

Submission Template

Local Government Bill – Exposure Draft

Name	Ms Rebecca McKenzie
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If you work in an organisation or council, please provide the following information:

Organisation or council name	LGPro
Position	President
Are you providing this submission on behalf of the organisation or council?	Organisation

Key information about making a submission

What feedback should I provide on the exposure draft bill?

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

What is the closing date for submissions?

The closing date for submissions is **5:00 pm, Friday 23 February 2018**. Given that the draft bill is subject to parliamentary timeframes, submissions received after this date will be considered at the Government's discretion.

How do I make a submission?

Submissions can be made in three ways:

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

How do I complete this template?

To complete this template:

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

Can I provide a submission in another format?

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

Will submissions be made publicly available?

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 Submissions that are defamatory or offensive will not be published.

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

Part 1: Preliminary

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
3	Do not support	We are concerned with the removal of the definition of “senior officer” from the Local Government Bill – Exposure Draft and any associated provisions. If this was to occur, the new Local Government Act should include transitional provisions to facilitate the transition of Senior Officers on maximum term contracts to a suitable employment arrangement determined by Council (in the case of the CEO) or determined by the CEO (in the case of management level positions). Some Council enterprise agreements cover senior executives and some exclude them. This has further implications for the basis of employment contracts for Senior Officers and, in particular, maximum term contracts. Council enterprise agreements are negotiated every 3 to 4 years.	The Definitions clause does not include a definition of “senior officer” nor associated provisions unlike the Local Government Act 1989. This has significant implications for the employment of senior officers. Different Councils will be affected in different ways, depending on whether the Council’s enterprise agreement includes or excludes coverage of Senior Officers.
8	Do not Support	(1) A Council must should in the performance of its role give effect to the overarching governance principles. (3) In giving effect to the overarching governance principles, a Council must should take into account the following supporting principles	We are supportive of the overarching governance principles and supporting principles. Suggested amendment in red text. As "must" imposes a legal obligation that something is mandatory, there is a risk that the standing of a decision may be open to challenge if a person is of the view that Council has not complied with one of the overarching principles.
8(2) (c)	Support		We support the inclusion of “planning for and mitigating climate change risks’ as a principle of the Act.
8(2)(d)	Neutral	No change	What does the word “strategic’ mean in this context? Does that exclude the community being involved in certain types of planning and decision-making? What is the distinction?

8(2)(f)	Support	Support governance principle that collaboration with other Local Governments, Governments and statutory bodies is to be sought. Extend this to also include collaboration 'with municipal human service sector'.	Collaboration with local community service, education, employment, health and the housing sector is consistent with Council's role.
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Do you have any overall comments on Part 1 of the Exposure Draft Bill?

It is noted that significant further detail regarding practical implementation of the Bill will be provided in Regulations. It will be important to ensure that the sector is widely consulted in the development of those Regulations and that a Regulatory Impact Statement is prepared and given full consideration in every instance.

LGPro is keen to be involved in development of the Regulations and policies to ensure practical application of the Local Government Act across the sector. LGPro has substantial expertise through its Special Interest Groups and CEO members that would add substantially to the value of the Regulations and policies being proposed.

Part 2: Councils

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
10	Support with qualifications	Provision for Council to delegate any power, duty or function To the CEO. S10(2)(a) requires clarification as to whether the CEO cannot delegate any of these powers, duties or functions. 2(c) amend so that the CEO can appoint an Acting CEO during periods of leave for periods of four weeks or less	We seek clarification of the intent and effect on the powers of the CEO to delegate functions that have been delegated to the CEO by the Council.
44 (3)	Support with qualifications	With the provision of the following wording change to reflect “have regard to’ rather than ‘consistent with’ the Government of Victoria’s Policy on Executive Remuneration in Public Entities. The support for the Policy is qualified subject to knowing the provisions yet to be incorporate in the regulations	This enables flexibility there is as each Local Government negotiates employment conditions with its Chief Executive Officer, which may or may not contain a bonus clause.
45 Functions of the Chief Executive Officer	Support with qualifications		Please refer to comments below relating to the relevant subsections of clause 45 to clarify our qualifications.
45(2)(d)	Do not support	Remove the subclause.	The Mayor need not provide advice to the CEO on setting the agenda of Council. The administration of the Council including the setting of the agenda, its content and recommendations should remain the sole domain of the CEO as the head of operational activity. 45
45(2)(f)	Support with qualifications	It is noted that this clause ought to be either reviewed and or bolstered with additional guidance to assist CEOs in meeting their responsibility for Councillors (deemed as workers) under the Workplace Injury Rehabilitation and Compensation Act 2013.	
45(4)	Support with qualifications	LGPro is strongly supportive of the need for Workforce Plans. LGPro is developing a workforce planning template to ensure the value and relevance of the plan. We are supportive of the intention of the Clause to require a Workforce Plan that includes measures to seek to ensure gender equity, diversity and inclusiveness. It is our view that a workforce plan ought to	This duplicates provisions and matters that are handled elsewhere such as Council’s Enterprise Agreement. LGPro supports measures to achieve gender equity and inclusion. We support targets, as opposed to quotas, as a means of tracking performance in achieving gender equity and

		<p>be considered as a fundamental strategic document within a suite of documents that include the Council Plan, Council's Budget, Strategic Resource Plan, Long Term Financial Plan and Long Term Council/Community Plan. We would recommend that the Act should not be prescriptive as to the contents of the workforce plan rather, that the outcome being sought be articulated in the Act.</p> <p>Keeping the Council informed before implementing an organisational restructure would generally happen as a matter of course. However, setting this out in legislation may have the effect of “blurring the lines” between the Councillors’ responsibilities and the CEO’s role.</p> <p>There is no need for consultation requirements as there are already comprehensive consultation requirements in regard to proposed organisational restructuring in Council enterprise agreements, in accordance with the Fair Work Act 2009 (C’th). It is mandatory for enterprise agreements and all modern awards (including the Victorian Local Government Award 2015) to contain a consultation clause.</p>	inclusion.
45(4)(c)	Do not support.	The clause is not required as it duplicates requirements to consult staff on organisational structure changes is contained within Council's Enterprise Agreements.	
45(5)	Neutral	LGPro is supportive of the intention to focus on gender equity, but, without exposure to the contents of the regulations, it is very difficult to comment on any requirements that may be prescribed.	
46 (2)	Support	With a broadening of the clause to include the Chief Executive Officer being able to delegate to not only a member of Council staff, but also to a natural person acting or performing the duties of a member of Council staff.	This provides flexibility to the Chief Executive Officer to delegate powers, duties and functions to contractors, seconded staff or consultants acting as Council staff.

47		The provisions relating to the CEO and senior officers contracts (5 year maximum term) should be retained.	Fair Work Australia's recent decision Navitas case (Saeid Khayam v Navitas English Pty Ltd t/a Navitas English [2017] FWCFB 5162.
47(1)	Do not support	Clause to connect the Council Plan, Budget and the Workforce Plan to support the delivery of such.	We consider that the Chief Executive Officer should have the authority to engage as many members of staff to deliver the Council Plan within Council's budget.
48	Support with amendments	Delete s48(2)(a)&(b) and amend s48(3):- A code of conduct for members of Council staff must include:- <ul style="list-style-type: none"> (a) Procedures for dealing with alleged and actual breaches of conflict of interest under this Act; and (b) Provisions requiring Council staff to disclose all gifts above a specified level and for disclosed gifts to be recorded in a gift register; and Provisions for the Chief Executive Officer to take disciplinary action against a member of Council staff.	The issue of gifts should cover both staff and Councillors. This could be consolidated into an all-encompassing gifts policy in s176.

Do you have any overall comments on Part 2 of the Exposure Draft Bill?

Senior Officers

The draft Bill provides no detail on the status of senior officer (SO) maximum term contracts currently in place and a number of questions and concerns arise from this lack of detail. LGPro requests that the Government provide information on the status of existing contracts, the need for annual performance reviews and remuneration reviews.

Implementation of Delegation Powers

It is proposed that the Role and Powers of Councils be implemented as part of Stage 1. LGPro requests that Clause 10 (Power of delegation) is not included as part of this implementation stage until the Governance Rules and Community Engagement Policy has been adopted and there has been an appropriate opportunity to review the current advisory committees, special committees of council and delegations.

Part 3: Council decision making

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
<p>54 & 55</p> <p>Community engagement policy & community engagement principles</p>	<p>Support</p>		<p>LGPro is supportive of the requirement for a community engagement policy, together with the community engagement principles being included in the Act.</p> <p>LGPro believes that the focus of this should be on ensuring that the community engagement policy enables comprehensive and meaningful engagement to be undertaken with the community rather than prescribing engagement practices as part of this process.</p> <p>Any requirement for deliberative engagement processes would be problematic for smaller municipalities to support the policy. LGPro would be happy to work with LGV to develop model policies that would be appropriate for small, medium and large Local Governments as one size does not fit all and will not achieve the outcome sought</p>
<p>56 & 57</p> <p>Public transparency policy & public transparency principles</p>	<p>Neutral</p>		<p>LGPro is supportive of the move to greater openness and transparency but would question:</p> <ul style="list-style-type: none"> • whether there is an overlap with the Part II Statement required under the Freedom of Information Act • the extent of what is required under cl.56(2)(c) – how far down is it envisaged councils should go? <p>The level of detail possibly required could be particularly onerous for organisations, such as councils, whose business is so diverse.</p> <p>LGPro would be supportive of the production of best-practice guidelines for transparency and accountability in council operations and administration and would be happy to assist and support such production</p>

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Do you have any overall comments on Part 3 of the Exposure Draft Bill?

Public Transparency Policy

LGPro is supportive of the requirement for a community engagement policy, together with the community engagement principles being included in the Act.

LGPro believes that bearing in mind the resources available, the focus of this should be on ensuring that the community engagement policy enables comprehensive and meaningful engagement to be undertaken with the community rather than prescribing engagement practices as part of this process.

Any requirement for deliberative engagement processes would be problematic for smaller municipalities to support the policy.

LG Pro would be happy to work with LGV to develop model policies that would be appropriate for small, medium and large Local Governments as one size does not fit all and will not achieve the outcome sought.

We support the need for Councils to have a Public Transparency Policy and the principles underlying it. However, we are concerned with regard to the implementation timeline to have all (but confidential or contrary to public interest) information available. This would require a Council to review and audit all information (including documents) of Council to determine if they are confidential or contrary to public interest and then facilitate the availability of this information. We suggest a 12 month implementation timeline on the development of such policy and availability of information to the community.

Part 4: Planning and financial management

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
83	Support	<p>The relationship between the Community Vision, s83, and the Council Plan in s85 is not clear other than the Council plan must address the Community Vision via the strategic planning principles.</p> <p>S85 of the draft is introducing the term 'strategic direction'. Clarification is required as to whether this mandatory Council Plan item relates to what is outlined in the Community Vision.</p>	<p>A community visioning exercise requires extensive and thorough consultation with a community. For the vision to be effective it also needs to be realistic in timing and not be for a far-fetched length of time. The clause proposed in the Bill does not achieve this balance.</p> <p>We propose that the vision be for at least the next 5 financial years and when created it have regard for the next 10 years. Meaning that every five years Councils would review the vision. This could also be achieved by having regard for the next 20 years and be for a period of at least 10 years, but a 20-year vision could also be an intangible length.</p> <p>The wording of this clause also implies that the community vision is a rolling (like that of the Financial Plan or Asset Plan whereby a Council is always at least 10 years in front) which in our view is not appropriate for a community vision.</p>
83(1)	Support	The development of the Community Vision should also reflect the community engagement principles.	Clarification on 'with its municipal community' does not indicate the level of community participation and engagement required.
84(1)	Support	That "other strategic plans" be defined	Further clarity is required as to what "other strategic plans" means.
86, 88 & 89	Do not support	That whilst Councils are subject to a Rate Cap that they are not required to prepare long term financial strategies or budgets when a cap is placed on their revenue and that is only provided with 6 months to prepare an annual budget.	Under the current Fair Go Rate Cap System it is inherently conflicting to expect Councils to consider their financial resources, revenue and expenses over an extended period (10 to 4 years) when Councils are required to meet a rate cap set by a such a variable measure like CPI and a possible efficiency factor.

			<p>Fundamentally a long term financial plan cannot be developed when we have no basis on being able to budget our income in the future. Without a long-term indicative rate cap, it isn't feasible to conduct the level of long term financial planning required in the Bill</p> <p>Councils remain the only tier of Government or Authority expected to operate in an environment whereby their expected revenue is set 6 months prior to the requirement to adopt a budget. Should the Government expect Councils to plan for the long-time in this way, a serious and rigorous review of the Fair Go Rate Cap System and its impact on Councils and their communities is required.</p> <p>The imposition of Government dictating control over Council's revenue capacity significantly constrains our ability to set a fully integrated strategic planning framework. The Community Vision and Council Plan that the community may agree with may not be able to be financed due to the government's control on our income and the high bar set to receive dispensation from the cap creates an unreasonably high burden to achieve this with limited resources.</p>
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Do you have any overall comments on Part 4 of the Exposure Draft Bill?

We remain concerned with the implementation timeframe of the Community Vision, Council Plan, Financial Plan, Asset Plan and 4 Year Budget all required to be delivered after a Council election prior to 30 June 2021. These documents will require extensive resourcing and community engagement. Under the circumstance where there could be a significant changeover in councillors following an election and whilst the Rate Cap remains the Government must consider a more realistic timeframe to deliver these major strategic planning outputs.

LGPro requests that after the next general election we are provided 24 months to produce a Community Vision with our community and that this vision is used to produce a 10-year Financial Plan and Asset Plan. We request that a Council Plan for 2021-2025 and the first four-year budget be produced by 30 June 2021 (as per current requirements) and that these are reviewed when the Community Vision, Financial Plan and Asset Plan is adopted to achieve the Strategic Planning Principles and framework proposed in the Bill.



Part 5: Rates and charges

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
150 (2)	Do not support	That a council must include a list of all the beneficial enterprises it is part of in its annual report.	<p>As a member or shareholder of a beneficial enterprise Councils would have limited control as to when a report on the enterprises operations and performance would be available.</p> <p>The clause is also unclear as to what details and to what extent this report would need to be. Rather than requiring Councils to undertake this administration we suggest that the onus be on the beneficial enterprise to report to Council on its operations and performance.</p>

Do you have any overall comments on Part 5 of the Exposure Draft Bill?

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Part 6: Council operations

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
89	Neutral	Further information is required as to the level of detail required. We have concern that the level of detail tapers off in years 2-4. Further guidance is required.	
90	Do not support	In the event of an emergency situation, Councils may require to urgently borrow funds. In this instance, Councils should not be required to prepare a revised budget.	
145	Support	The service performance principles are supported, however, no detail is providing around minimum service provision, particularly in the current environment of rate capping and service delivery shifting from State Government.	The review of the Act provides an opportunity to define minimum core service for Local Government with remaining services being 'optional' based on capacity to deliver. Rural Local Governments generally are not able to provide the range of services offered by metropolitan Councils due to cost and ability. The Act should expressly provide an opportunity for Councils to enter into share service provision with other Councils and/or organisations.

Do you have any overall comments on Part 6 of the Exposure Draft Bill?

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Part 7: Council integrity

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
Division 3 Councillor and staff returns.	Neutral	Further clarity and definition of 'nominated officer'. ie: 'a member of Council staff who has a statutory or delegated power, duty or function, and is nominated by the CEO because of the nature of that power, duty or function'.	It is unclear as to the basis for nominating a person, presently, nominated officers are one category of staff who lodge a return.
174	Do not support	CEO to provide a summary of personal interests, including the town or suburb of residence or land.	The expansion of declaring personal interests from the current municipal district or neighbouring municipalities to any suburb or town seems unnecessary. If the purpose is to ensure that staff declare interests within the municipality, then, 174 goes too far.
179	Support with amendments	Councillor Codes of Conduct are currently not required to contain procedures relating to allegations of sexual harassment by or between Councillors. We recommend that the Act should contain provisions that address harassment, including sexual harassment.	It is also proposed to seek a provision requiring Councillor Codes of Conduct to include reference to obligations placed on Councillors by other acts.

Do you have any overall comments on Part 7 of the Exposure Draft Bill?

The misconduct framework established under the LGA makes no specific provision of misconduct that takes the form of sexual harassment. There is now an opportunity to strengthen the framework in light of the recent experiences within the sector.

Where there is a significant risk to the health and safety of Councillors or Council staff, the process set out is not sufficiently flexible or rapid. This could present challenges given that the CEO is responsible for workplace health and safety for Councillors. However, CEOs are "public servants" who do not and should not have the power to control or manage Councillor behaviour or actions. This places them in a situation where they are responsible but have no clear authority. This situation needs to be addressed in the new Act.

There is an opportunity to mandate a Councillor Induction program to ensure that Councillors are informed and assisted in their multiple roles.



Part 8: Ministerial oversight

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
214, Div 4 and Div 5 Support	Support	The inclusion of appropriate procedural fairness provisions that require a Municipal Monitor, Chief Municipal Inspector or Commission of Inquiry to investigate and deal with a matter in a timely way.	

Do you have any overall comments on Part 8 of the Exposure Draft Bill?

Part 9: Electoral provisions

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
268 Use of the voters' roll by the Chief Executive Officer	Do not support	Delete s268(2) & (3).	These clauses should be developed as s267(1(b)&(c), the Victorian Electoral Commission will be taking all requests for copies of the roll to be provided. Therefore, all requests to use the Roll should go through the VEC.
			<i>Press tab to insert additional rows (as needed)</i>

Do you have any overall comments on Part 9 of the Exposure Draft Bill?

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Part 10: General provisions

Clause (No.)	Support / Do Not Support / Neutral	What changes do you propose and why?	Are there any other comments you would like to make on this clause?
326	Do not support	<p>S47 allows the CEO to appoint staff and appears to be inconsistent with s47 which only empowers the CEO to appoint Council employees as authorised officers under the LGA and not any other Act.</p> <p>S326 restricts powers of an authorised officer to enter land and buildings to the LGA or Council local law. There is no justification given for the omission of 'any other Act'. As an example, the new provision removes the power for a Municipal Fire Prevention Officer to enter properties to conduct fire hazard inspection.</p>	It is proposed that the provisions of the 1989 Act be reinstated to enable an authorised officer to administer and enforce any Act which relates to the functions of a Council.
			<i>Press tab to insert additional rows (as needed)</i>

Do you have any overall comments on Part 10 of the Exposure Draft Bill?

It is noted the Bill removes the ability for authorised officers to enforce provisions under other Acts. This is problematic in terms of the day to day operations of Council and it is recommended that redrafting occur to retain the existing S89 provisions. Also, CEOs should have delegated power to delegate authorised officers to administer other Acts rather than Council having to resolve accordingly.

