

Local Government Bill 2019

We appreciate the opportunity to provide feedback on the proposed Local Government Bill 2019 that your government is planning to table in Parliament in the near future. This bill is the successor of the Local Government Bill 2018 which lapsed following the recent Victorian State elections.

The 2019 version of this bill contains a number of changes which are reportedly the consequence of a ‘... *high-level review of the Local Government Bill 2018... that .. has provided the opportunity to include some additional reforms designed to further improve and strengthen the 2018 Bill.*’¹

Who is making this submission?

This submission is being made on behalf of both Lighter Footprints and the Kooyong Climate Change Alliance.

Lighter Footprints is an environmental group comprising members and supporters primarily from the City of Boroondara. It has over 2000 people belonging to or supporting the group and its aim is to influence Australians (including decision-makers) to take the action that is needed to meet the challenge of climate change as a matter of urgency,

The Kooyong Climate Change Alliance is a non-partisan co-operative arrangement between environmental groups working in the Kooyong electorate to promote community action on climate change. It includes Lighter Footprints, ACF Boroondara, GetUp! Kooyong & Higgins and StopAdani Kooyong.

Our position

We are particularly opposed to the proposal to standardise the format of local government electoral systems by mandating single member wards for most municipalities and for the removal of the option for councils to be constituted as multi-member wards.

We believe that single member wards are a significant impediment to democracy in local government. Our experience as residents of the City of Boroondara confirms our assessment that this form of representation leads to a major reduction in the capacity of our elected representatives to reflect the diversity of our community and to generate policy that can respond to the increasingly complex issues that confront local government.

We support the inclusion of climate change as an overarching governance principle as we are confronting a climate emergency. This existential threat requires all levels of government to act promptly and decisively and to use all sources of authority available to them to adapt to and mitigate the impact of climate change.

¹ <https://www.localgovernment.vic.gov.au/council-governance/local-government-act-review>

We believe the level of penalties proposed in the 2018 version of this bill continues to be an inadequate enforcement tool across a significant range of local government activity. In particular, the current maximum penalty of 20 penalty units fails to deter the illegal removal of canopy trees on private property with significant attendant environmental loss. We recommend that the maximum penalty be increased to \$100,000 to be indexed regularly.

We are concerned about the absence of any independent and effective accountability mechanism with the duty to report back and provide the local community with meaningful information based on high quality analysis on how well their Council fulfils its responsibilities and maintains good governance.

Electoral systems for local government

We are strongly in favour of multi member proportional representation as the basis for the electoral systems of all local councils. Accordingly, we oppose the changes mooted by the Minister for Local Government in his consultation paper for the 2019 bill to make single member wards the primary basis for local council electoral systems.

This major change in approach should be subjected to significantly more consultation and review in line with that previously undertaken for the 2018 Bill

We question the basis for this new provision. No evidence has been presented to indicate that this change reflects the views of residents, stakeholder organisations; or local government bodies especially those currently using a multi-councillor system.

This lack of community consultation and review contrasts markedly to the process that commenced in 2015 and culminated in the Local Government Bill of 2018. We are puzzled as to why support for the abolition of multi-councillor electoral systems was not identified during this time of consultation despite it being comprehensive, in depth and involving all affected interests:

- The discussion paper in 2015 attracted 324 submissions plus 10 community forums in regional and metropolitan areas; six technical working groups; and meetings with peak council and ratepayers associations.
- The Directions Paper released in June 2016 resulted in 333 submissions and 18 community forums in regional and metropolitan Victoria between July and September 2016.
- Consultation and review continued throughout 2017 with seven technical working groups and meetings with peak ratepayer groups, key stakeholders, council peak organisations and newly elected councillors.

This change to electoral systems will have significant impact on the current structure of local government in Victoria. It deserves to be considered thoroughly and not to be the result of ministerial discretion.

At present, we calculate that of the 31 metropolitan councils, there are 25 that are comprised of multi-councillor wards elected by proportional representation.

Boroondara, the municipality that we live in is one of the few remaining councils which is elected from single councillor wards.

We dispute the claims by the Minister on the democratic and other benefits of single councillor wards.

This change to electoral systems will not make councils more democratic or ensure councillors are more accountable to their local community or ensure more direct representation. The claimed virtue of consistency is of such minor consequence as to be insignificant.

The single member, first past the post system disadvantages minority views by aligning representation to dominant opinion. This acts to stifle advancement of positive reforms, and creates inertia when dealing with contemporary challenges.

The justification that single member wards will "make councils more accountable" runs contrary to the idea of representative democracy. We believe multi-councillor wards with proportional representation provide diverse views in councils, with richer experiences and skills feeding those views. They facilitate advocacy for significant groups that would not otherwise be represented. Conversely, single councillor wards amplify the views of the most vocal groups or of those with the narrowest of majorities.

In Boroondara, census statistics show that one in three residents are overseas born, and three quarters of residents consider multiculturalism benefits our lives. Yet the elected council seems, by contrast, to be strongly monocultural. This diversity in demographic composition combined with a significant diversity in other forms of community interest is not reflected in the members sitting around the council table at Boroondara.

Boroondara has had single councillor wards since its inception in 1994. Prior to that, the constituent councils were based on a multi-councillor system. Over the intervening years, there has been a steady decline in the respect for democracy and its practice here. This is evidenced by the way Public Questions to Council meeting are structured to limit the number and nature of questions; the reluctance of councillors to engage with their electors in ward meetings and other forums; the obscurity, imprecision, attempts to mislead or unavailability of much of the documentation regarding council activities; the abolition of advisory committees to engage interested community members and so on.

We believe multi-councillor wards contributes to greater democracy and better decision making by Council

Our reasons for supporting multi-councillor electoral systems include the following:

- Multi-council wards promote diversity and representation from minority groups.
- Large multi-Councilor wards are more reflective of how communities engage across a number of communities of interest or activity hubs.

- Multi-councillor wards enhance the quality of ward representation. In a system of single councillor wards there is the ever-present prospect that particular ward interests may be left unrepresented in consultations and decision-making.
- Multi-councillor wards, by distributing work, can cover more issues and more deeply, so that the decisions that need to be made are otherwise informed and better able to balance many competing needs with available resources.

The concept of the councillor as a representative of his or her electors is a complex and uncertain. Within each area, there will always be people of many different backgrounds, interests, values and philosophies which suggests that a representative cannot easily align themselves with this diversity of factors. The need to declare a conflict of interest is appropriate when the councillor has allegiances or interests that that would benefit from a positive decision on a matter before Council. However, the consequence of this declaration will be that the Councillor will absent themselves from the room and not participate in the decision making process.

We see the Councillor having a role to ensure that all considerations are taken into account when Councils conduct consultations or make decisions that affects the electors in their ward. They are not there to advocate for one position over another but to ensure all reasonable voices are heard as part of any process to reach a decision. This is despite whether they agree or not to the divergent views held by people in that ward.

We encourage our councillors to continue to declare all conflicts of interest they may have. We are concerned, however, that this may leave large numbers of electors unrepresented when their Councillor leaves the room. The multi-councillor system would provide an effective counter to this problem by providing a number of representatives who are unlikely to have similar conflicts.

We are concerned that this proposal usurps the role of the Victorian Electoral Commission.

The Local Government of 1989 provides for regular reviews of the electoral representation systems of all local councils. The nominated reviewer in that Act is the Victorian Electoral Commission (VEC). This provision has been dropped from the Local Government Bill of 2018 and the functions of VEC appear to be limited to administrative tasks related to the maintenance of the electoral roll and conduct of elections.

We believe that VEC plays a central role in ensuring local government conducts its activities in a democratic, transparent and accountable manner. VEC is the appropriate body to investigate what is the best system for a particular region and to tailor responses that reflect the circumstances of that region. This should not be over-ridden by the Minister without proper review.

This use of ministerial discretion suggests a trend of further concentration of power, and the rights of community members to engage in local government affairs.

VEC's most recent review of Boroondara which it has just completed resulted in the recommendation that our council adopt a multi- councillor electoral system. About three-quarters of those persons who made response submissions to the review supported the VEC's final recommendations to the Minister for Local Government.

This recommendation reflected the strong level of support expressed in submissions to both parts of this review for a multi-councillor ward system. The major opponent to this recommendation was the Council itself which conducted an intense, prejudiced and dishonest campaign to retain the current system and thereby protect vested interests in our community especially around corporate activity and property development.

Section 8 Overarching Governance Principles and Supporting Principles

Division 1 Section 8 of the 2018 Bill sets out nine overarching principles that a Council '*... must in performance of its role give effect to ...*' The principle spelt out in 8 (2)(c) is that '*... the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted*'.

We welcome the inclusion of climate change as an important principle that all Councils must take into account in its decision making. We are concerned that, at present our Council sees climate change only through the lens of environmental sustainability as it applies to parks and gardens and matters such as waste management. This terminology does not necessarily capture the full extent of the challenge the local governments will be facing as a consequence of climate change.

Governance that is transparent, accountable, clear in purpose and optimal for efficiency and performance is an essential ingredient of government at all levels. It is particularly essential for local government where opportunities for maladministration, corruption, preferential treatment or favouritism are ever present but often difficult to detect. These opportunities exist when the local community discounts the importance of local governments, does not understand its processes or fails to engage actively in its operation.

The challenge implicit in implementing these principles is to ensure that they are applied with good will and determination. High quality governance in all areas of a council's responsibility and particularly with respect to climate change requires measuring and reporting achievement adequately.

These principles need to be backed up with specific and quantifiable measures that report on how well they are being applied. It is essential that Councils are accountable for implementing these principles and stand by their achievements and failures more publicly. Consideration should be given to the identification and implementation of appropriate measures and how these can be used to inform the community's knowledge and oversight of their Council in a timely and meaningful way.

Penalties

Division 3 Section 74 Penalties. Subsection 1 proposes a maximum penalty of no more than 20 penalty units for a contravention of a local law, indexed annually according to the Consumer Price Index.

We strongly oppose this subsection particularly as it relates to penalties for the destruction of canopy trees on private land. As currently structured and as proposed, these penalties are inconsequential to a developer who too often is willing to pay such a small amount in light of the significant financial return that will arise from a block substantially denuded of vegetation and particularly of trees perceived to limit the design and footprint of a future building.

We submit that such penalties should be large enough to provide a realistic disincentive for the removal of canopy trees in the built urban environment, which now more than ever is essential for responding to the critical issue of climate change. We propose that this penalty should be \$100, 000, to be indexed to reflect increased prices.

Who monitors the effectiveness of local government?

The proposed Local Government Bill appears to lack any independent and effective accountability mechanisms. Reporting back to the local community and providing them with meaningful information that has been subjected to high quality analysis on how well their Council fulfils its responsibilities and maintains good governance is essential for promoting the democratic values of both accountability and transparency.

Positions such as the Municipal Monitor and the Audit Committee contain no provision or obligation to perform this task. The reports on the Know Your Council website are inadequate. The reports on this website rely heavily on a 'representative random probability survey' using telephone interviews. This would seem to suffer the limitation of encouraging highly subjective and unmoderated responses and consequently are a very shallow method of measuring the effectiveness of a Council. If all that you require from the Council is that they collect your rubbish regularly and without fuss, then you are likely to rate them highly.

There is a need for specific and quantifiable measures that report on how well the overarching governance principles are applied. We also see a similar need to make sure Councils are accountable for all their activities and that measuring and reporting mechanisms exist that are objective, meaningful and provide reports that easily accessible for all residents. Satisfaction surveys are totally inadequate and superficial.

As convenor for Lighter Footprints, I would welcome the opportunity to further discuss these issues. I can be contacted by email on admin@lighterfootprints.org or by mobile on 0411 115 186.

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