



# **Local Government Act Review**

**Submission from Southern  
Grampians Shire Council**

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## **1. Introduction**

Southern Grampians Shire Council has prepared this submission in response to the Discussion Paper on the review of the Local Government Act (1989) (“the Act”) by the Minister for Local Government. This submission has not focused on all issues asked in the Discussion Paper, rather key issues based on internal discussion with council staff, Councillors and the community.

In relation to the new Act in its entirety Southern Grampians Shire Council is keen to see more clarity and consistency in the new Act. There needs to be a balance between the normative, enabling and prescriptive provisions with a focus on transparency and accountability. There also needs to be consideration given to the current levels of regulatory oversight on local government, including the significant pieces of legislation the industry must comply with. A reduction in regulation is required to allow local government the freedom and autonomy to be a distinct and essential tier of government.

Southern Grampians Shire Council supports the submission from the Local Government Spatial Reference Group, of which one of its officers is a member, in relation to spatial (location based) information.

## **2. Community Consultation**

Southern Grampians Shire Council welcomed community feedback in relation to the review of the Act. This feedback was sought in a number of ways:

- A media release was published by the local newspaper in Hamilton, Victoria inviting submissions from the community;
- Several challenging questions were published on Council’s Facebook page and the online forum Our Say to generate discussion;
- Postcards which included details of the review and submission process were handed out to the community, available at local businesses and Council’s offices.

## **3. Chapter 2 – The Role of Councils**

Much discussion was had internally, and with councillors, as to what the role of councils should be. The general consensus was that the role of councils, including the key objectives and functions, should be retained as they currently are. The current roles, objectives and functions provide guidance for councils, but are not overly prescriptive and therefore allow individual councils the flexibility to deliver services tailored to their individual communities.

However, it was felt that further clarification about the role of councillors and the chief executive officer (“CEO”), including the relationship between the two would be helpful in assisting both the council and the organisation. Although it is understood that councils would still need to focus on strategic rather than operational issues, it would be beneficial for the demarcation between councillors and the executive to be reviewed to allow for better relationships and information sharing. This comment is made given the significant move in Victoria to ensure that councils have little contact with the organisation, and use the CEO as the main point of contact, similar to how a company board operates.

Whilst it is noted that the Local Government (Improved Governance) Act 2015 includes a description of the role of councillors further information could be included, such as in the Local Government Act 2009 (Qld) where section 12 outlines the role of councillors and the mayor and section 13 outlines the role of local government employees.

#### **4. Chapter 3 – How Councils are Elected**

There was much discussion in relation to this chapter in the Discussion Paper. The community in particular was interested in the election of the mayor. Community opinions were divided about this issue with six submissions being in favour of the voters electing the mayor, and four submissions being in favour of the council continuing to elect the mayor. Internal discussions were also in favour of the council continuing to elect the mayor. This is more reflective of the current description of the role of the mayor and councillors. If the voters elected the mayor, the duties and expectations placed on that elected representative are likely to be higher than those placed on the mayor currently. It also raises some challenges regarding the relationship between the mayor and other councillors, especially if there is not clear support for the mayor.

Further community comments were received in relation to ensuring that there is representation across the municipality on councils and that all residents, not just ratepayers, should be required to vote.

Southern Grampians Shire Council supports a review of the voting and ballot counting system in local government elections. Having the same ballot counting system, preferential, across all Australian elections may ensure greater consistency in voting as voters would only need to understand one system of voting. However, it is acknowledged that there may be issues with using a preferential vote counting system as opposed to proportional representation vote counting, particularly in unsubdivided regional councils. If multiple vote counting systems are maintained clear and effective voter education would be required to ensure that voters understand how to vote for their chosen candidates.

Other suggestions for the new Act are as follows:

- Fix councillor numbers based on the number of voters in a municipality to stop councillor to voter ratios varying so dramatically across Victoria.
- Introduce more consistency across local government including:
  - One voting system – postal;
  - One structure and representation for all Victorian councils being unsubdivided, or at least fewer options than the current four. This would allow for less election confusion when voters move to another municipality.
  - The introduction of the requirement to send out, or make available to voters, information on candidates for elections which are consistent throughout Victoria. There should be several mandatory questions which all candidates must be required to answer, but councils should be allowed to add additional questions if desired.
  - Following the introduction of the requirements for all councils to have a caretaker policy under the Local Government (Improved Governance) Act 2015, more detail and clarity should be provided in the Act as to what councils must include in such a policy.
- Clarification is needed as to who can vote in local government elections. Following this clarification voting should be compulsory for everyone who is entitled to vote at Council elections, including those aged 70 and above.
- Councillors should be required under the Act to undertake ongoing training, such as annual Continuing Professional Development for Victorian lawyers. This training would educate them on their financial, governance, planning and reporting responsibilities. Failure to complete the required training should have penalties attached such as having to take a leave of absence until training has been completed.
- Further to the above point the new Act should include some guidance on councillor induction to ensure more consistency, and a minimum standard across all councils. This would not need to be overly prescriptive, just a high level overview of what must be included, and by when. If this is not something that has support for inclusion in the new Act, it is something Southern Grampians Shire Council would recommend the MAV is more involved in, to ensure that councillors are given an appropriate induction.
- A limit should be placed on the number of times a candidate can successfully run for a council election in a row. Limiting this to only being able to serve two consecutive terms before having to abstain for a term would increase turnover of councillor position and, particularly in rural communities, allow for more candidates to have a chance to be elected in any given election.

## **5. Chapter 4 – How Councils Operate**

In relation to councillor allowances there are many issues which need to be considered. If they were changed to reflect population size of location this would suggest that smaller, regional councils are not as valued and important and do not deal with the same issues, albeit perhaps on a smaller scale, that larger, metropolitan

councils. However, having consistent allowances across the state has a significant costs imposition of smaller councils.

Suggestions for the new Act are as follows:

- The appointment of a Chief Executive Officer, contract development and reviews should be required to be undertaken by Council and an independent professional. This would ensure that appropriate documentation and key performance indicators are developed and potential issues are discovered at the earliest possible opportunity.
- Although section 89 details certain matters which can be discussed in a council meeting which is closed to the public more guidance and examples as the threshold of these items, possibly involving a test, should be included in the new Act. This would increase the amount of reports that would go to open council meetings and in turn increase the transparency of council decision making.
- The requirement to have Chief Executive Officer and Senior Officer positions advertised state-wide should be retained but the requirement that these must be published in a newspaper should be removed. This is a costly procedure which does not reflect the current practice of advertising jobs on online platforms.
- Duplications of protections afforded in legislation other than the Act, such as equal opportunity, should be removed. Legislation in relation to employment and human rights should not be unnecessarily duplicated.
- Further prescriptions on consultation and public notice requirements would not be beneficial as they may unnecessarily increase council workloads and may be too onerous. However, one solution may be to require councils to have a policy on consultation and engagement. The comments from the community recognised a need for increased use of social media for consultation with councils. This is not something that would need to be prescribed in the legislation but could be included by councils in a consultation and engagement policy.
- A review of Local Laws across Victoria should be done to see what similarities there are. If there are similarities across most/all councils this topic should be included in the Act. This would reduce the workload on councils when developing local laws and would reduce the number of documents the community needs to refer to find all the legislation that applies to them.

## **6. Chapter 5 – Planning and Reporting**

Reporting requirements in relations to councils can definitely be streamlined and improved. There is currently a lot of duplication between the Annual Report, the Local Government Performance Reporting Framework and the reporting requirements of other services, particularly regulatory and community services.

There is agreement with the position of the Municipal Association of Victoria (“MAV”) that where there are changes to planning and reporting obligations these should not just be an increase to these obligations but should be counterbalanced by the removal of any duplications or redundant requirements. It is also agreed that the Local Government Performance Reporting Framework (“LGPRF”) does not add value.

The questions asked are unable to be compared between councils without more information as to what was included in the calculation and written descriptions as to why such a figure was reported. A review of the LGPRF needs to be undertaken to ensure the reporting adds value and is reporting information that the state government requires and will utilise.

Clarification is also required as to the purpose of Annual Reports. What is the purpose of the report? Who is the report designed for? Who reads the report? These reports are not something that is widely read by local communities, and therefore duplicating information that has already been provided to the state government through other reporting systems is frustrating for local governments.

## **7. Chapter 6 – Council Rates and Charges**

Southern Grampians Shire Council agrees with the submission from the MAV that councils should continue to have the discretion and power to set rates and charges without being subject to rate capping. For local government to continue to develop and improve it needs to freedom and capacity to grow.

The new Act should reflect the changes to council services that have occurred since a rating system based on a land tax was introduced. Consideration needs to be given to the long term sustainability of funding for councils. Councils should have more powers to collect the full cost of services provided which only, or mainly, benefit the person who receives that service, for example:

- Councils should be enabled to pass on the cost of investigative reports and other services to property owners when the report/service identifies the property as a risk to public health or the environment. Examples of these services would include asbestos assessment and analysis reports.

Councils should have the power to apply special levies in addition to rates to support a user pays systems to enable Council to undertake roles and functions. For example levies could be charged to property owners in addition to rates to have their septic systems inspected in accordance with the inspection program. This is an opportunity to charge for implementing Council's functions, which will become increasingly important with rate capping implementation.

## **8. Chapter 7 – Service Delivery and Financial Decision-Making**

There is an inconsistency between the requirements on councils buying and selling land. It is odd that there are more restrictions on one process than the other when they both should be aiming to ensure property is purchased for a fair price and that public funds are not wasted.

More consistent procurement practices across the state would be beneficial to councils and contractors. The provisions should not be overly proscriptive, merely provide more consistency where possible. Procurement is one area where there are no reporting requirements, in particular in relation to non-compliant contracts, variations and exempt contracts. This is one area where increased reporting would be beneficial as it may lead to better management of public funds and increased transparency. There should also be penalties in place for councils, and individual staff, who fail to comply with a council's procurement policy.

Insurance should be exempt under section 186 of the Act. This would remove any confusion and remove the issues associated with the terms of insurance are frequently not known until a matter of days before policies are due to expire. It is impractical to conduct tenders for these services when in most cases the industry cannot respond with sufficient details for Council to assess best value.

Collaborative arrangements should be expanded to include more options than libraries. This would simplify resource sharing between councils, which will be of great benefit to smaller, regional councils once rate capping begins. The comments received from the community were also supportive of increased resource sharing.

There needs to be some guidance on how councils can deal with vexatious customers who continually waste council's time and resources.

## **9. Chapter 8 – Councillor Conduct, Offences and Enforcement**

Southern Grampians Shire Council is supportive of the following items in the Local Government (Improved Governance) Act 2015:

- Additional and updated definitions including misconduct, serious misconduct, and gross misconduct.
- The inclusion of the roles and responsibilities of councillors, mayors, and chief executive officers.
- The new requirement to have an internal resolution procedure for dealing with an alleged breach of a Councillor Code of Conduct, together with the inclusion of sanctions for such a breach.

However, given that this legislation is new, and some of the sections have not yet been enacted, it is important that careful consideration of this legislation is given before it is included in the new Act to ensure that it reflects the aims of the new Act, and is also amended where required.

Southern Grampians Shire Council is supportive of having the councillor conduct principles included in the Act, although the separation between principal and general conduct principles may not be necessary. It is also supportive of these principles needing to be recreated in Councillor Codes of Conduct.

The sections in relation to conflict of interest need to be reviewed, clarified and simplified. If the current sections are to be maintained, dealing with direct interest and several forms of indirect interest it needs to be shown that this delineation is necessary and adds value. Rather than having several different sections in relation to conflicts of interest, dividing into direct and indirect, one clause dealing with all types of conflict can be drafted so that the amount of legislation to be read and understood in relation to the issue is simplified. Consideration also needs to be given to the possible loss of expertise when a councillor or officer with a conflict of interest is removed from discussions in relation to an issue. Perhaps a return to the practice of councillors and officers being able to be involved in discussions but still not able to vote on an issue would be appropriate.

Southern Grampians Shire Council agrees with the MAV that mechanisms that are in place to ensure that councillors comply with the requirements of the Act should be properly resourced and prioritised so that issues can be investigated and resolved promptly.

#### **10. Chapter 10 – Harmonisation of the Local Government Act**

Southern Grampians Shire Council supports the harmonization of legislation which regulates local government where possible. In particular streamlining legislation in relation to local governments power over roads, contained in Schedule 10 and 11 of the Act, could be transferred to the Road Management Act 2004, Road Safety Act 1986 and Road Safety Road Rules 2009 as appropriate.