Not Support / Neutral
7.2	The range of possible conflicts of interest are voluminously described in the Act.	<p>New rules define two types of conflicts of interest which apply to councillors, delegated committee members and council staff:</p> <p style="padding-left: 40px;"><i>A material conflict of interest</i> 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.</p> <p style="padding-left: 40px;"><i>A general conflict of interest</i> 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.</p>	<p>Support / Not Support / Neutral</p> <p>Current conflict of interest provisions are copious in number and confusing to understand and apply. Any simplifying of this is to be welcomed.</p>

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7.3	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.	Support / Not Support / Neutral Simplifies an unnecessarily convoluted process and adds certainty as to the wording.
7.4	Misconduct and Serious Misconduct is heard by Councillor Conduct Panels and Gross Misconduct is heard by VCAT.	Retained.	Support / Not Support / Neutral
7.5	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.	Support / Not Support / Neutral Maroondah currently has its gift provisions and processes for Councillors within the Code of Conduct and such includes a gifts register and a process for reminding Councillors on a monthly basis. To have as a stand alone policy would enhance transparency.
Part 8 - Ministerial Oversight			
8.1	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.	Support / Not Support / Neutral
8.2	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	Support / Not Support / Neutral A sensible enhancement to the current scenario

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		problem will persist.	
8.3	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.	Support / Not Support / Neutral
8.5	The Minister has the power to suspend an entire council where there is evidence of significant governance failures or breaches of the law.	Retained.	Support / Not Support / Neutral
8.6	The dismissal of a council requires the passage of a Bill through both houses of the Victorian Parliament.	Retained.	Support / Not Support / Neutral
8.7	No baseline conditions that must be considered by restructuring advisory bodies in providing advice to the Minister on altering the external boundaries of a council.	Baseline conditions identified in <i>Review of Sunbury out of Hume</i> must be considered by restructuring advisory bodies in providing advice to the Minister on altering the external boundaries of a council.	Support / Not Support / Neutral A sensible enhancement to the current scenario
Part 9 - Council Elections			
9.1	Voter franchise includes citizens on the state roll and property franchise voters.	No change to voting entitlement.	Support / Not Support / Neutral
9.2	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.	Support / Not Support / Neutral Consistency across the sector would be welcome – highly confusing for voters where abutting municipalities have different voting arrangements.
9.3	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.	Support / Not Support / Neutral Maroondah has supported this change for a number of years and has twice – albeit unsuccessfully – submitted motions along these lines to the MAV State

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			Council.
9.4	The Magistrates Court conducts reviews of disputed elections.	VCAT will review disputed elections.	Support / Not Support / Neutral Municipal Electoral Tribunals (disputed electoral results) would be considerably enhanced by being heard by a tribunal with sufficient training and experience to do so.
9.5	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.	Support / Not Support / Neutral The handling by the CEO (Council) of processes for campaign donations is an unnecessary encumbrance. Far more sensible to be handled by the Chief Municipal Inspector.

OTHER ISSUES

No.	Existing Local Government Act 1989	New Local Government Draft Bill 2018	Support/ Not Support/Neutral Comments
10.0	s95A Employment of senior officers to be regulated by contract (1)A senior officer may only be employed under a contract.	Senior Officers as a category of employment no longer exist	Support / Not Support / Neutral In the absence of this statutory category of employment, with 5 year maximum terms of employment being the defining feature of the employment relationship, unless alternative and enforceable industrial arrangements were to be put in place, SO's would effectively become SEO's. The practical effect of this would be that as such they would acquire ongoing tenure and be covered by the

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			<p>EBA.</p> <p>The question is whether or not the acquisition of ongoing tenure would have a potentially detrimental impact on employee performance, as the risk of contracts not being renewed would cease to exist as a potential performance motivator.</p>
10.1	Special Purpose Charge – process prescribed as to declaration of charge	Prescribed process retained though consultation provisions streamlined and updated prescribed provisions. Appeal provisions to allow VCAT to set aside a special purpose charge not complying with prescribed matters	<p>Support / Not Support / Neutral</p> <p>Generally support the provision but would seek clarification – re intent and operation - around a number of the proposed sections within the Exposure Draft, namely :-</p> <ul style="list-style-type: none"> • Clause 111(3) – special benefit clause requires clarification. Could be misinterpreted as limiting to power to charge for new infrastructure or upgrades. • Clause 111(4) - Council can include non-rateable land for a special purpose charge for <u>street construction only</u>. Appears not to include drainage schemes and clause should be expanded to included <u>drainage schemes</u>. • Clause 114(1) – If Council contributes more than 2/3's of the total cost there is no objection process available. The wording of the clause could be misinterpreted and requires clarification. It is not clear as to whether the objection process applies if Council contributes less than 2/3's of the total cost i.e. recovers more than 1/3 of the cost from property owners (assumption that it does). • Clause 115(1)(b) - Council cannot declare a scheme if the estimated charge increases by 10%

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			<p>from the notice of the intention levy a charge to the declaration / levy of the scheme charge by Council <u>or</u> if the time from the intention notice is greater than 12 months.</p> <ul style="list-style-type: none"> • Clause 118(2)(a) – Council cannot increase the special charge levied on a property by more than 10% (this is a throw back to the old 1958 Act scheme provisions) i.e. cannot require additional payment of more than 10% for cost increases • Clause 119(2) – Time for appeal to VCAT increased from 30 days to 60 days – not supported (time is unreasonably long) • Clause 123(1) – ability to provide incentives for early payment. Methods of incentives is not defined i.e. can we allow for a discount of the amount levied for early payment, or waive interest payable up to a defined period? Seems to be at our discretion and could be open to challenge as some will argue they're penalised for not being able to pay up front.
10.2	Provisions relating to roads, drainage and infrastructure within the current Act	Removed and to be inserted in Road Management Act	<p>Support / Not Support / Neutral</p> <p>Appears to makes some sense for roads and road related drainage but the drainage provisions also relate to development and protection of properties from flooding that is broader than the Road Management Act</p>