Local Government Bill – Exposure Draft

Southern Grampians Shire Council Submission

February 2018

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Introduction

Southern Grampians Shire Council ("Council") has prepared this submission in response to the Local Government Bill – Exposure Draft.

Council is mostly supportive of the Bill and welcomes new legislation for local government which will enable councils to keep up with modern business practices, improvements to technology and increase collaboration. It is also pleased to see clear and comprehensive legislation which is easy to read, in a sensible order and avoids duplication. In particular Council is pleased to see legislation which is less prescriptive.

However, Council still has some concern and questions now that it has been able to review the Bill in detail, rather than just rely on the proposed Directions. These are discussed in more detail below.

Council thanks the State Government and LGV for completing a review of the Local Government Act 1989 in such a thorough and timely manner, and congratulates them on not only entering into meaningful consultation with the sector, but taking on board the feedback provided and altering the Bill accordingly.

Overarching Matters

Administrative Burden and Resourcing

Council welcomes the changes to the current out-dated, repetitive and prescriptive Act.

However, the implementation of the proposals in the Bill and the initial development of the documents will significantly increase the administrative burden of councils and have significant impact on resources, especially for rural and regional councils.

Whereas larger metropolitan councils may have teams of staff in areas of governance, policy development, communications and community engagement; rural and regional councils often have one person in each role, or one person doing multiple roles. When there is a huge increase in strategic planning and policy development such as this, these positions can be overloaded and ensuring meaningful compliance with legislative requirements becomes difficult.

The pressure of an increased administrative burden is intensified with the current system of rate capping. Limiting the income councils can make from rates limits the resources available to councils, particularly rural and regional councils without other significant ways of generating income. If planning, reporting, governance and community engagement is to be a priority of councils this should be financially supported or supplemented by the State Government, especially as the State Government plans to continue its policy of rate capping and proposes to reduce the fixed component of municipal rates to 10%.

There will be significant resourcing required by councils to develop and implement the key strategic documents and policies in the Bill including the:

- Community Engagement Policy
- Governance Rules
- 4 year budgets
- 10 year financial management plans
- 10 year asset management plans

Another way that the State Government could support councils with the transition to the new legislation would be to hire specialists from within local government to develop appropriate templates and best practice for councils to utilise. It would also promote consistency in documents between councils and ensure that the interpretation of the Bill are understood by each council. While it should not be mandatory to use these templates, all councils would benefit from their availability.

Reporting Requirements

Although Council is supportive of the requirement to develop an Annual Report, the new requirement to present this Annual Report to the community through an AGM suggests that the Annual Report is aimed at the community, rather than a tool for councils' to report on

their performance to the State Government. The information which is currently legislated to be included in the Annual Report, and the way the information is required to be presented makes the Annual Report quite dull and convoluted. If this Report is to be the key way councils report to their communities on their annual performance the current requirements in the Bill and the current regulations are not appropriate. This issue was raised by Council in its Directions Paper Submission, and it is disappointing more focus has not been placed in this area.

In its Direction Paper Submission, Council highlighted the need for a review of the current levels of regulatory oversight on local government, including the significant pieces of legislation the industry must comply with. While the Bill has done an excellent job of removing prescriptions which are located in other pieces of legislation, there has been no reduction in the regulatory oversight from the Minister and other regulatory bodies in Victoria. In fact, the Ministers powers have been expanded over local government.

Council highlighted concerns about the reporting requirements of councils in its Directions Paper Submission. No Directions had been developed that focused on the reporting requirements of councils, other than a brief mention of the Annual Plan.

There is again no significant mention of reporting requirements in the Bill. There are some reductions in reporting requirements, such as no longer having to submit the Annual Report to the Minister, however these changes appear tokenistic and will not in any meaningful way reduce the reporting requirements on local government. Most of the onerous reporting requirements on local government are contained in the regulations, not the Act and have not been reviewed yet.

It is disappointing that no engagement has been done during the current process on the reporting requirements of local government. The current reporting requirements are incredibly onerous and need to be reviewed and streamlined. The duplication of reporting which councils are required to comply with is oppressive and adds no value to the sector.

Any planning and reporting obligations placed on councils should reflect government to government requirements, be actively utilized by the bodies they are reported to, and provide meaningful information to the community. Any additions to planning and reporting obligations placed on councils should be balanced with the removal of redundant or repetitive obligations to ensure that overall resources required to comply with local government reporting are not increased.

It is also imperative that any reporting requirements add value to the sector and are developed in consultation with the sector. There is widespread dissatisfaction with the Local Government Performance Reporting Framework and frustration that the Framework does not add value.

It is recommended that all the local government reporting requirements continue to be reviewed and streamlined through consultation with the local government sector.

Part 1 – Preliminary

The definition for ADI – authorized deposit taking institution is not included in the definitions. However, the acronym ADI is used in s98(c) of the Bill. It is recommended that the definition for ADI be included in s3(1) of the Bill.

It is very confusing having the definition of 'electoral matter' in s3(2) and (3) as opposed to s3(1) with the rest of the definitions. Although I note that it is a very detailed definition it is recommended that the definition for 'electoral matter' be included in s3(1) in alphabetical order with all other definitions.

Part 2 – Councils

Council is supportive of the changes in the Bill in relation to the role of the Mayor and the Councillors, and is especially supportive that the Mayoral term has remained as an option of 1 or 2 years, and was not mandated to be 2 years.

Council objects to the inclusion of s18(1)(a) and (2) in the Bill. It does not agree with the Mayor having any powers which prevail over the decision making powers of the Council as a whole.

Further the delegated committees should have the flexibility to appoint their own chairs in accordance with their delegations. If the Council wishes to appoint the chair when it established the delegated committee that is appropriate, but the Mayor should not be able to override the decision of council.

There has also been no consideration given to conflicts of interest that the Mayor may have in appointing a chair of a delegated committee. If the Mayor has the power to appoint a chair to a delegated committee outside a formal Council Meeting, then the exercise of that power may fall under s170 which provides less protections around the disclosure of conflict of interest and the removal of the Mayor from the decision making process.

There is no longer a requirement in the Bill that the Minister review the Mayor and Councillors Allowances following a general election. In fact, the Bill not does provide for any regular reviews of Allowances at all. It is recommended that the requirement to review the Allowances at least one every four years, following a general election, be included in the Bill to provide assurance to Mayors and Councillors that the Allowances will be reviewed on a regular basis.

Section 45(2)(c) is almost an exact repeat of section 45(1)(a). It is recommended that 45(2)(c) be removed from the Bill to avoid any unnecessary duplications.

Council does not agree with the requirement that CEO's must develop and maintain workforce plans. This section of the Bill is very prescriptive and doesn't align with the key reform proposals for the new legislation. The benefit of having a legislated workforce plan does not outweigh the disadvantages to the CEO and their staff, especially in rural and regional councils, of creating a workforce plan which would have to be updated incredibly regularly to stay current and relevant. The inclusion of this section in the Bill creates pointless busy work for CEO's and it is recommended that this section be removed from the Bill.

However, if the requirement to develop and maintain a workforce plan remains in the Bill the inclusion of s45(4)(a)(iii) in relation to gender equity and targets is not supported. This requirement would be a repeat of the Equal Opportunity legislation that councils must already comply with. It would also be a repeat of the gender equity legislation the State Government is currently developing. Whilst the reasoning behind the inclusion of this section is understood, any inclusion of sections in Bill which are in other legislation is not supported.

Part 3 – Council Decision Making

In its Directions Paper Submission, Council expressed concerns in relation to the proposal of "deliberative community engagement". These concerns focused on how onerous and overly prescriptive including deliberative community engagement in the new legislation would be, and the significant increase that deliberative community engagement would have on the administrative burden of councils, especially for rural and regional councils.

Council recommended that the word 'deliberative' not be utilised in any legislation. Council proposed that while the highest level of community engagement should be encouraged, councils should still have the flexibility to tailor the level of community engagement required for each situation.

Council therefore welcomes the changes that have been made in the Bill, from those proposed in the Directions Paper. Allowing Councils to create their own Community Engagement Policy which allows them to tailor the community engagement required for their circumstances, resourcing levels and situations is the exact type of flexibility Council advocated for previously.

One concern that still lingers is in relation to Good Practice Guidelines issued by the Minister in relation to community engagement and the Community Engagement Policy requirement. Any Good Practice Guidelines need to ensure that the current flexibility in the Bill is maintained and general rules which will apply mandatorily to all councils are not enacted at a later time. What will be best practice community engagement for one council, will not

necessarily suit another. Many factors including population, resourcing, and size and location of each local government need to be considered by each council when drafting their Community Engagement Policy, and not dictated by the State Government.

Council also recommends that further consideration is given to the drafting of s55(d) in relation to "support to enable meaningful and informed engagement". It is not clear from the current drafting of the Bill exactly what the State Government intends this section of the Bill to mean. If this section is to be included in the legislation it is recommended that further detail be provided as to what the aim of this section is and what 'support' is intended to be provided.

Council is very supportive of the changes in the Bill in relation to Council Meetings being open to the Public and Local Laws.

The power of the Minister to make Good Practice Guidelines is discussed below in Part 8 – Ministerial Oversight.

Part 4 – Planning and Financial Management

Council is mostly supportive of the changes proposed in Part 4 of the Bill, in particular the decision to leave the Council Plan due date as 30 June.

However, Council objects to the inclusion of s93(4)(a) in the Bill. This section is a direct repeat of s93(3)(d). Reporting on the indicators of service should only be included in the Annual Report once, either in the Report of Operations or the Performance Statement. Having to include this information in the Annual Report twice is redundant and adds to the already onerous amount of administrative work for councils in developing the Annual Report. Any duplication of reporting requirements is not supported.

Part 5 – Rates and Charges

The proposal to fix the municipal charge at a maximum of 10% of the total revenue from municipal rates and general rates in the financial year, divided equally among all rateable properties is a very prescriptive proposal. It takes away from councils the power to set an appropriate municipal charge based on the upcoming financial year's requirements. This proposal is not supported.

The proposal to integrate the Fair Go Rates System into the new Act is also not supported.

Although benefits may be found from having all the legislation in relation to councils' ability to set rates and charges in one piece of legislation integrating the Fair Go Rates System into

the new Act undermines the general intent of the legislative reform to reduce the prescription of the Act and empower councils to make their own decisions.

Further, integrating the Fair Go Rates System into the Bill also undermines the commitment by the State Government to continually review the Fair Go Rates System to ensure that rate capping is an appropriate legislative system for local governments and their communities.

Clarification is sought in relation to the application of s121 of the Bill. Section 121(1) requires that councils must allow a person to pay a municipal rate or service charge in a lump sum which is a new requirement. Further to this change s121(3) states that the dates for lump sum payments will be set by the Minister.

Currently Council offers two payment options in relation to rates being:

- Four instalments; or
- Pay by 30 September and receive an incentive discount.

Will the changes in s121(1) mean that Council will have to offer three payment options in relation to rates being:

- Four instalments;
- Incentive payment due date; and
- Lump sum due date set by the Minister.

If this is the intention, Council objects to the inclusion of the power for the Minister to set the lump sum payment date, and recommends that the setting of this date still be up to Councils in accordance with s123 for incentive payments.

Further to the discussion about rate capping above, Council strongly objects to the inclusion of service charges in the calculation for the capped average rate as detailed in s140. When the Fair Go Rates System was brought in, local government was assured that service charges would not be included in the capping calculations. By altering the calculation for the capped average rate, the State Government has disregarded this commitment to local government. The inclusion of service charges in the capped average rate calculation significantly alters the calculation and restricts councils' ability to deliver appropriate services.

The inclusion of the Fair Go Rates System in the Bill and the service charges in the capped average rate calculation is in direct opposition to the legislative reform in relation to providing councils with greater autonomy by reducing prescriptive decision-making processes.

Part 6 – Council Operations

Council supports the changes in the Bill in Part 6, in particular in relation to procurement and that councils will now be able to set their own thresholds for public tendering.

Part 7 – Council Integrity

Section 167(3)(d) of the Bill in relation to a material conflict of interest seems to be a redundant provision. It states that:

An affected person is an employer of the relevant person unless:

- The employer is the Crown or a statutory body established by or under any Act for a public purpose; AND
- Is not affected by the matter.

If the employer isn't affected by the matter then there is no material conflict of interest. Therefore, the wording of s167(3)(d) makes no sense. It is recommended this section be altered to read "an employer of the relevant person."

Council objects to the disclosure of conflict of interest requirements as currently draft in s169 and s170. Having briefing sessions fall under s170 as opposed to s169 is very concerning. There is no way to ensure that the application of s170(2)(b) will be consistent across councils, or to individual Councillors. The risks in relation to this section are significant. Briefing sessions of councils should be treated in the same manner in relation to conflict of interest as Council Meetings. Councillors should be required to declare a conflict of interest and leave the room while the matter is discussed. Briefing sessions are a key time when Councillors could seek to influence their colleagues, and as such there presence after declaring a conflict of interest is not recommended.

It is recommended that briefing sessions should be included in s169, or that Councils have the option under s170 to treat conflicts of interest in relation to briefing sessions the same as Council Reports if they determine to do so in their Governance Rules.

Council strongly supports the removal of the requirement for the Councillor Code of Conduct to be adopted at a Special Meeting of council to consider just that one item. The current requirements are very onerous and not the most effective use of Council, Councillor or Council staff time and resources.

Council also supports the removal of the provisions in relation to Assemblies of Councillors.

Part 8 – Ministerial Oversight

Council does not support the inclusion of s82 in Part 3 of the Bill. All sections in relation to the powers of the Minister should be included in Part 8 of the Bill. Having the powers of the Minister spread throughout the Bill is very misleading, particular when s82 gives the Minister the power to issues Good Practice Guidelines which councils may choose to adopt, but s209(2)(a) gives the Minister the power to force a council to adopt Good Practice Guidelines.

It is also disappointing that the messaging around s82 during the engagement process for the Bill has reinforced this picture, without clearly explaining the relation between s82 and s209(2)(a).

The Minister should not be given a general power to make Regulations. By allowing the Minister to make Regulations, rather than the Governor there is no cross check to ensure the Regulations are appropriate. The legislative requirements placed on the local government sector should be led by the sector, for the sector and not imposed by the State Government without any input. Allowing the Minister a general power to make Regulations does not encourage transparency and accountability and contradicts the themes and objectives of the legislative review.

Part 9 – Electoral Provisions

Council does not support the Minister being the one who determines the voting system for elections as specified in s276(1). Council recommends that the VEC determine the voting system. There is concern that any decisions made by the Minister may be driven by political motivations, rather than achieving the best outcomes for local government In Victoria. The cost implications on rural and regional councils of the Minister determining that attendance voting is appropriate for the whole state are of significant concern.

The requirement for the order in which Councillors are elected to be included in the public notice declaring the result of the election has been removed from the Bill. Has this requirement been removed due to the alteration in the process for counting votes at a countback? Is it expected that the order in which Councillors are elected will still be included in the public notice? Will this information still be available on the VEC website?

Council is supportive of the removal of the requirement that a Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief

Executive Officer. This is a very onerous requirement and was a significant administrative burden on CEO's during the election period.