

# Local Government Bill Reform Proposal

## A submission by Yarra City Council

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Yarra City Council considered the reform proposals set out by the Minister for Local Government in the paper *Local Government Bill – A reform proposal* at its council meeting on Tuesday 16 July 2019 and resolved to provide the submission below.

### Changing the voter franchise

**Yarra City Council supports this proposed reform, without the transitional arrangements for 2020, and with the reform taking effect in full from 2024.**

While the reform is described as simplifying the electoral franchise, in reality it does not remove the voting entitlement of any of the current franchise. What it does do however, is remove the 'automatic' inclusion of non-resident property owners from the electoral roll, and requires that they first apply for enrolment in the same way that business owners and some property lessees currently do.

Aside from the administrative efficiency brought about by this change, this reform has the potential to lead to other benefits, including:

- An opportunity to simplify the communication with voters regarding their obligation to vote, as all voters in receipt of a ballot paper will now be required to vote.
- A reduction in the likelihood of voter fraud caused by postal ballots being sent to managing agents and returned en mass, as was experienced in the City of Melbourne in 2016.
- The placement of all non-resident voters on equal footing, as non-resident property owners are brought into line with corporations, business tenants and owner occupiers who are not on the electoral roll.
- Removal of the cumbersome process required to ensure a voter is accurately listed when they are an owner of multiple properties across different wards.

That said, the proposal to progressively implement the change over 2020 and 2024 by requiring only new non-resident property owners to apply to vote in 2020 runs a very real risk of compromising the reform, by sending a confusing message about who is required to register in 2020, and who is required to vote. In 2024, this problem will continue, as many long term property owners will see the communication about the need to register to vote and assume it doesn't apply to them, on the basis that it didn't apply in 2020.

It is the view of the Yarra City Council that while the reform is welcomed, the transitional arrangements are unnecessarily confusing and potentially compromise the reform. If the reform cannot be implemented in full by 2020, then they should be placed on hold and implemented ahead of the 2024 election.

## Mandating electoral structures

**Yarra City Council does not support this proposed reform.**

### Respecting communities

The history of ward structures is illustrative in that from their establishment in the mid 19<sup>th</sup> century, Victorian Councils were almost universally comprised of either multi-member wards or un-subdivided municipalities. In fact, it was only on the passage of the 1989 Local Government Act that single member wards became legislatively possible. For this whole period, communities had been successfully and effectively represented by their councils.

Then, in the largest attack on local democracy in Victoria's history, the Kennett government launched a reform program which amalgamated local governments, stripped away elected councillors and appointed Commissioners who were not accountable to local communities.

At the time of these reforms, just one of Victoria's over 200 councils had been made up of councillors from single member wards. There had simply been no demand for it. The commissioners took a different view and began a dramatic move to single member wards and the preferential voting that came with it. In fact, by 1998 almost 70% of all councils included single member wards.

Over the following years, a comprehensive program of Electoral Representation Reviews was rolled out across the state, with the Victorian Electoral Commission mounting an extensive program of community consultation and engagement to determine the best electoral structure for each municipality. This program returned a voice to local communities and found that they (and many councils themselves) did not feel well served by single member wards. By the time of the 2016 elections, only 8 of 79 councils were made up entirely of single member wards - a rate of just 10%. In fact, had the Minister not overturned the recommendation of the VEC in the Shire of Yarra Ranges, the number would have been just seven.

It is puzzling why the proposed reform would want to return to the Kennett era and reinstate a model largely put in place by unelected commissioners and resoundingly rejected by local communities in successive electoral representation reviews. This proposal is simply not respectful to the wishes of local communities.

### Recent experience

While history shows a community desire for different electoral models, it is not necessary to go back to the 1990s to identify the downsides of mandatory single-member wards.

The current experience shows that single member wards often do not produce the same level of democratic engagement and participation as is found in different electoral structures, and do not give a voice to those holding significant minority views in local communities.

By way of example, if you look at the four neighbouring municipalities of Banyule, Boroondara, Darebin and Yarra and examine the outcomes of the 2016 election, the differences between these elections becomes clear. These figures are taken from the VEC website results for 2016:

### **Four neighbouring municipalities, 2016**

	<b>Banyule</b>	<b>Boroondara</b>	<b>Darebin</b>	<b>Yarra</b>
Structure (wards x vacancy per ward)	7 x 1	10 x 1	3 x 3	3 x 3
Voting method	Attendance	Postal	Postal	Attendance
Counting method	Preferential	Preferential	PR-STV	PR-STV
Candidates per vacancy	2.7	3.3	6.7	3.6
Candidates per election	2.7	3.3	20.0	10.7
Uncontested elections	2 of 7	1 of 10	0 of 9	0 of 9
% electors without chance to vote *	27.0 %	9.5 %	0.0 %	0.0 %
% primary vote recipients elected **	51 %	48 %	48 %	64 %
% votes electing a councillor ***	61 %	57 %	76 %	76 %

\* *This figure represents the proportion of voters located in an uncontested ward.*

\*\* *This figure is derived by taking the total of the primary votes received by each successful candidate, and dividing it the total number of formal votes cast. It represents the proportion of voters who saw their first preference candidate get elected.*

\*\*\* *This figure is derived by taking the total number of votes allocated to each successful candidate at the time of election and dividing it by the number of formal votes cast. It represents the proportion of formal voters whose vote played a role in the election of a councillor.*

In short, when compared to single member wards, multi-member wards have:

- Higher numbers of candidates competing for each vacancy
- Higher number of candidates to choose from on each ballot paper
- Fewer uncontested elections
- Fewer constituents who don't get a chance to vote
- A higher chance that a voter's first preference will be elected
- A greater proportion of voters playing a part in the election of a councillor

Perhaps the most telling figure is looking at the uncontested elections across Victoria at the 2016 elections.

In all, there were 192 different elections at those elections (one in each ward). Of the 99 single member elections, 33 had to be abandoned because they were uncontested, with councillors appointed unopposed. This represents a failure rate of one third. In the 159 multi-member elections, this happened only 5 times, a failure rate of just 3%. In short, elections in single-member wards are more than ten times as likely to fail as their multi-member counterparts.

Of the eight entirely single-member councils in 2016, only one (Nillumbik) managed to have a contested election for every seat. In fact the failure rate for these councils was so high, that three councils (Loddon, Murrindindi and Pyrenees) now have a majority of councillors who were appointed unopposed. Presented with these facts, it is hard to argue that single-member council wards deliver meaningful local democracy.

#### Listening to the experts

Yarra City Council is not alone in its opposition to mandatory single-member wards, with the overwhelming view of the sector being that a range of electoral structures should be available to ensure the council effectively represents its community.

The first time the issue was comprehensively addressed since the 1989 Act was the Local Government Electoral Review Panel's July 2014 report *Local Government Electoral Review Volume 2*. This report recommended "the discontinuation of the current practice of having 'mixed wards', where municipalities contain a mix of single-member wards and multi-member wards or a mix of non-uniform multi-member wards" but continued to support multi-member wards where it best serves the community.

The Exposure Draft Local Government Bill 2018 (and all the position and discussion papers that lead to it) gave effect to this recommendation, and continued to provide a legislative avenue for councils where, as a result of an independent representation review, it was found that multi-member wards best served the community. Yarra City Council supported this approach.

Of those councils that addressed the issue of electoral structures through this process, the overwhelming majority supported local communities having the option of multi-member wards. In fact, our analysis cannot find one council who argued ahead of the development of the 2018 bill that single member wards should be mandatory across the state.

Most recently, the reform paper that is the subject of this submission. This paper acknowledges that single member wards are not suitable for every community – carving out exemptions for small, rural councils as well as for the City of Melbourne. In stating that sometimes it "is impractical to subdivide a council into wards", the reform paper acknowledges that one size simply cannot fit all.

#### Arguments that cannot be supported

The reform paper and accompanying FAQs make an attempt to prosecute the case for single-member wards. These arguments require scrutiny.

*"Single member wards for each council enable residents to more effectively receive direct representation"*

In the event that constituents do not share like views with their ward councillor, this representation can be difficult at best. In multi-member elections determined by a PR-STV counting method, it is much more likely that significant minorities will successfully elect a councillor to represent them. This is evidenced by the experience of the sector, which finds that constituents have no trouble seeking out representation when required – including from councillors from other wards. Arguably, constituents "more effectively receive direct representation" from a councillor who shares their views. A diversity of opinion is much more valuable than a diversity of location.

*"Councillors will be more accountable to local communities"*

In preferential counting methods, there is little electoral incentive for councillors to be accountable to minority communities. Unlike the PR-STV method, where a significant majority of votes influence the outcome, preferential counts require only a slim majority to be successful. In local government multi-member wards, where there are no group voting tickets, there is no such thing as a 'safe' seat.

*"Consistent application of this model also ensures that all councillors are elected under the same system with equal vote shares within their council"*

The 2018 bill proposed the elimination of councils with a mixture of single-member and multi-member wards, and Yarra City Council supports this initiative. This too achieves the objective of equal vote shares within a council.

*"This more closely reflects the way members of Parliament are elected"*

Why is this desirable? What about members of the Legislative Council? Local government is different to the Victorian Parliament, and there are few parallels between the two. There does not seem to any argument advanced as to why the voting method for the lower house of the bi-cameral Victorian Parliament should be automatically applied to local councils. Notably, councils have no mechanism akin to the Legislative Council where significant minority voices can be heard.

*“Single member wards are the best way to ensure representation is genuinely local”*

As there is no compulsion that candidates hold a voting entitlement in the ward they seek to represent, the notion of a councillor being ‘local’ is an entirely artificial construct. That it is possible to successfully define communities with lines on a map capturing equal number of electors within a narrow margin of error is plainly fraught.

#### Further matters

In addition to the issues identified above, Yarra City Council further submits that:

- Council wards should be structured to best suit the differing geography, demographics and governance of municipalities and collective decision making in the interests of the community as a whole;
- Single member wards are highly limiting for smaller geographic councils like Yarra, Port Phillip or Queenscliffe;
- The requirement for all councillors to be elected from single-member wards has the effect of abolishing proportional representation;
- Proportional representation allows for voters who favour independents and small political parties to have their views represented on council;
- Each state and territory parliament with the exception of Queensland and the Northern Territory has a proportionally elected house, and the federal Senate is proportionally elected;
- The number of municipalities with councillors elected from single-member wards has decreased from 43 in 2003 to 8 in 2016, due to Victorian Electoral Commission (VEC) representation reviews consistently recommending multi-member wards and that VEC representation reviews involve extensive community consultation and analysis of the impacts of each model;
- The 2016 State Government Commission of Inquiry into the City of Greater Geelong highlighted single-member wards as a contributing factor in the dysfunction and poor governance of that municipality, and since that inquiry, the City of Greater Geelong has had multi-member wards;
- Single-member wards were not canvassed in the government’s 2016 discussion paper or the 2013 Petro Georgiou discussion paper;
- A single councillor in each ward would mean that in the event of a councillor being unable or unwilling to fulfil their duties, the local community would have no other ward councillor representation;
- Single-member wards have resulted in uncontested elections in other municipalities;
- Councillors are required to represent the entire municipality and having wards with a very small geographic area is in conflict with this principle;
- The proposal will require by-elections for each ward vacancy, resulting in lack of representation of constituents during the vacancy period, and require more costs and delays in filling vacancies, in lieu of the proposed improved count-back system for filling vacancies;
- Current wards would need to be separated into multiple wards, potentially separating communities of interest from each other; and
- 41.69% of Victorian councillors elected from multi-member wards are women, vs. only 33.9% in single-member wards.

**Yarra City Council does not support the mandatory application of single-member wards.**

## Mandatory candidate training

**Yarra City Council does not support this proposed reform.**

Yarra City Council is concerned that this proposal engages the human rights of constituents by placing a limitation on their ability to stand for election. The fundamental right to take part in public life by standing for public office is placed under threat for little benefit – there seems no evidence that providing training to candidates (rather than councillors) will better equip them to assume office.

The proposal to give the Victorian Electoral Commission the authority to reject nominations from candidates who cannot demonstrate that they have undertaken relevant training compromises the ability of the VEC itself to undertake a fair and impartial elections. Further, if the training is competency-based (as it would undoubtedly have to be if it is to be meaningful), the program's designers and assessors may find themselves open to accusations of bias, as they alone determine the standard accepted to 'pass' and the elements of training warranting assessment.

Lastly, from a purely practical point of view, the training would have to occur before the opening of nominations. This means that either the timeline of elections will need to be adjusted, or that candidates will need to be permitted to attend training despite not being on the electoral roll at the time. Neither is desirable, as it requires candidates to make a decision to stand much earlier than is currently the case.

In addition to the issues identified above, Yarra City Council further submits that:

- The proposal would unnecessarily limit candidates nominating for office;
- such mandatory training provisions do not apply to Parliamentary candidates notwithstanding the complexities and responsibilities regarding governance for the State of Victoria;
- the suggestion ignores that candidates may have previously been councillors or council officers, may have undertaken other equivalent courses; been involved in council meetings/committees, been involved in Boards, taught governance or politics or have other relevant experience; and
- the reform suggests the electorate is incapable of assessing the aptitudes of candidates.

**Yarra City Council does not support the introduction of mandatory training for candidates.**

## Mandatory councillor induction

**Yarra City Council supports this proposed reform, conditional on the Chief Executive Officer having responsibility for designing the program and that such training be available as soon as possible after candidates are sworn in.**

Councillor induction training is a long standing feature of the process for introducing new and returning councillors to Yarra after each election. Typically, the program includes a number of high level sessions focussing on the role of councillors and the council's overarching governance responsibilities, as well as a number of targeted sessions in specific portfolio areas, such as budgeting, planning, corporate communications and others. On occasion, the programs may include some more general team-building activities.

The nature and extent of the program is designed to ensure it meets the individual needs of councillors as well as the collective needs of the group. By necessity, this means that some sessions are targeted at councillors with limited experience, and are less relevant for councillors who are returning for a second or subsequent term. Any mandatory induction program would need to recognise this distinction, and allow that not all of the offered training sessions or modules should be included in the mandatory program.

**On the basis that the program can continue to be determined by the Chief Executive Officer, and can be delivered in a way that is flexible enough to meet the different needs of each councillor, then the City of Yarra supports this reform.**

## Election campaign donations

**Yarra City Council supports this proposed reform, conditional on the \$250 gift threshold not including the value of extraneous gifts provided to a candidate for purely private or personal reasons; and further submits that donations should be banned from property developers.**

While prohibiting the acceptance of large electoral campaign donations is welcomed, as is increased transparency in reporting of gifts received below the threshold, Council is concerned that the reform as described will lower the gift disclosure threshold for all gifts, not just those that are election campaign donations. This will have the unintended effect of requiring councillors to publicly declare many gifts received in a personal capacity. It would also prevent councillors from accepting anonymous gifts over the threshold value if participating in personal fundraising.

It is submitted that the reform be implemented in a way that does not inadvertently require the public declaration of gifts received by councillors in an entirely personal capacity. For example, under the proposed reform, a councillor who is taken out to dinner by a close friend each year on their birthday could easily find themselves exceeding the \$250 threshold (over five years). This would both require the administrative effort of public disclosure, and trigger a conflict of interest declaration on matters before the council. A threshold this low could well mean an increasing number of councillors are required to declare a conflict of interest, creating increased likelihood that a quorum is unable to be achieved.

Further, Council submits that a prohibition on the acceptance of campaign donations by property developers be introduced (based on the 2018 Bill, this would be at section 322). These arrangements are in place in New South Wales, and withstood a challenge to the High Court as to their lawfulness. This prohibition would eliminate the risk of a number of councillors being required to declare a conflict of interest in relation to planning permit matters – something which had seen the Melbourne City Council frequently fail to achieve a quorum due to property developer donations to the Team Doyle campaigns in 2012 and 2016.

**On the basis that the gift disclosures do not include gifts received in a personal capacity, then the City of Yarra supports this reform. Council also believes that a further reform should be introduced to prohibit donations from property developers.**

## Prescribing standards of conduct

**Yarra City Council supports the simplification of the Councillor Code of Conduct to be no more detailed than that applicable to members of the Victoria Parliament, and opposes Councillor Code of Conduct provisions being transferred from the Act to regulations.**

The proposal to remove the defined standards of councillor conduct from the Act in favour of their inclusion in regulations is opposed by Council because:

- regulations can be more readily amended without the level of public and other scrutiny applicable to Statutes including application of the State-Local Government Agreement with the sector;
- this approach runs the risk of greater complexity and inconsistency, and being less accessible to the public; and
- the Victorian Constitution Act stipulates that it is the role of Parliament to make laws regarding councils and councillors, with councils as the governing body being responsible for ensuring good governance.

**Yarra City Council does not support the transfer of standards of councillor conduct to regulations.**

## Changes to dispute resolution

**Yarra City Council does not support the proposed changes to internal arbitration processes.**

Altering the way councillor behaviour is addressed in the way proposed has the effect of escalating complaints to the Principal Councillor Conduct Registrar far earlier than would otherwise be the case. What is described as an internal arbitration process (but is in effect an external process) is potentially costly and time consuming and is not suitable for low level disputes between colleagues.

In reality, most councils will establish a process to be implemented before the proposed internal arbitration process is triggered – consisting of counselling and mediation as required. This process (perhaps to be known as the ‘really internal arbitration process’) will essentially replace the arbitration processes currently included in Councillor Codes of Conduct – meaning this new reform will, in essence, add an additional layer of process to an already drawn out and unnecessarily complicated process.

In addition to the issues identified above, Yarra City Council further submits that:

- this is contrary to effective dispute settlement processes where disputes should not be escalated externally until all internal dispute resolution process stages have been exhausted; and
- the Victorian Constitution Act stipulates that it is the role of councils as the governing body, being responsible for ensuring good governance

**Yarra City Council does not support the establishment of internal arbitration processes in the way described.**



## Community accountability

**Yarra City Council supports the proposed mechanism for councillor disqualification upon two findings of serious misconduct subject to a strict definition of 'serious misconduct' agreed with the sector, application of the rules of natural justice and checks on misuse of this provision with the onus being to prove serious misconduct beyond reasonable doubt and not on the balance of probabilities.**

Yarra City Council submits that the repeated serious misconduct by one councillor has the potential to undermine good governance for an entire council and should trigger a process leading to the disqualification of that councillor. On this basis, Council supports the dismissal of a councillor upon a second finding of serious misconduct which has been the independent finding of a Councillor Conduct Panel.

That said, the significant consequences of councillor dismissal (both for the councillor themselves and the community that elected them) are such that it is essential that the principles of natural justice be enshrined in the process, and that the threshold be raised to 'beyond reasonable doubt', rather than the balance of probabilities.

**Subject to the inclusion of adequate checks and balances, Yarra City Council supports the disqualification of a councillor upon two findings of serious misconduct subject.**

## Community initiated Commissions of Enquiry

**Yarra City Council does not support the process suggested to establish community initiated Commissions of Enquiry.**

The proposal to establish a community initiated Commission of Enquiry as a result of a community petition is not supported as it is not well thought out and is potentially very damaging to the reputation and community confidence in individual councillors and a council as a whole. Seemingly modelled on the process used for a 'recall' election in a number of international jurisdictions (notably the USA), the process differs in that it does not require a majority to succeed, and even if it is successful, it simply triggers an enquiry seeking to investigate poor governance in a council.

Further, unlike a recall election, where the process delivers a clear community outcome, the suggested process provides a mechanism for a minority of the community to upset the smooth operation of a council. It is not difficult to imagine a scenario where a carefully considered council decision is challenged through this process by a minority opposition. This process would be very damaging indeed, even if a resultant enquiry found no evidence of poor governance.

The process described is, in Council's view, unworkable insofar as it requires the collection of (in Yarra's case) almost 20,000 signatures within a 60 day period. While in extreme circumstances, it is possible to imagine that this could occur, it is hard to see how the resultant petition could then be evaluated against the voter's roll to determine whether it meets the standard required to trigger an enquiry. This would certainly be a time consuming and potentially very costly process.

It is also understood that the Victorian Electoral Commission does not have a record of signatures against which a petition could be compared to enable identification of fraudulent entries.

In addition to the issues identified above, Yarra City Council further submits that:

- this is inconsistent with any other State and Territory provisions throughout Australia;
- it would be divisive in the community and exacerbate disagreements over policy and council processes which should be resolved prima facie through council as the governing body; and
- it would be unnecessary with the plethora of existing processes including dispute resolution, Councillor Conduct Panel, investigation by Municipal Inspectorate, and proposed powers of the Minister to suspend a councillor on the recommendation of an integrity body.

**Yarra City Council does not support the establishment of community initiated Commissions of Enquiry.**

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