

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	<p>Improved Conduct</p> <p>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.</p>
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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	<p>Community Accountability</p> <p>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.</p> <p>There will be two clear new pathways that can lead to disqualification, these are:</p> <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> a. a failure by the council to provide good governance; or b. a failure by the council to comply with a governance direction.
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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 Council. 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 using the subject line Local Government Bill 2019.



MITCHELL SHIRE COUNCIL

Council Meeting Attachment

GOVERNANCE AND CORPORATE PERFORMANCE

15 JULY 2019

8.3

**COUNCIL SUBMISSION - LOCAL GOVERNMENT
BILL 2019**

Attachment No: 2

**Mitchell Shire Council Submission to Local
Government Bill 2019**

Mitchell Shire Council Submission

Local Government Bill 2019

Reform 1: Simplified Franchise

Proposal	Why is this proposed and how will it work?	Mitchell Shire Council Comments
<p>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.</p>	<p>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.</p> <p>Proposed to be done in two stages over two election cycles. There are two reasons for this:</p> <ol style="list-style-type: none"> 1. It will allow time to ensure every person with a voting entitlement has a reasonable opportunity to exercise their rights; and 2. It will allow time to review electoral structures to address changes in the distribution of voters between the wards of some councils. <p>Stage 1 2020 Local Government elections:</p> <p>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.</p> <p>Stage 2 2024 Local Government elections:</p>	<p>There is some confusion for voters with the current voting arrangements and entitlements so this reform will make it clearer for voters. Compulsory voting is supported.</p>

	<p>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.</p>	
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Reform 2: Electoral Structure

Proposal	Why is this proposed and how will it work?	Mitchell Shire Council Comments
<p>Representative structures and election processes are to be simplified and made consistent.</p>	<p>It is proposed to move to a single consistent model of single member wards, unless it is impractical to subdivide a council into wards.</p> <p>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.</p> <p>The option for councils to be constituted as multi-member wards will be removed.</p>	<p>There are pros and cons to this reform.</p> <p>Pros - This reform would provide more accountability for Councillors and the community they serve and residing in the ward you represent will become more important.</p> <p>Cons – a tendency for Councillors to not vote based on needs of the municipality as a whole and only think of the impact on their ward, for rural shires it may split large towns and communities of interest, poorer service for the community if Councillors are only concerned with their own ward.</p> <p>A Shire as large as Mitchell Shire and one that is growing rapidly does not lend itself to single member wards as the numbers in particular in the South of the Shire would fluctuate too frequently making it unmanageable for a single ward Councillor</p>

		to address the needs of the community in that ward(s).
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Reform 3: Training

Proposal	Why is this proposed and how will it work?	Mitchell Shire Council Comments
<p>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.</p> <p>There are two parts to this training Election candidates - Mandatory Training and Councillor Induction Training</p>	<p>Election candidates - Mandatory Training</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>Councils submission of February 2018 supported this training, which was further supported by a number of Council's at the MAV State Council meeting in October 2017. However, the training should be not necessarily be provided by the MAV, but a registered training provider.</p> <p>There is concern as to how the mandatory training would be monitored. If a candidate attended and only stayed for part of the training have they satisfied the requirement? Should an exam after attending the training be considered to ensure that the candidate has understood the requirements of being a Councillor?</p>

	<p>Councillor Induction Training</p> <p>Requiring all councillors to complete mandatory training will improve their standards and capability to meet the requirements of office.</p> <p>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.</p>	<p>This reform is supported. The Chief Executive Officer already arranges extensive training across a number of topics for Councillors when first elected, however it is not mandatory. Making it mandatory will allow for all Councillors to be trained at the same time. However, there is concern with withholding the Councillor allowance until this training is completed as some Councillors who are not concerned with the allowance may never undertake the training and continue to serve Council. Consideration should be made that if a Councillor does not attend the training, they lose their position on Council.</p>
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Reform 4: Donation Reform

Proposal	Why is this proposed and how will it work?	Mitchell Shire Council Comments
<p>A number of recent changes to the electoral campaign donations arrangements in Victorian Parliamentary elections will be extended to local government elections.</p>	<p>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.</p> <ul style="list-style-type: none"> • Foreign donations will be banned. • 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 	<p>This reform is supported, however consideration should be made for instance, to a political party (single donor) making a number of donations under different names and understanding how this would be monitored.</p>

	<p>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.</p> <ul style="list-style-type: none"> • The 'gift disclosure threshold' which applies to campaign donations and other gifts received by councillors, subject to requirements of the Bill, will change from \$500 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. 	
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Reform 5: Improved Conduct

Proposal	Why is this proposed and how will it work?	Mitchell Shire Council Comments
<p>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.</p>	<p>Consultation with the local government sector and community groups has revealed that councils need more assistance in developing and enforcing their codes of conduct.</p> <p>Prescribed standards of conduct</p> <p>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</p>	<p>This reform is supported and agree that Councils should be able to retain discretion to include additional material in their codes.</p>

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.

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

	<p>and Administrative Tribunal that results in the disqualification of a councillor.</p>	
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Reform 6: Community Accountability

Proposal	Why is this proposed and how will it work?	Mitchell Shire Council Comments
<p>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.</p> <p>There will be two clear new pathways that can lead to disqualification:</p> <ol style="list-style-type: none"> 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: <ol style="list-style-type: none"> a. a failure by the council to provide good governance; or b. a failure by the council to comply with a governance direction 	<p>Disqualification – conduct</p> <p>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.</p> <p>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.</p> <p>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.</p> <p><i>Disqualification – Repeated Serious Misconduct</i></p> <p>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.</p>	<p>This reform is supported, more accountability for Councillors is required.</p>

	<p><i>Community initiated Commission of inquiry</i></p> <p>Under the LG Act the Minister may appoint a Commissioner to conduct an inquiry into the affairs of a Council or councils. 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.</p> <p>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).</p> <p>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 Council. However, the Minister will not have the power to disqualify a Councillor under these circumstances.</p> <p>Petition process</p>	<p>The Commission of Inquiry petition process is not supported.</p> <p>It may result in more divisive, politically motivated activity. 25% of voters may not agree with many council decisions and at any time there would be 25% of the voters not happy with every councillor.</p> <p>Only 200 words for Council's response to the petition is inadequate.</p> <p>The process may create more division and instability. Any process which results in Local Government becoming a more negative sphere to participate in will have the unintended consequence of deterring good, community minded people from nominating for council - a snowballing effect may result in more negative, inferior councils over time.</p>
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The process for petition will be set through regulations. 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.

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Other General Comments:

The timeline for consultation on these reforms was inadequate. Without the sector understanding the implications of these reforms, it cannot understand the impact the reforms will have, and the lack of guidelines associated with these reforms, leave a lot to interpretation.

