

# Agenda

Special Meeting of Council  
Tuesday, 9 July 2019

To be held in the  
Council Chambers  
1 Merrijig Drive, Torquay

Commencing at 12.00pm

**Council:**

Cr Rose Hodge (Mayor)  
Cr David Bell  
Cr Martin Duke  
Cr Clive Goldsworthy  
Cr James McIntyre  
Cr Brian McKiterick  
Cr Margot Smith  
Cr Heather Wellington

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AGENDA FOR THE SPECIAL COUNCIL MEETING OF SURF COAST SHIRE COUNCIL  
TO BE HELD IN THE COUNCIL CHAMBERS, 1 MERRIJIG DRIVE, TORQUAY  
ON TUESDAY 9 JULY 2019 COMMENCING AT 12.00PM

**PRESENT:**

**OPENING:**

Council acknowledge the traditional owners of the land where we meet today and pay respect to their elders past and present and Council acknowledges the citizens of the Surf Coast Shire.

**PLEDGE:**

As Councillors we carry out our responsibilities with diligence and integrity and make fair decisions of lasting value for the wellbeing of our community and environment.

**APOLOGIES:**

Nil

**CONFLICTS OF INTEREST:**

**Note to Councillors and Officers**

***Declaration of Interest***

*Councillors and Officers please note that in accordance with Section 77A of the Local Government Act 1989, there is an obligation to declare a conflict of interest in a matter that could come before Council.*

*A conflict of interest can be a direct or indirect interest in a matter.*

*A person has a direct interest if:*

*There is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.*

*A person has an indirect interest if the person has:*

- 1. A close association whereby a "family member" of the person has a direct or indirect interest or a "relative" or member of a person's household has a direct interest in a matter;*
- 2. An indirect financial interest in the matter;*
- 3. A conflicting duty;*
- 4. Received an "applicable" gift;*
- 5. Become an interested party in the matter by initiating civil proceedings or becoming a party to civil proceedings in relation to the matter; or*
- 6. A residential amenity affect.*

***Disclosure of Interest***

*A Councillor or Officer must make full disclosure of a conflict of interest by advising the class and nature of the interest immediately before the matter is considered at the meeting. While the matter is being considered or any vote taken, the Councillor with the conflict of interest must leave the room and notify the Chairperson that he or she is doing so.*

**BUSINESS:**

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1.1 <i>Council Submission - Local Government Bill 2019 Proposed Reforms .....</i>	<i>4</i>

## 1. GOVERNANCE & INFRASTRUCTURE

### 1.1 Council Submission - Local Government Bill 2019 Proposed Reforms

**Author's Title:** Manager Governance & Risk

**General Manager:** Anne Howard

**Department:** Governance & Risk

**File No:** F17/1772

**Division:** Governance & Infrastructure

**Trim No:** IC19/1112

**Appendix:**

1. Local Government Bill - A Reform Proposal Paper (D19/86426)
2. Council Submission - Local Government Bill 2019 (D19/95031)
3. Council's Previous Submission - Local Government Bill 2018 (D17/148515)

**Officer Direct or Indirect Conflict of Interest:**

**Status:**

In accordance with Local Government Act 1989 –  
Section 80C:

Information classified confidential in accordance with  
Local Government Act 1989 – Section 77(2)(c):

Yes

No

Yes

No

**Reason:** Nil

**Reason:** Nil

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#### **Purpose**

The purpose of this report is to provide Council with an opportunity to make a submission to Department of Environment, Land, Water and Planning (DELWP) following release of its Local Government Bill reform proposal paper.

#### **Summary**

A copy of the State Government's paper titled 'Local Government Bill – A Reform Proposal' is attached as Appendix 1. This paper sets out the review process to date and provides a summary of additional proposed reforms.

Submissions are being invited up to 17 July 2019. A proposed submission (Appendix 2) is has been developed in direct response to the reforms outlined in the paper.

A full copy of the proposed Local Government Bill 2019 is not available at this time, however Council made a substantial submission in response to the 2017 Exposure Draft which is also attached (Appendix 3).

If approved by Council the submission will be forwarded to State Government for its consideration when developing the final version of the Local Government Bill 2019.

#### **Recommendation**

That Council:

1. Approves the Letter of Submission at Appendix 2 as its response to the *Local Government Bill – A Reform Proposal* released in June 2019.
2. Submits the final Letter of Submission and resubmits its 2018 submission at Appendix 3 to the Department of Environment, Land, Water and Planning.

## **1.1 Council Submission - Local Government Bill 2019 Proposed Reforms**

### **Report**

#### ***Background***

Attached at Appendix 1 is a copy of the State Government's paper titled 'Local Reform Bill – A reform proposal' which sets out the review process to date and provides a summary of additional proposed reforms. A full copy of the Local Government Bill 2019 is not available at this time but is anticipated to be similar to the exposure draft released in 2017.

Submissions are being invited until 17 July 2019.

#### ***Discussion***

The Local Government legislation has been in place since 1989 and has undergone numerous amendments. The State Government has undertaken a comprehensive review and Council has actively engaged through the review process, recognising that this is a rare opportunity to have input to the primary legislation under which it operates.

The Minister for Local Government has indicated that he is keen to see the proposed Local Government Bill 2019 presented to Parliament in coming months. The Minister has also proposed some further reforms and is seeking feedback on these prior to the finalisation of the drafting of the Bill.

The proposed submission (Appendix 2) is focussed on responding to the issues in the reform paper released in 2019.

Council's previous submission to the exposure draft of the Local Government Bill 2018 (Appendix 3) is also considered relevant because the reform paper and council's response build on the previous documents.

#### ***Financial Implications***

There are no financial implications associated with making this submission.

#### ***Council Plan***

Theme	5 High Performing Council
Objective	5.2 Ensure that Council decision-making is balanced and transparent and the community is involved and informed
Strategy	5.2.1 Prepare for Local Government Act review recommendations

#### ***Policy/Legal Implications***

Reforms to the Local Government Act 1989 have been foreshadowed for a number of years.

#### ***Officer Direct or Indirect Interest***

No officer involved in the preparation of this report has any conflicts of interest.

#### ***Risk Assessment***

Not applicable.

#### ***Social Considerations***

Not applicable.

#### ***Community Engagement***

Council has not undertaken any community engagement in relation to the recently released reform proposals, or in the development of its submission. The release of the paper has had media coverage by the State Government and DELWP have hosted some forums.

#### ***Environmental Implications***

Not applicable.

#### ***Communication***

If a submission is approved it will be communicated to the Minister and DELWP under the signature of the Mayor on behalf of Council.

## **1.1 Council Submission - Local Government Bill 2019 Proposed Reforms**

### ***Options***

#### Option 1 – Not provide a submission

This option is not recommended by officers. The review of the Local Government Act has significant implications for Council and the sector and participation should be expected.

#### Option 2 – Approve the submission

This option is recommended by officers. The submission addresses all proposed reforms, builds on Council's previous submissions and has had been discussed at a Councillor Briefing Session to gain Councillors' input. The proposed submission provides important feedback for consideration when the final version of the Bill is developed.

#### Option 3 – Approve the submission, with changes

This option is not recommended by officers as the attached submission already reflects Councillors' review.

### ***Conclusion***

Council has an opportunity to adopt the attached submission to the proposed Local Government Bill 2019 and to provide input for DEWLP's consideration when developing the final version.

**1.1 Council Submission - Local Government Bill 2019 Proposed Reforms**

**APPENDIX 1 LOCAL GOVERNMENT BILL - A REFORM PROPOSAL PAPER**

# Local Government Bill – A reform proposal





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# Local Government Bill – A reform proposal



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## Ministerial foreword

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

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

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

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

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

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

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



**Hon Adem Somyurek MP**  
Minister for Local Government

## Local Government Bill 2019

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

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

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

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



## Part 1 – Background

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

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

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

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

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

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

### The Reform Process

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

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

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

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

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

## Part 2 Reform Themes

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

### **A NEW RELATIONSHIP**

*Example*  
Minister will no longer set Mayor and Councillor allowances.

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

### **COMMUNITY CONFIDENCE**

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

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

### **IMPROVE CONDUCT**

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

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

## IMPROVED SERVICE DELIVERY

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

**01**

**02**

## STRONG LOCAL DEMOCRACY

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

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

**03**

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

Local Government Bill – A reform proposal

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## Part 3

# Proposed Reforms

### REFORM

## 1

### Simplified Franchise

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

### Voter Franchise

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

#### Why is this proposed?

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

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

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

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

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

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



### How will it work?

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

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

#### Stage 1

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

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

#### Stage 2

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

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

#### Melbourne City Council Reforms

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



REFORM

2

## Electoral Structures

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

### Electoral Structure

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

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

#### Why is this proposed?

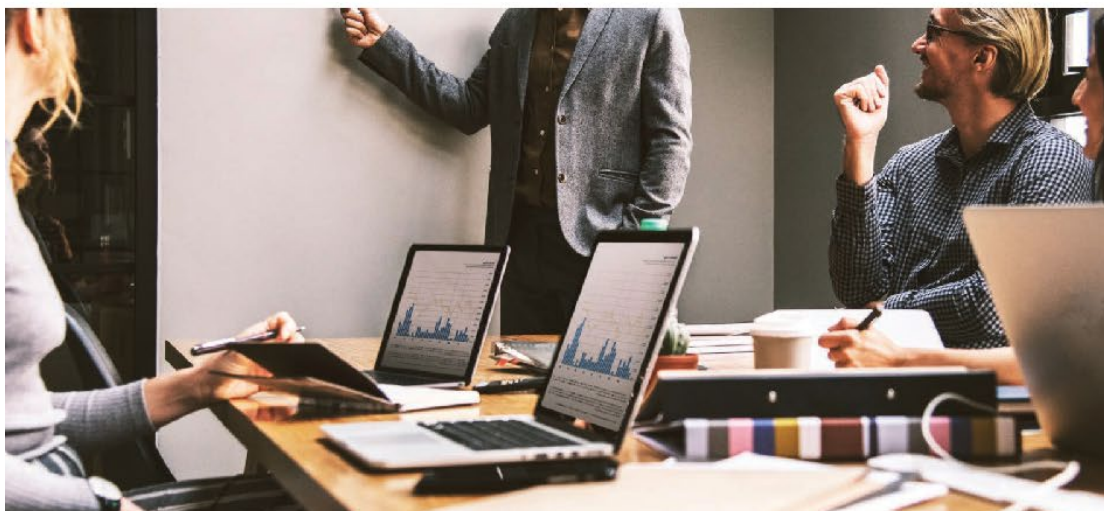
Single member wards for each council enable residents to more effectively receive direct representation. Councillors will be more accountable to local communities, fostering true 'local' government.

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

#### How will it work?

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

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



REFORM

3

**Training**

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

**Election Candidates – Mandatory Training**

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

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

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

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

**Why is this proposed?**

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

**How will it work?**

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

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

**Councillor Induction Training**

**Why is this proposed?**

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

**How will it work?**

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

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

REFORM

4

### Donation Reform

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

#### Why is this proposed?

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

#### How will it work?

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

#### Melbourne City Council Reform

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



REFORM

5

### Improved Conduct

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

## Prescribed standards of conduct

### Why is this proposed?

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

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

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

### How will it work?

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

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

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

## Internal arbitration process

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

### Why is this proposed?

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

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

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

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

#### **How will it work?**

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

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

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

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

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



REFORM

6

### Community Accountability

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

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

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

### Disqualification - conduct

#### Why is this proposed?

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

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

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

#### How will it work?

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

##### *Disqualification – Repeated Serious Misconduct*

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

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

##### *Community initiated Commission of inquiry*

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

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

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



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

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

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

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

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

### **Petition process**

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

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

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

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

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

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

## Part 4

# Implementation and Comments



### Implementation

The 2018 Bill proposed that the provisions of the Bill commence in stages to enable councils to implement the changes effectively and orderly. The government also indicated that support and guidelines would be provided to assist councils during the transition. It is proposed that this approach will also apply to the 2019 Bill.

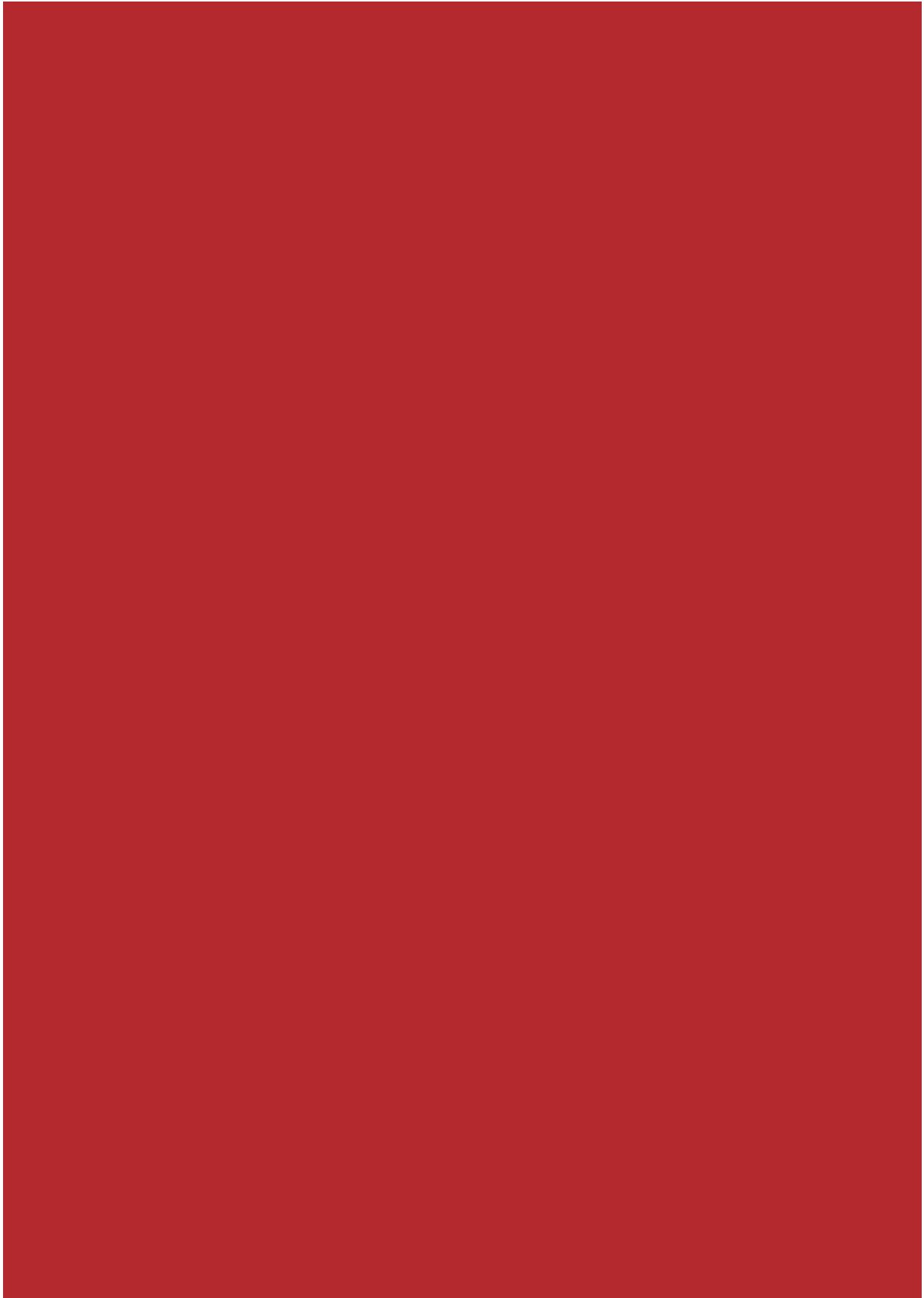
The implementation support will be tailored to the timeframe and nature of the change and continue beyond implementation as a continuous improvement approach.

If enacted, the provisions of the Bill would be implemented in stages up until late 2021.

### Comments

We welcome your feedback on these reforms before **17 July 2019**.

Please send any feedback you have on the proposed reforms to [local.government@delwp.vic.gov.au](mailto:local.government@delwp.vic.gov.au) using the subject line Local Government Bill 2019.



**1.1 Council Submission - Local Government Bill 2019 Proposed Reforms**

**APPENDIX 2 COUNCIL SUBMISSION - LOCAL GOVERNMENT BILL 2019**



Our Ref: F17/1772  
Contact: Anne Howard/ Wendy Hope

9 July 2019

The Hon Adem Somyurek MLC  
Minister for Local Government  
[local.government@delwp.vic.gov.au](mailto:local.government@delwp.vic.gov.au)

Dear Minister

**Submission in response to Local Government Bill Reform Paper 2019**

On behalf of the Surf Coast Shire Council I make this submission in response to the Local Government Bill Reform Paper. Council appreciates the opportunity to make comment on the proposed reforms that build on previous work regarding the Victorian Local Government legislation.

Council recognises that a comprehensive review of this key legislation is a rare opportunity for our level of government, our council and our community. For this reason Council has consistently engaged with all formal and informal opportunities to inform and shape this legislative review, including our 2018 submission to the exposure draft (copy attached).

Our comments focus only on the reform themes as outlined in the document "Local Government Bill – A reform proposal".

**1. Simplified franchise**

Council supports the alignment of the electoral roll to the State electoral roll, making us more consistent with our interstate counterparts.

Council believes that non-residential residents and commercial lessees that are interested in participating in Local Government elections will continue to do so and will nominate for enrolment. It is important that the option to apply for nomination is simple and encourages participation.

**2. Electoral structures**

Council holds serious concerns about the proposed changes to electoral structures.

As outlined in our previous submission, Council accepts that single-member wards may work well for metropolitan councils that generally have evenly dispersed population. However this structure does not adequately take into consideration regional and rural councils and their widely or inconsistently distributed populations.

Council's previous submission also noted that the City of Greater Geelong Commission of Inquiry reported the view that the single member ward structure contributed to the challenges experienced at that Council.



The Local Government Bill Exposure Draft 2017 indicated that councillors should have a focus on the 'municipal' community in their decision-making. Proposing that only single-member wards are to be the base electoral model seems contrary to this direction.

Accordingly, Council requests that a range of electoral structures be available to enable each municipality to have representation that best suits the needs of the community.

### 3. Training

Council strongly supports this reform.

Council further submits that the candidate training should be a requirement for all candidates, including former or incumbent councillors, given that there may be changed circumstances.

Council strongly supports mandatory training for all councillors, including new or returned councillors to ensure that each new term commences with a common and shared understanding.

The consequence of a councillor not participating in mandatory training needs to be sufficient to ensure compliance. Withholding the allowance is considered insufficient and Council submits that if a councillor has not completed mandatory training within six months of the election then they should be deemed to be ineligible to continue in the role of a councillor.

### 4. Donation reforms

Council supports this reform.

### 5. Improved conduct

#### Prescribed standard of conduct

Council supports the proposed framework of consistent standards of conduct across local government, noting that the detail is yet to be developed.

#### Internal arbitration process

Council supports the proposed reforms, noting:

- i. Mediation should be the primary response to interpersonal disputes. Mediation has a forward-looking focus that can assist in helping councillors work together.
- ii. A more consistent approach to the appointment of arbiters is supported as is the independence of the arbiter's ability to directly impose minor disciplinary sanctions.

#### Other matters

Council makes further submission regarding improved conduct.

- i. The current Councillor Conduct Panel is inadequate and that further consideration needs to be given to:
  - the level of justification needed to convene a panel
  - the lack of information about the panel's procedures which creates significant and unnecessary stress for participants
- ii. Councils should be empowered to voluntarily appoint a monitor to assist them in difficult times rather than only have avenue to a Municipal Monitor, on the basis that the Minister's office or Local Government Victoria:
  - Endorse the selection of the voluntary monitor
  - Endorse the Terms of Reference
  - Receive regular updates directly from the voluntary monitor



#### 6. Community accountability

Council supports the disqualification of a Councillor found guilty of serious misconduct twice in an eight year period.

Council partially supports the petition process, with the following proposed improvements:

- A minimum threshold, such as 2,000 signatures, noting that some municipalities have relatively small populations and a percentage approach only may not be reasonable; and
- The process should include a step, such as a preliminary review by Local Government Victoria, whereby the Minister can be satisfied that the petition is based on genuine reasons.

Council further submits that regardless of how a Commission of Inquiry comes about, the Minister should have the power to disqualify a councillor if a Commission of Inquiry recommends this is warranted.

Council is pleased to see that the review of the Local Government Act remains a priority for the Victorian Government and that further consideration has been made to enhance this legislation. We hope that this submission is given positive consideration.

Yours sincerely

**Cr Rose Hodge**  
Mayor

**1.1 Council Submission - Local Government Bill 2019 Proposed Reforms**

**APPENDIX 3 COUNCIL'S PREVIOUS SUBMISSION - LOCAL GOVERNMENT BILL 2018**





## Submission Template

### Local Government Bill – Exposure Draft

Name	Wendy Hope
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If you work in an organisation or council, please provide the following information:

Organisation or council name	Surf Coast Shire Council
Position	Manager Governance and Risk
Are you providing this submission on behalf of the organisation or council?	Council

#### Key information about making a submission

##### What feedback should I provide on the exposure draft bill?

Following an extensive consultation process that considered the policy issues that underpin the Local Government Act, we are now seeking feedback on the Local Government Exposure Draft Bill to inform the final draft legislation before the Government reviews it to present to the Victorian Parliament. We strongly encourage you to read the explanatory document (*A New Local Government Act for Victoria*) to assist you to navigate the draft legislation.

##### What is the closing date for submissions?

The closing date for submissions is **5:00 pm, Friday 16 March 2018**. Given that the draft bill is subject to parliamentary timeframes, submissions received after this date will be considered at the Government's discretion.

##### How do I make a submission?

Submissions can be made in three ways:

- **Online** by uploading your submission to the [www.yourcouncilyourcommunity.vic.gov.au](http://www.yourcouncilyourcommunity.vic.gov.au) website
- **Emailing** your submission to [local.government@delwp.vic.gov.au](mailto:local.government@delwp.vic.gov.au)
- **Posting** your submission to:  
Local Government Act Review Secretariat  
C/o Local Government Victoria,  
PO Box 500, Melbourne VIC 3002

##### How do I complete this template?

To complete this template:

- (1) Locate the part of the Draft Bill you wish to comment on.
- (2) Insert the clause number, your level of support for the clause, the proposed change and any other comments into the table.

##### Can I provide a submission in another format?

It is strongly preferred for submissions to be made by completing this template. However, if another format suits your needs or the requirements of your organisation you are welcome to use another format.

##### Will submissions be made publicly available?

Written submissions and the name of the author will be published on the [www.yourcouncilyourcommunity.vic.gov.au](http://www.yourcouncilyourcommunity.vic.gov.au) website unless confidentiality is requested and the Executive Director of Local Government Victoria grants it, or if it is determined your submission should remain confidential. Submissions that are defamatory or offensive will not be published.

Please contact the Local Government Act Review Secretariat if you have any questions on (03) 9948 8518 or [local.government@delwp.vic.gov.au](mailto:local.government@delwp.vic.gov.au)



**Part 1: Preliminary**

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<b>Clause (No.)</b>	<b>Support / Do Not Support / Neutral</b>	<b>What changes do you propose and why?</b>	<b>Are there any other comments you would like to make on this clause?</b>
s3	Support	Support that the definition of bullying is clear and correctly refers to the behaviour being 'repeated'. Importantly, 'unreasonably' can include persistent intervention to the point people feel they cannot do their job, rather than for example, being rude or overly directional – staff must be left reasonably to do their jobs.	
s3	Do Not Support	Definition of confidential information does not include CEO and staff employment and remuneration matters – policies should also be public.	Need to include CEO and staff employment and remuneration matters in definition of confidential.

<b>Do you have any overall comments on Part 1 of the Exposure Draft Bill?</b>

**Part 2: Councils**

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
s8	Support	Noted that governance principles include responsibility for Council to consider climate change and future generations – supportive of this.	
s8(2)(f)	Support	Agree strongly with the principle regarding seeking collaboration with other Councils and governments – this is important in the pursuit of efficiencies.	
s10	Neutral	Clauses relating to delegations do not allow provision for Council to delegate direct to staff members as required under certain legislation eg the Environmental Protection Act refers to a council officer as a ‘person who is authorised by a municipal council to enforce’ – this would therefore require a direct delegation from Council to the staff member, not through CEO.	Suggest inclusion of ability for Council to delegate direct to Council staff.  However, appreciate that this could be that the power to delegate comes from the enabling Act rather than the LG Act - worth a mention just to check this is the case.
s10(c)	Neutral	Appointment of Acting CEO in s10(2)c is only by Council, however recommend this should be if for more than one month - for example if CEO is going on leave for two weeks the CEO should appoint the Acting CEO, perhaps in consultation with the Mayor.	CEO should be able to appoint acting CEO if less than a month.
s12(1)	Neutral	Perhaps the maximum number of Councillors should be 11 and not 12 so that an odd number more readily allows for majority decisions.	Change maximum number of Councillors from 12 to 11.

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
s12(4)	Do not support	<p>Councils to consist of single member wards, uniform multi-member wards or be unsubdivided. This will affect Surf Coast which is currently constituted of mixed multi-member wards.</p> <p>Strongly advocate for the current provision which allows mixed multi-member wards to remain in place.</p>	<p><b>Strongly against this provision.</b></p> <p>Believe that this is a 'metro-centric' provision which works well for city councils and their evenly spread population. It does not take rural Councils and their widely distributed populations into consideration. Request that the ability for mixed multi-member ward representation is retained.</p> <p>Noted that the City of Greater Geelong Commission of Inquiry reported the view that the single member ward structure contributed to the challenges experienced at that Council.</p>
s12	Do not support	<p>Current electoral structure for SCS not allowed under new Act mixture of single and mixed multi-member wards. Next SCS electoral review due in 2024.</p>	<p>Unclear how/when new provisions will affect Councils such as Surf Coast with next electoral review not scheduled until 2024.</p>
s13(2)	Neutral	<p>Use of Common Seal – unclear when this should be used – very rarely used now. Would be useful to have this articulated in the legislation.</p>	<p>For clarity and consistency include explanation of when the common seal should be used.</p>
s18(1)(a)	Do not support	<p>Rationale is unclear for Mayor appointing a Councillor to be Chair of a delegated committee when the Council has to appoint the members. Why can't Council appoint the Chair at the same time?</p>	<p>Council should be responsible for appointing Chairs of delegated committees – not the Mayor.</p>
s20	Support	<p>Provision for Mayor to be removed from office if 75% of Councillors vote in favour.</p> <p>Supportive of this provision.</p>	
s21	Support	<p>Support the recognition of Deputy Mayor as a formalised role with associated remuneration.</p>	<p>Suggest include rules around:</p> <ul style="list-style-type: none"> <li>- Making term of Mayor and Deputy Mayor the same length</li> <li>- Requirement to replace Deputy Mayor within a month of a vacancy, as with the Mayor.</li> </ul>

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
s28(1)	Support	Role of a Councillor seems very concise and clear.	
s43	Support	Agree with the removal of the explicit restriction on only being able to reappoint a CEO in the last six months of contract.	
s43	Support	Agree with removal of the need to publicly advertise intention to reappoint the CEO and leaving this to Council to consider in the policy.	
s44	Support	Support the concept of a CEO remuneration policy.	<p>CEO remuneration policy only allows for obtaining independent advice and does not require it. Suggest this is extended to be a requirement – Surf Coast Shire gets great value from having an independent Chair of the CEO Employment Matters Committee.</p> <p>Many of the clauses in section 94 of the current Act should be maintained to ensure consistency across the industry or they should be requirements of the proposed CEO Employment &amp; Remuneration policy. (eg re-appointment)</p>
s44(3)	Neutral	Victoria’s Policy on Executive Remuneration in Public Entities has two elements in particular that may be inconsistent for local government – high levels of bonuses are not currently the norm and this may introduce that, and prohibition on termination payments would expose CEOs to unjustified termination by an incoming Council, noting that a CEO may have relocated family to a rural or regional area to then be unreasonably removed – may be better to set a limit as 6 months’ salary or remainder of contract (whichever is less) as this is currently common in sector.	Consider changes in line with comments in previous column.

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
s45	Support	Important that the CEO sets the Council meeting agenda – good addition to consult with the Mayor.	
s45(1)(a)	Support	Functions of CEO seem concise and clear, perhaps 45(1)(a) should also refer to Deputy Mayor.	Refer to Deputy Mayor.
s45(2)(f)	Neutral	Including Councillors as deemed employees under s45(2)(f) reflects current reality – however guidance will be required as to how this relates to psychological wellbeing and what the role of the CEO would reasonably be, for example when Councillors are having relationship difficulties that caused high stress. What would be the expectation for the CEO to provide a safe workplace in this situation?	Guidance is needed in relation to classification of Councillors as ‘deemed employees’.
s45(3)	Support	Regarding an organisation structure, informing Council and consulting with impacted staff seems to reflect a good balance.	New requirement to <b>inform</b> Councillors of proposed organisational restructure if it impacts capacity to deliver Council plan – definition of ‘restructure’ would be helpful.
s45(4)(a)	Support	Agree with the notion of having a workforce plan.	
s47(1)	Neutral	Regarding s47(1) – needs clarification - what would happen if the CEO feels the need to appoint staff above that indicated in the workforce plan as the section says “as required under the workforce plan”? Is it prohibited or does the workforce plan need to be first updated? Importantly the workforce plan just needs to be prepared and maintained by the CEO, not adopted by Council.	Explanation needed relating to CEO being able to appoint staff above those prescribed in the workforce plan.

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
s48	Neutral	Requirement for Councils to include 'a gift policy' in the staff code of conduct.	<p>Suggest the requirement to have a policy that addresses gifts and conflict of interest but not necessarily prescribe that it has to be within the staff code of conduct.</p> <p>Perhaps the wording could be that Councils include their policy on gifts .... A subtle difference but would ensure Councils could insert a paragraph outlining the policy on gifts rather than including their full gifts policy document as part of the staff code of conduct.</p>

<b>Do you have any overall comments on Part 2 of the Exposure Draft Bill?</b>

**Part 3: Council decision making**

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
s52	Support	Support that the Audit and Risk Committee should have broadly existing responsibilities as no need to be involved in CEO matters.	
s54	Support	Good that public participation approach will be based on established model (VAGO) and also good to have a community engagement policy.	
s57	Support	Support the introduction of Public Transparency Principles.	
s58	Support	Agree with having Governance Rules (including meeting procedure) and this not being included in the Local Law.	Clarity needed in the guidelines on whether penalties can be applied to the public from the Governance Rules or whether a local law is required for this. Do we repeal the Local Law when the Governance Rules are in place apart from the penalties section?
s59(4)(c)	Support	Support the concept of no provision to abstain. Wording needs to include being present 'at the time the vote is taken' to ensure the clause is correctly interpreted.  Suggest simplifying by stating that 'all Councillors present at the meeting at the time the vote is taken must vote'.  Suggest that a comment is included that such a vote will be recorded in the minutes as a vote against the motion – ie not as abstaining from voting.	Suggest reword to make it clear that the 'no vote' only applies to those present at the meeting at the time the vote is taken – already highlighted to LGV and agreed this needs to be added.  For simplicity the Bill could say that all Councillors present at the meeting at the time the vote is taken must vote.
s59(4)(d)	Neutral	The Mayor having a second vote – perhaps it would be clearer if this wasn't just called a second vote. This is undoubtedly the effect but it would be useful to provide more context for this – it is a Mayoral vote that should take into account certain principles not just giving the Councillor who is Mayor two votes. Also, in the event that the Mayor is absent and Deputy Mayor is Chairing the meeting they would have the second vote – it is the Chair of the meeting that has the second vote not the Mayor as such.	Suggest strengthening the section relating to the use of the second vote and rewording to clarify that it is the Chair of the meeting who has the second vote. (Could be a scenario where Deputy Mayor is standing in while the Mayor is in attendance at the meeting so is not technically 'the Mayor', including where the Mayor has declared a conflict or has stepped away from chairing that item).



Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
s60	Support	Very supportive of the notion of joint meetings and the way the Bill encourages collaboration with other Councils and organisations.	Need to be clear whether the decisions of a joint Council meeting are treated as decisions of each Council and if they are binding.
s61	Do not support	This Council does not support the requirement for delegated committees to have two Councillors.  Do not support the provision that the Mayor's decision in appointing a Chair overrides that of Council.	Request that this section is less prescriptive and that Council has precedence when appointing the Chair.
s62	Support	Support the creation of Community Asset Committees and that the CEO directly manages these as this better reflects the notion of community assets being Council operational functions.	Need to be clear on the scope of 'Managing a community asset' for a Community Asset Committee eg does it mean asset planning and renewal responsibilities?
s63	Support	Supportive of ability to close Council meetings to the public for reasons of confidentiality explained in Bill and removal of ambiguity.  Support Councils being able to close the meeting and livestream if there are concerns for security or public order.  Add CEO and staff employment and remuneration matters to the list of confidential reasons for closing a Council meeting.	This provision will encourage the establishment of live streaming.
s67	Support	Very important that the prohibition on Councillor discretionary funds be kept in place – this was a clear recommendation in the CoGG Commission of Inquiry.	
s72	Neutral	Need clarity as to where Council's power comes from for application of fees and charges – presumably under a local law s72(1)(a).	Clarity needed for where Council's power comes from for application of fees and charges. Is it through a local law?

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
s82	Support	Good practice guidelines will be useful although these will need to be comprehensive, clear and published in plenty of time before implementation to be of real use.	<p>Additionally request a suite of model template documents, including policies, which would ensure a more consistent approach across the sector. This would reduce burden on small Councils and the need for all Councils to seek their own advice.</p> <p>Suggest MAV could act on behalf of Councils and engage a consultant to develop model documents that prevent need for all Councils to do this individually.</p> <p>Guidelines and model documents need to be published at least three months before implementation dates to allow time for Council meeting process.</p>
s83	Support	Agree with the need for a 10-Year Community Vision and further suggest requirement for a similar document for the organisation.	Suggest that Council organisations need an equivalent Organisation Direction (should not call Vision as this would be confusing although it would have the same intent – ie what would the organisation look like in the future).
s89	Support	Support the introduction of 4 year budgets.	

Do you have any overall comments on Part 3 of the Exposure Draft Bill?
<ul style="list-style-type: none"> <li>- Suggest clarification of when a Councillor or Committee member is in 'attendance' at a meeting eg by phone, Skype etc and whether can vote if not physically in the room but present via technology.</li> <li>- Agree with the notion of Department of Justice enabling escalation of fines without having to revisit the local law.</li> <li>- No mention of advisory committees – how will these be treated in the future? Can Councils have them?</li> <li>- A summary of Councillors' expense reimbursements should be published periodically.</li> <li>- Need to be clear that having information or registers publicly available is covered by being available on Council's website – ie no paper copies needed.</li> <li>- Need reasonable lead time after 1 July 2018 for basic governance provisions that are not mentioned in the implementation schedule such as the new Conflict of Interest rules, reasons for closing of Council meetings, personal interests, delegations (delegated and community asset committees in particular), Audit and Risk Committee, Deputy Mayor, no abstaining etc. Councils will need time to prepare for these as well as the headline plans, rules and policies.</li> </ul>

**Part 4: Planning and financial management**

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
s86	Support	Excellent that the Financial Plan will be for 10 years.	
s87	Support	Excellent to have the Asset Plan for 10 years.  Should be matched with the requirement for service plans.	Asset Plans should be matched with the requirement for service plans.
s88	Support	Agree with the Revenue and Rating Plan for 4 years as this will show the basis of 4 year budget revenue.	
s92(3)	Neutral	Should read 'only if the CEO believes a revised budget is or may be required' – no need to include a reference if it is not anticipated that a revised budget may be required.	Change wording as described.
s93-95	Support	Good idea to publish Annual Report rather than submit to Minister – suggest this could be the approach used with other strategic documents such as the Budget and Council Plan.	Budget and Council Plan should also be published rather than submitted to the Minister.

<b>Do you have any overall comments on Part 4 of the Exposure Draft Bill?</b>

**Part 5: Rates and charges**

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
s102	Support	Surf Coast Shire Council already uses CIV for rating purposes so no change involved.	
s106	Support	Agree with the Municipal Charge being limited to 10% of rates revenue. Surf Coast Shire Council currently within this range.	
s107	Do not support	<p>'Drainage' mentioned only once in the Bill in reference to being able to levy a charge. Explanation of this is required.</p> <p>Power to order a landowner to carry out drainage works removed – needs reinstating.</p>	<p>Explanation of ability to levy a drainage charge needs explanation.</p> <p>Appears that power to order a landowner to carry out drainage works has been removed. Recommend reinstatement of this power.</p>
s107	Neutral	Refuse charge - Definition of 'refuse' is required.	Request a definition of refuse to provide clarity and consistency.
s110	Neutral	<p>Owner of the land is liable for municipal rates and service charges on that land. There is a distinction between these and SPCs in the Bill but does not seem to be a matching provision for SPCs. Sec 111(1) provides for SPCs to be declared on rateable land, Sec 113 (2) mandatory notification to persons who are required to pay, Sec 114(2) notification regarding objection process to owners and occupiers of non-residential lands and 115(2) that it be levied by sending it to the person who is required to pay.</p> <p>Nowhere is it clear about who is required to pay.</p>	Provide clarity in relation to who is required to pay.

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
s114	Do not support	Exemption to objection provisions for 'drainage schemes required for reasons of public health' removed. This will be an issue as drainage schemes are notoriously difficult to implement. Beneficiaries of these schemes are those who discharge the water and those who are protected from discharges. Those few at the bottom may be severely affected by flows concentrated by upstream landowners. Upstream landowners tend to be the majority and see themselves as receiving no benefit and not wanting to contribute. Removal of these provisions will make it virtually impossible to use SPCs to fund them. Council will not be able to assist flooded property owners except via Council funded works. S16 of the Water Act enables affected landowners to seek compensation for damages from those upstream but in general it is extremely difficult and almost impractical to pursue and it only allows for compensation and not fixing the cause of the problem.	Request reinstatement of exemption to objection provisions for 'drainage schemes required for reasons of public health'.
s114	Do not support	Right of objection made available to occupiers and owners of 'rateable property' regardless of who is responsible for SPC. (Tenants may dictate owner's position even though they are not responsible for the SPC). The current legislation (S163B(4) & (5)) restricts occupiers from objecting except where they produce documentary evidence that they will be liable. Objections counted with respect to rateable properties rather than titles (issue – owner of unsubdivided non-residential property with many occupancies (e.g. shops, warehouses, factoryettes etc.) receives much greater say than owner of same property all in one occupancy and much greater say than owner of one much larger property consisting of several adjoining titles under one occupancy and rated as one.)	Better to allocate objection rights proportional to proposed contribution or at least per title.
S120		Bearing in mind that average rate cap means an amount expressed as a percentage amount, based on the change to the CPI for the financial year to which the cap relates, plus or minus any adjustment; base average rate, in relation to a Council, means the rate calculated according to the following	Service charges not to include waste charges.

		<p>formula— <math>R_b \text{ BAR } L^2</math> where— BAR is the base average rate; and</p> <p><math>R_b</math> is the total annualised revenue leviable from— (a) municipal rates; and (b) rates under the Cultural and Recreational Lands Act 1963; and (c) service charges prescribed by the regulations—</p> <p>As we have not seen the regulations, if the service charges (c) do include waste charges this would be an issue for Council.</p>	
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<b>Clause (No.)</b>	<b>Support / Do Not Support / Neutral</b>	<b>What changes do you propose and why?</b>	<b>Are there any other comments you would like to make on this clause?</b>
s134-138	Support	Support the concept of environmental upgrade charge – this tool has been used by metro councils such as Darebin to enable ratepayers to access solar panels.	
s146	Support	Support the requirement to develop a complaints policy – this builds on strong work undertaken by the Ombudsman.	

<b>Do you have any overall comments on Part 5 of the Exposure Draft Bill?</b>

**Part 6: Council operations**

<b>Clause (No.)</b>	<b>Support / Do Not Support / Neutral</b>	<b>What changes do you propose and why?</b>	<b>Are there any other comments you would like to make on this clause?</b>
s147-8	Support	Removal of hard tender thresholds in the legislation – good idea to recognise diversity of councils and constraints on Council in accessing different specialist goods and services or in developing strategic partnerships.	Suggest Councils are required to report on spend with one supplier in Annual Report where cumulative spend exceeds a threshold eg \$500k.
s148(2)	Support	Pleased to see reference to requirement to consider procurement collaboration with other Councils or public bodies.	

<b>Do you have any overall comments on Part 6 of the Exposure Draft Bill?</b>



**Part 7: Council integrity**

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
s162	Support	Good to see that Misuse of Position explicitly includes disclosing confidential information, influencing staff and failing to disclose a conflict of interest.	
s163	Neutral	In relation to a Councillor "seeking to direct" – consideration should be given to "unreasonably seeking to influence" – there is a line here where it is not direction but still can represent an issue.	Suggest adding 'unreasonably seeking to influence' as well as seeking to direct.
s165	Do not support	Suggest conflict of interest rules to remain as under existing legislation. More clearly defined than new provisions and were made to be specific for a reason.  More serious consequences for material conflict breaches do not balance out with less prescription and explanation.	Prefer to retain existing rules. New rules allow for interpretation – old rules are clearer and easier to administer.  Will require the strong support of guidance notes as while the goal of removing specificity is good, the prescriptive nature of the existing Act was based on much experience – it is important to remember why this was the case and to seek to avoid the same issue.
s165	Do not support	Would be good to state that if declaring a conflict of interest in the Council meeting then Councillors should not interact with officers on that matter outside the Council meeting – section 169(2)(b) could address this by adding "or seeking to influence staff in addressing this matter or preparing a report for Council's consideration"	Suggest adding the wording as described in previous column.
s166(1)	Do not support	Suggest under 166(2), where private interests are defined, that this needs to be more clearly explained.  The use of the word 'interest' as part of the definition of a 'private interest' is not helpful or explanatory. What exactly is meant by 'interest'?	Might seem obvious but need to be clear what 'interest' means in the context of this section. Without a definition could be misinterpreted. This could be the type of conflict that is the most difficult to quantify therefore clarity would be very useful. Need wording other than 'interest' to describe what is meant by 'interest'.
s169(2)(b)	Do not support	Unclear if 'exclude themselves from the decision making process ...' means the person is required to leave the room after declaring a conflict at a Council meeting.	Would like to see the requirement to leave the meeting room reinstated as someone's presence at the meeting during the debate and while the decision is being can be enough to influence decision making. Again, this provision was introduced for good reason.

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
s170	Do not support	Declaration of conflicts at other meetings – Do not agree that the majority of persons present should decide whether a person can stay in meeting if they have declared a conflict. Open to inconsistency and influence. This would apply at former Assemblies of Councillors - strong view that Councillors/delegated committee members should automatically be required to leave the room when declaring a conflict.	Reinstate requirement to leave the room at other meetings on declaring a conflict of interest and not leave this decision to the majority of those present.

<b>Do you have any overall comments on Part 7 of the Exposure Draft Bill?</b>
<ul style="list-style-type: none"> <li>- 'Assemblies of Councillors' have been removed – unclear how these types of meetings will be handled when majority of Councillors are present. This was an important element in addressing conflicts of interest outside the Council meeting and unclear how this will now be effectively achieved. Requirement to include Assembly of Councillors notes on the Council agenda removed – again this was introduced for a reason ie to increase transparency and prevent Councils from holding pseudo Council meetings. The Governance Rule Guidelines will need to contemplate these issues.</li> <li>- Opportunity should be taken to address the status of unbiased decision making (ie Winky Pop) and clarify where having a predetermined mind fits into the new provisions.</li> </ul>

**Part 8: Ministerial oversight**

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<b>Clause (No.)</b>	<b>Support / Do Not Support / Neutral</b>	<b>What changes do you propose and why?</b>	<b>Are there any other comments you would like to make on this clause?</b>
s243	Support	Support the idea that a Councillor can be suspended with no pay as long as this is part of a robust and fair process, with the opportunity for monies to be reimbursed if cleared of wrongdoing.	Requires a robust and fair process with reimbursement of pay if cleared of wrongdoing.

<b>Do you have any overall comments on Part 8 of the Exposure Draft Bill?</b>

**Part 9: Electoral provisions**

<b>Clause (No.)</b>	<b>Support / Do Not Support / Neutral</b>	<b>What changes do you propose and why?</b>	<b>Are there any other comments you would like to make on this clause?</b>
s320	Support	Agree with proposal for campaign donation returns to go direct to CMI and not CEO. Cuts out rework and is more logical now that Councils are not responsible for elections or failure to vote processes.	

<b>Do you have any overall comments on Part 9 of the Exposure Draft Bill?</b>
<ul style="list-style-type: none"><li>- The phased implementation seems to have been well thought through – need to understand whether the revised electoral structure will be in place by the next Council election and confirm the status of existing contracts, for example the CEO's employment contract that may have clause(s) that are inconsistent with the public service guidelines.</li></ul>

**Part 10: General provisions**

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Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?

<b>Do you have any overall comments on Part 10 of the Exposure Draft Bill?</b>

**Part 11: Consequential amendments and repeals**

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Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?

<b>Do you have any overall comments on Part 11 of the Exposure Draft Bill?</b>

**Close:** There being no further items of business the meeting closed at pm