



Rural Councils Victoria

SUBMISSION TO LOCAL GOVERNMENT
ACT REVIEW: **EXPOSURE DRAFT**

March 2018

TABLE OF CONTENTS

1 INTRODUCTION	2
2 CONTEXT	2
3 COMMENTARY ON EXPOSURE DRAFT	3
4 SUMMARY OF KEY RECOMMENDATIONS	10
5 CONCLUSION	12

1 INTRODUCTION

Rural Councils Victoria (RCV) welcomes the opportunity to contribute to the Local Government Act Review: Exposure Draft. RCV supports the initiative to reform Victoria's Local Government legislation to better meet the needs of contemporary council practices, and commends the work undertaken to date to involve the sector and broader stakeholder groups.

RCV was established in 2005 to coordinate the network of rural councils across Victoria in their efforts to better understand, articulate and address the issues affecting them. RCV's mission is four-pronged:

1. Heighten awareness and understanding of issues that impact on rural communities
2. Use policy, strategy, advocacy and evidence-based research to secure better outcomes for our member councils
3. Assist with building the capacity of rural councils to face challenges
4. Provide leadership on local governance

One of RCV's key objectives is to **identify and promote the collective interests of rural councils and their communities**. RCV provides its commentary on the Exposure Draft through this lens of representing the interests of rural Victorian local government authorities and their communities.

2 CONTEXT

RCV believes that liveable, sustainable and prosperous rural communities are fundamental to the ongoing success of Victoria.

Victoria's rural councils are responsible for administering 79 per cent of Victoria's land area, and have a combined population of approximately 745,200 people - or approximately 12.5 per cent of the State total (June 2016).

Key contemporary challenges and issues for local government include:

- The Australian Government's burden of debt has resulted in significant spending cuts to the sector, such as the hiatus on annual indexing of Financial Assistance Grants
- Local government costs are rising rapidly, beyond the Consumer Price Index
- There are real sustainability issues for rural councils, including forecast gaps in infrastructure investment and operating deficits
- Victorian councils are doing most things 79 times (eg. Enterprise Bargaining Agreements, Information Technology platforms, Public Policy development)
- Councils' four year plans do not address the strategic challenge of change
- Many regional areas are experiencing a loss of skills and younger workers as the population ages, which also impacts on the ability of councils to deliver services and modernise operations
- Digital government is coming, and it will need to operate 24-hours a day, seven days a week
- There is a general perception that local government is too slow, delivers poor value for money and is overly focused on its regulatory role
- There is an increasing community expectation for high standards of service, and additional services

It is vital to recognise that these challenges are amplified for many (most) Victorian rural councils. Many municipalities are faced with stagnant or declining populations, ageing infrastructure and assets, ageing populations, dispersed populations, and poor accessibility to health and social services to name a few challenges. This is set against a fiscal backdrop of reduced funding options and mandated rate-capping.

In representing the interests of Victoria's rural councils, it is imperative to RCV that local government legislative reform seeks to mitigate these challenges rather than add unnecessary burden to an already stretched sector.

3 COMMENTARY ON EXPOSURE DRAFT

RCV has invited the views of its member councils in the preparation of this submission. The responses returned to RCV generally demonstrate strong alignment in most areas of reform, with a diversity of views on a number of discreet provisions. This submission by RCV seeks to convey those responses where commonality is evident and where the legislative impact is the greatest. Regard has also been had for the extensive work undertaken by other local government peak bodies through the course of the review.

RCV's specific commentary is provided below, following the sequence of the Exposure Draft for ease of navigation.

PART 1: Preliminary

Comments on specific provisions

s.3	The definition of Gift is not sufficiently clear and could benefit from rewording. Misconstruing of the meaning of Gift would have implications for other sections of the Bill. RCV recommends clarifying the definition of Gift.
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Other comments on Part

Nil

PART 2: Councils

Comments on specific provisions

s.12(4)	There exists a common view amongst contributing councils against abolishing flexibility of a ward's electoral structure (ie. mandating equal multi-member wards). The premise for including this change in the Bill is unclear, as there is not an apparent problem with existing provisions. For rural councils with a mix of population centres and sparsely-populated agricultural land, flexibility of electoral structures ensures a fairer model of representation for communities. RCV recommends retention of the range of electoral structures provided by the current Act (1989) to better meet the needs of rural and regional communities.
s.18(1)(a)	The expansion of the Mayoral role to include the power to appoint chairs of council committees and external committees may prove problematic. In the interests of good governance and to avoid unnecessary political discord associated with such appointments, all committee chairing appointments should be made by the elected council. RCV recommends removal of s.18(1)(a), with a suitable replacement within the Bill providing for the appointment of committee chairs by a vote of council.
s.20(3)	RCV perceives a wide range of views on the ability of a council to dismiss a sitting Mayor by a three-quarter majority vote. Some contributing councils saw this as potentially destabilising for a council to retain this provision at all, while others questioned why a simple majority vote would not suffice. Given the range of considerations RCV holds no particular position on this provision, however requests that it be subject to concerted review as to its implications. RCV recommends detailed consideration of draft provision s.20(3) to address contrasting views amongst rural councils.

s.37	<p>Contributing councils expressed opposition to the setting of allowances by the Minister. The current method (wherein the Minister prescribes an appropriate allowance range from which councils then determine the appropriate allowance) is preferred. This view extends to the setting of allowances for the Deputy Mayor, noting that the role of Deputy Mayor in many councils may not be particularly active. Councils would prefer to retain discretion on this issue.</p> <p>RCV recommends retention of the existing practice of the Minister prescribing an allowance range for individual council discretion.</p>
s.43(4)	<p>Contributing councils expressed concern with the requirement for the elected council to appoint an Acting CEO when the CEO is unable to perform his or her duties. This provision appears impractical to implement, in particular for brief appointments such as short-term annual leave, unanticipated sick leave or other personal leave where an Acting CEO might be required to step in. To enact this provision would require a vote of council, meaning a dedicated council meeting may need to be called. It is unclear why existing circumstances should not continue to apply, whereby a CEO would appoint an Acting CEO.</p> <p>If this provision is to remain, RCV recommends that it be amended to provide for council appointment of an Acting CEO for longer-term appointments only (for example, four weeks or longer).</p>
s.44	<p>Two aspects of proposed s.44 remain in question, being:</p> <ul style="list-style-type: none"> ▪ Clarification of the extent of mandated external advice required in the management of CEO hiring and performance, noting that this could be an additional cost burden for councils if not constrained (s.44(2)(a)); and ▪ The relevance of the Government of Victoria's Policy on Executive Remuneration in Public Entities, and whether its application is of genuine value given the differences between the two sectors (s.44(3)) <p>RCV recommends that these provisions be reviewed as to their utility, with particular consideration as to any additional cost burden placed on councils.</p>
s.45(4)	<p>The benefit of a four-year workforce plan remains in question at present.</p> <p>Workforce requirements are fluid, and over a four-year period are likely to change markedly from when first forecast. All councils will already have organisational structures in place – this is not an area where local government has been found lacking. It is unclear what material benefits will therefore be derived by mandating the development of a formal plan. This is an example of an additional administrative burden for small councils.</p> <p>Contributing councils additionally note that while the inclusion of specific measures for gender equity, diversity and inclusiveness are commendable, such measures are likely to be unworkable for rural councils where there is often a limited number of candidates for vacant employment positions.</p> <p>RCV recommends that the requirement to develop a workforce plan be reviewed as to its utility, with particular consideration to any additional cost or administrative burden placed on councils.</p>
s.53(2)(a)	<p>It is noted that the role of the Audit and Risk Committee has effectively been expanded to monitor compliance of council policies and procedures in relation to governance principles and the Act, Regulations and Ministerial Guidelines. This is akin to duplicating the role of council itself, creating significant administrative burden while potentially deriving limited benefit.</p> <p>RCV recommends that this provision be reviewed to consider whether the focus of Audit and Risk Committees should remain on issues of finance and risk only.</p>
s.54(2)(b)	<p>Councils undertake a broad range of strategic planning and policy development, both external facing (policy or strategic planning that impacts on the general public) and internal facing (policy that affects the workforce, such as various human resources policies). The</p>

	<p>wording of this provision at present implies an expectation that community consultation principles should be applied to the development of any strategic project or policy. It would not be usual for internal facing policy development processes to include a public participation exercise, for example. Clarification of the language within this provision would assist.</p> <p>RCV recommends that the application of the community engagement principles be applied to all strategic planning, and for councils to have the discretion of when they may be applied to any other processes.</p>
s.54(3)	<p>Clarification is required on the use of the word 'collaboration', given its connotation with the terminology used under the IAP2 framework where it is used to signify a co-design process. If 'collaboration' is genuinely intended then this will have significant implications for the resources of smaller councils.</p> <p>RCV recommends replacing the word 'collaboration' with a suitable alternative or clarifying the Bill's intention for this provision.</p>
s.56	<p>Contributing councils expressed concern with the requirement to develop a Public Transparency Policy, describing it as duplication of council's responsibilities under the <i>Freedom of Information Act 1982</i>. Application of the public transparency principles alone would appear to suffice as they give sufficiently clear direction on what should be made public. Again, an additional policy to develop and continuously monitor and update would appear administratively excessive, in particular for smaller councils.</p> <p>It is recommended that the public transparency principles (s.57) be maintained, however the requirement to develop and maintain a Public Transparency Policy (s.56) be removed from the Bill.</p>
Other comments on Part	
Nil	

PART 3: Council decision making

Comments on specific provisions

s.60	<p>The need for joint Council meetings is unclear. To undertake a joint meeting would entail considerable administrative planning for logistics and rules of governance, with questionable benefit. RCV is unable to envisage a circumstance when this provision might be invoked, that cannot be managed through current practice.</p> <p>In the absence of clarification as to how the provision would operate or why it is needed, RCV recommends the removal of this provision.</p>
s.82	<p>The issue of Ministerial Good Governance Guidelines attracted a range of views from contributing councils as to whether they should receive in-principle support. Notwithstanding, there was a common view that any guidelines or documents falling from this provision should:</p> <ul style="list-style-type: none"> ▪ Include extensive consultation across the sector ▪ Ease the administrative burden on councils rather than add to it ▪ Be made available well in advance of respective statutory compliance dates <p>RCV recommends the retention of s.82 with the addition of a requirement for collaborative engagement with councils during the stage of development.</p>

Other comments on Part

Nil

PART 4: Planning and financial management

Comments on specific provisions

s.85	<p>There is concern amongst councils regarding the tight timeframes for the development of the Council Plan following an election, given the need for increased community engagement. The experience of councils is that superior outcomes are achieved if new Councillors are given a period to settle and orientate themselves before being required to settle on a strategic direction for the next four years. It has been suggested that an additional three months added to this timeframe (ie. by 30 September in the year following an election) would be adequate to achieve this end.</p> <p>It is recommended that consideration be given to extending the time allowable for the development of a four-year Council Plan.</p>
s.87	<p>While the development of a long-term asset plan is a worthy ambition, there is concern regarding the level of detail that would be expected, and subsequently the financial burden on councils to prepare such a plan.</p> <p>It is recommended that clarification be provided as to the expected inclusions in a 10-year asset plan. RCV remains neutral on this provision until such point as further information is available.</p>
s.89	<p>There is general support for the development of four-year rolling budgets, acknowledging however that accuracy and certainty deteriorate progressively beyond the current year.</p> <p>RCV recommends that this provision be maintained.</p>

Other comments on Part

While the structural and governance documentation required of councils through the Exposure Draft Bill generally support good governance, there is deep concern regarding the capacity of smaller rural councils to develop and progressively maintain the range of mandated policies and strategic plans. These will include:

- A community vision of at least 10 years
- A four-year Council Plan
- A four-year budget
- A financial plan for at least the next 10 years
- An asset plan for at least the next 10 years
- A revenue and rating plan for at least the next four financial years

A council will also be required to have a:

- Workforce plan
- Council expenses policy
- CEO employment and remuneration policy
- Community engagement policy
- Public transparency policy
- Governance rules
- Complaints policy
- Procurement policy
- Councillor gifts policy
- Financial policies that give effect to the financial management principles

Smaller rural councils will undoubtedly need support to be able to comply with these requirements within the specified timeframes. **RCV would strongly encourage the development of government funded financial assistance packages for eligible smaller councils to support the initial development of**

mandated documentation, to ensure that expected services in those communities do not diminish as a result of the redirection of staff resources.

PART 5: Rates and charges

Comments on specific provisions

s.101	<p>Further engagement needs to occur with the sector regarding the rating provisions. One area of ongoing impact is the inability of councils to levy rates from rate-exempt land used for commercial purposes and land operating electronic gaming machines.</p> <p>RCV recommends further engagement with the local government sector regarding the rating provisions to identify areas for improved rating outcomes for local councils and communities.</p>
s.106(3)	<p>The limiting of the fixed component (current 'municipal charge') to 10% - as opposed to the current 20% - was of some concern to contributing councils as the cost burden would most likely shift to farming properties. This would be a challenging outcome for rural Victoria. Given that the average proportion of revenue derived from municipal charges for all councils in the 2015-16 municipal year was 9.1%, it would therefore appear likely that a number of councils would have seen fit to levy a charge in excess of 10%. RCV additionally notes the position of the Municipal Association of Victoria is to retain the existing 20% limit.</p> <p>RCV recommends that s.106(3) be reviewed and revised accordingly to avoid any unintended cost shifting on to farming properties and to maintain flexibility for individual councils.</p>

Other comments on Part

Division 6: The impacts of rate capping have been hardest felt in small, rural communities where there is limited population from which to raise rates, coupled with lower property prices, yet higher assets per head of population to meet basic community expectations. Urban councils and residents enjoy the opposite set of conditions. The Bill has not sought to address this disparity.

It is therefore doubtful that the provisions of Division 6 can ever meet the stated purpose of that Division, being:

- To promote the long term interests of ratepayers and the community in relation to sustainable outcomes in the delivery of services and critical infrastructure; and
- To ensure that a council has the financial capacity to perform its duties and functions and exercise its powers.

This will continue to remain a seminal issue for RCV member councils.

PART 6: Council operations

Comments on specific provisions

s.146(3)	<p>The definition of Complaint would appear to be extremely broad. It is likely that the breadth of the definition will by its nature lead to increased administration time and resources to meet the requirements of the complaint provisions.</p> <p>RCV recommends that the definition of Complaint be revisited with the objective of avoiding additional council administration.</p>
s.148(2)	<p>The requirement to identify collaboration opportunities with other councils or public bodies appears to be another example of unnecessary administration. The reality is that there are limited opportunities for collaborative agreements in rural areas. Any such opportunities for inter-council collaboration would be picked up in the course of normal business, without it being mandated.</p>

	It is recommended that this provision be removed.
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Other comments on Part

While the service principles within Division 1 of this part appear admirable in theory, the reality is that meeting these principles may simply be financially unattainable for smaller rural councils.

PART 7: Council integrity

Comments on specific provisions

s.170(2)(b)	<p>This provision appears to indicate that members of the public or agencies, including council officers, would be required to determine whether a Councillor who has declared a conflict of interest should be required to leave a meeting. This would be an awkward and unworkable provision in practice and appears unsound from a governance perspective.</p> <p>It is recommended that a Councillor who has declared a conflict of interest at a meeting under this provision be required to leave the meeting.</p>
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Other comments on Part

Nil

PART 8: Ministerial oversight

Comments on specific provisions

s.243	<p>Concerning the Ministerial suspension of a Councillor, there does not appear to be a step in the process that provides for a response by the Councillor in question prior to the Minister's decision. In the interests of natural justice, this aspect of the process should be reviewed.</p> <p>RCV recommends that provision be made for 'right of reply' by a Councillor facing suspension prior to a final decision by the Minister.</p>
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Other comments on Part

Nil

PART 9: Electoral provisions

Comments on specific provisions

Nil

Other comments on Part

Nil

PART 10: General provisions

Comments on specific provisions

s.326(10)	<p>The drafting of this section appears to fail to empower authorised officers to properly carry out duties, other than the entry to land or a building to enforce the Local Government Act. Unaddressed, this may impede a range of council functions where power cannot be drawn from another Act, such as in the case of Fire Prevention Officers. The words "or any other Act" or other such mechanism should be added to this provision.</p>
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It is recommended that the provision be amended to provide powers for officers responsible for the administration of Acts beyond the *Local Government Act*.

Other comments on Part

Nil

OTHER CONSIDERATIONS

Councillor inductions

The State Council of the Municipal Association of Victoria passed a resolution in October 2017 to call on the State Government to:

- Fund a mandated induction program for Councillors
- Require all Councillors to participate in the induction program
- Appoint an independent government-appointed contractor to conduct the program

RCV supports this resolution in principle and notes that the current legislative reform process provides an opportune time to embed inductions for Councillors in legislation. This would help to ensure consistent advice and education for Councillors to support them in their role and would be a significant step forward for improved governance outcomes.

RCV recommends that provisions to support improved Councillor induction into local government be considered for inclusion in the Bill.

4 SUMMARY OF KEY RECOMMENDATIONS

The following table sets out a summary of RCV's key recommendations.

Local Government Bill: Exposure Draft

Rural Councils Victoria summary position

Provision	RCV recommendation
s.3	RCV recommends clarifying the definition of <i>Gift</i> .
s.12(4)	RCV recommends retention of the range of electoral structures provided by the current Act (1989) to better meet the needs of rural and regional communities.
s.18(1)(a)	RCV recommends removal of s.18(1)(a), with a suitable replacement within the Bill providing for the appointment of committee chairs by a vote of council.
s.20(3)	RCV recommends detailed consideration of draft provision s.20(3) to address contrasting views amongst rural councils.
s.37	RCV recommends retention of the existing practice of the Minister prescribing an allowance range for individual council discretion
s.43(4)	If this provision is to remain, RCV recommends that it be amended to provide for council appointment of an Acting CEO for longer-term appointments only (for example, four weeks or longer).
s.44	RCV recommends that these provisions be reviewed as to their utility, with particular consideration as to any additional cost burden placed on councils.
s.45(4)	RCV recommends that the requirement to develop a workforce plan be reviewed as to its utility, with particular consideration to any additional cost or administrative burden placed on councils.
s.53(2)(a)	RCV recommends that this provision be reviewed to consider whether the focus of Audit and Risk Committees should remain on issues of finance and risk only.
s.54(2)(b)	RCV recommends that the application of the community engagement principles be applied to all strategic planning, and for councils to have the discretion of when they may be applied to any other processes.
s.54(3)	RCV recommends replacing the word 'collaboration' with a suitable alternative or clarifying the Bill's intention for this provision.
s.56	It is recommended that the public transparency principles (s.57) be maintained, however the requirement to develop and maintain a Public Transparency Policy (s.56) be removed from the Bill.
s.60	In the absence of clarification as to how the provision would operate or why it is needed, RCV recommends the removal of this provision.
s.82	RCV recommends the retention of s.82 with the addition of a requirement for collaborative engagement with councils during the stage of development.
s.85	It is recommended that consideration be given to extending the time allowable for the development of a four-year Council Plan.

s.87	It is recommended that clarification be provided as to the expected inclusions in a 10-year asset plan. RCV remains neutral on this provision until such point as further information is available.
s.89	RCV recommends that this provision be maintained.
s.101	RCV recommends further engagement with the local government sector regarding the rating provisions to identify areas for improved rating outcomes for local councils and communities.
s.106(3)	RCV recommends that s.106(3) be reviewed and revised accordingly to avoid any unintended cost shifting onto farming properties and to maintain flexibility for individual councils.
s.146(3)	RCV recommends that the definition of <i>Complaint</i> be revisited with the objective of avoiding additional council administration.
s.148(2)	It is recommended that this provision be removed.
s.170(2)(b)	It is recommended that a Councillor who has declared a conflict of interest at a meeting under this provision be required to leave the meeting.
s.243	RCV recommends that provision be made for 'right of reply' by a Councillor facing suspension prior to a final decision by the Minister.
s.326(10)	It is recommended that the provision be amended to provide powers for officers responsible for the administration of Acts beyond the <i>Local Government Act</i> .
OTHER:	
Councillor inductions	RCV recommends that provisions to support improved councillor induction into local government be considered for inclusion in the Bill.
Small council funding assistance (Ref. Part 4 of this submission)	RCV would strongly encourage the development of government funded financial assistance packages for eligible smaller councils to support the initial development of mandated documentation, to ensure that expected services in those communities do not diminish as a result of the redirection of staff resources.

5 CONCLUSION

Rural Councils Victoria appreciates the opportunity to provide its commentary to the Exposure Draft Bill. RCV acknowledges the importance of local government legislative reform in Victoria, and overall is supportive of the principles-based approach adopted in the drafting of the legislation. RCV also believes that the Bill will assist with improved and consistent governance outcomes across the sector.

Of some concern to contributing councils is the nature of the Bill to reduce the supervisory role of Parliament over the sector, instead placing additional power with the Minister for key decisions. This may have implications in terms of autonomy and authority for local government. A healthier equilibrium should therefore be pursued in the drafting of the final Bill.

Central to RCV's concerns, however, is the impact that the Bill will have on the administrative functions of smaller councils, which will almost invariably lie in rural Victoria. As stressed throughout the submission, many of these municipalities are presently constrained by a 'perfect storm' of stagnant population growth, low property values, high asset bases relative to population, and large asset renewal gaps. In this light, there is little capacity within the respective councils to fulfil the significant administrative requirements expected of the legislation. RCV will strongly advocate for improved consideration of the circumstances of such councils in the formulation of the provisions within the final Bill. Further consideration must also be given to other opportunities for council relief, such as funding or other assistance for the initial development of strategies, plans and policies mandated by the new legislation.

Rural Councils Victoria

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