



COMMITTEE FOR GEELONG

SUBMISSION TO THE LOCAL GOVERNMENT ACT REVIEW SECRETIART REVIEW OF THE LOCAL GOVERNMENT ACT 1989

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1. INTRODUCTION

The Committee for Geelong (CfG) is pleased to lodge a submission to provide feedback on the review of the *Local Government Act 1989*.

The CfG, as an independent, member-based organisation, provides strategic leadership and influence to leverage the economic potential of our city-region, to make Geelong a world-class place.

We work collaboratively with a -group of stakeholders and leaders to deliver that growth for Geelong. Our members include local, national and international organisations and individuals who set aside commercial gain, sectoral interest and personal perspectives to provide a united voice on the issues facing Geelong.

As thought leaders, we encourage innovation and debate around opportunities for Geelong.

The CfG has a history of achieving results for Geelong by actively looking at ways to solve problems and confront challenges. Our success allows us to influence policy and see our highly valued opinion consistently sought by key decision makers.

We share on passion with our members – the vision of a Clever and Creative Geelong.

It should be noted that the City of Greater Geelong (CoGG) is a member of the CfG and, whilst CoGG has been consulted as part of our submission process, their position has not influenced this paper.

2. BACKGROUND

In earlier submissions to this Review of the Local Government Act (the Act), the Committee for Geelong (CfG) argued that the City of Greater Geelong would benefit from a new Local Government Act provided that:

- The Council is given wide discretionary powers to allow it to do what has to be done;
- The Council is able to have strong, pro-active leadership at its head;
- The representational structure allows the Council to be made up of high calibre councillors, representative of diverse community interests.

As the bedrock of the local government system the Act must not only be workable as a framework, it must be capable of attracting high calibre people, both elected councillors and appointed officers, into elected office.

In this regard, the CfG has noted the claim in the 'Statement of Compatibility' *"that the Bill seeks to revitalise local democracy through facilitating greater participation by candidates, voters and citizens in council activities and promoting a greater understanding and value for the role of councils as democratically elected bodies. This is intended to strengthen the right to participate in public life."*

This submission examines those parts of the draft Local Government Bill (the Bill) that are relevant to the three criteria above and discusses how well, in the CfG's view, the new provisions will deliver on these criteria.

3. THE POWERS AND RESPONSIBILITIES OF THE COUNCIL

Commentary:

The new Bill gives Councils the power to undertake activities that are necessary or convenient to perform their roles, providing they exercise these powers and perform their role in accordance with a set of overarching governance principles. Compliance with the overarching principles will determine whether a Council is providing good governance. Among other things, the principles require a Council to act lawfully, give priority to the best outcomes for the community, engage with their community and co-operate with other governments and public bodies.

The overarching principles are supplemented with a set of community engagement principles, public transparency principles, strategic planning principles and financial management principles.

The Minister for Local Government also has the power to issue Good Practice Guidelines on any matter, and compliance by the Council can be used as evidence of good governance.

Altogether the new Bill moves from a prescriptive model to what is generally referred to as a power of general competency. The principles give Councils comprehensive guidance on how to exercise the power of general competency.

CfG position: The concept of a power of general competency with prescribed principles and good practice guidelines is supported by the CfG. In particular, the requirement for a Council to adopt community engagement and transparency policies, drawn up in accordance with a set of principles, is strongly supported as this will require Councils to engage with their communities and to be open and accountable to them.

4. STRONG, PRO-ACTIVE LEADERSHIP

4.1 Election of Mayor

Commentary:

According to the draft Bill, the Mayor and Deputy Mayor for all municipalities in Victoria, including Geelong, will be elected by their councillor peers. The only difference being that Geelong must elect a Mayor for two years, while other councils can choose to elect the Mayor for one year or two years.

CfG position: The CfG encourages the inclusion of a provision that makes it clear that a Mayor of Geelong, having been elected for an initial two years and having served for that two years, can be elected for a further two year terms if that is the - decision of the councillors. This would provide a continuity of leadership that is needed in Geelong.

4.2 Role and powers of the Mayor

Commentary:

In the new Bill the responsibilities of Mayors will be extended slightly (it is noted that 'slightly' is the word used in the Government's documentation).

The new Bill provides that *"the role of the Mayor is to chair Council meetings; be principal spokesperson for the Council; lead engagement with the municipal community on the development of a Council Plan; report to the municipal community, at least once a year, on the implementation of the Council Plan; promote behaviour among councillors that meets the standards set out in the Councillor Code of Conduct; assist councillors to understand their role; take a leadership role in ensuring the regular review of the performance of the CEO; provide advice to the CEO when the CEO is setting the agenda for Council meetings; perform civic and ceremonial duties on behalf of the Council."*

Specific powers for the Mayor are limited. They include a power "to direct a councillor, subject to any procedures or limitations specified in the Governance Rules, to leave a Council meeting if the behaviour of the councillor is preventing the Council from conducting its business."

CfG position: The CfG favours a Mayor of Geelong having a strong leadership role, with appropriate powers. However, it is accepted that any further extension of the role and powers of the Mayor will probably not be entertained at this stage. The CfG recognises that an 'effective person' in the role of Mayor could play an important role under these 'slightly extended' new provisions.

The requirement for the Mayor to report to the municipal community at least one a year is an important initiative. The CfG would like to see this requirement extended so that a Council is required to commission an independent annual review of council operations and achievements by a suitably qualified external organisation.

4.3 Resources for Mayor

Commentary:

The CfG agreed with the proposal for the Mayor to have greater support and access to resources. The new Bill requires a Council to make available to the Mayor and the Councillors the resources and facilities reasonably necessary to enable them to effectively perform their role.

CfG position: The CfG supports this provision.

5. ELECTION OF COUNCILLORS

5.1 Number of Councillors

Commentary:

A council must consist of no fewer than 5 and no more than 12 councillors, including the Mayor and Deputy Mayor. This is the same as at present.

CfG position:

The CfG has always argued that a Council with a small number of councillors would be likely to be more effective. Given that the range offered in the Bill would, for example, allow the CfG, if it wished, to argue for an un-subdivided municipality with say 5 or 7 councillors, this provision is supported.

5.2 Representation structure

The number of alternative representational structures has been reduced.

“A Council may be constituted so that it consists of—

- (a) all Councillors elected to represent the municipal district as a whole; or*
- (b) all Councillors elected to represent multi-member wards into which the municipal district is divided with an **equal number** of Councillors to represent each ward; or*
- (c) all Councillors elected to represent single member wards into which the municipal district is divided.”*

The recently adopted structure for Geelong - three wards with three councillors, one ward with two councillors - would not comply with these provisions and this configuration would not be possible in future reviews.

As each ward is to have approximately – a variance of 10% is allowed – an equal number of voters per councillor it would, given the urban and rural areas of Geelong, be difficult to configure wards that would have a legitimate community of interest and at the same time meet the councillor/voter ratio. There would have to be a mixture of urban areas with rural areas within a ward to achieve the voter/councillor ratio. It is possible, therefore, that the reviewers would lean towards an un-subdivided Geelong (which is supported by the CfG) or towards a single member ward model (which has been heavily criticised in the past, not only by CfG, but by various Government initiated inquiries such as the Moran Inquiry.)

The necessity for multi-member wards to have equal numbers of councillors seemed to gain acceptance after the Government’s Georgiou Review a few years ago. Prior to the Georgiou Review identified the inequity associated with ward based system having differing numbers of councillors, it seemingly had not been regarded as a major problem, hence the VEC recommending wards with uneven numbers of councillors.

Given the limited alternatives the CfG, in any future review of representational structures, would advocate for an un-subdivided municipality. Inevitably attention would be drawn to the

weakness of this model by critics who would point out the difficulty of achieving appropriate representation from urban and rural areas (i.e. urban based voters would have the numbers). Also they would point out the practical problems associated with a lengthy ballot paper with many candidates, something that has been mentioned as a problem in past commentary.

CfG position: The CfG supports two of the alternative structures (a) un-subdivided municipality and (b) multi member wards with equal numbers of councillors. However, the CfG does not support (c) single member wards. The CfG wishes to prevent the possibility of a single member ward structure being implemented in Geelong, as it would risk a repeat of past inadequacies and failures in Greater Geelong Council's representation.

The desirable principle of equity of representation between wards does raise some practical operational difficulties including:

- **To achieve voter/councillor ratios in wards with equal numbers of councillors it will be necessary to configure some wards in Greater Geelong, which have a combination of urban and rural interests, thereby diluting the community of interest principle;**
- **The demanding workload associated with councillors having to represent a ward with a mixture of urban and rural interests. For example Geelong's current northern electorate (Windermere ward) has only two councillors. It is the largest ward with a diversity of issues – rural and urban issues, growth issues and significant socio economic issues. Here, the equity principle comes into conflict with the 'sharing the load' principle.**

While an un-subdivided municipality is supported by the CfG, the difficulty in ensuring that rural interests would achieve adequate representation is also acknowledged.

The CfG is interested to learn how the VEC intends to work with these new rules.

5.3 Review of representational structures

Commentary:

The Minister has the power to call for a review of the electoral representation structure in regard to the number of councillors and whether the municipality should be un-subdivided or divided into wards.

CfG position: It is accepted that reviews of electoral representation should be undertaken from time to time, especially if councillor/voter ratios fall outside the required 10% variation. It is a pity that the recently approved ward structure for Geelong did not comply with the new rules as this has left Geelong with a non-compliant structure which may motivate an earlier, and disruptive, review than would otherwise have been the case. The CfG is concerned that, in Geelong's case, there has been a sustained period of review in recent years and even though the current ward structure does not comply with the draft Bill, the CfG would caution against further reviews in the near future.

5.4 Voters and voting systems

Commentary:

The CfG was concerned that an earlier proposal was for adult franchise be the sole eligibility for voting at council elections. The adult franchise applies to only those on the State electoral roll would be eligible to vote in council elections. If adopted, this would have excluded from the roll ratepayers who owned property in a municipality, or in the ward of a municipality, where they did not reside. The CfG argued against this believing that the property franchise approach, which includes property owners being eligible to vote.

The new Bill states that a person can be enrolled if the person has an entitlement as a resident or a ratepayer.

Persons appointed on behalf of corporations will also be entitled to vote.

In cases where only one candidate is being elected the preferential voting system will be used. This would apply in a single member ward.

Where two or more candidates are to be elected the proportional representation voting system will be used. This would apply in a multi member ward or an un-subdivided municipality.

CfG position: The CfG supports the retention of the adult franchise plus property franchise for local government elections. It also supports the voting systems.

5.5 Role of Councillors

Commentary:

The role of councillor will be defined as: to participate in the decision-making of the Council; represent the broad interests of the local community in that decision-making; and to contribute to the strategic direction of the council through the development and review of key strategic documents of the council, including the Council Plan.

(2) In performing the role of a Councillor, a Councillor must—

- (a) consider the diversity of interests and needs of the municipal community; and*
- (b) act with integrity; and*
- (c) participate in the responsible allocation of the resources of the Council; and*
- (d) facilitate and participate in effective communication between the Council and the municipal community; and*
- (e) acknowledge and support the role of the Mayor.*

(3) The role of a Councillor does not include the performance of any responsibilities or functions of the Chief Executive Officer.

CfG position: The CfG supports the provisions for the role of councillors.

5.6 Qualification (or eligibility) of Councillors

Commentary:

A person is qualified to be a councillor if a person is 18 years old, an Australian citizen (or an eligible British subject) and on the Council's voter's roll. The Bill lists a limited number of grounds which would disqualify a person from being a councillor, for example, if the person is not entitled to be on the Council roll, is a Member of Parliament, is a member of a Council staff, is a bankrupt, or a person who has been disqualified from being a Councillor after a finding of gross misconduct by VCAT and the period of disqualification specified in the order made by VCAT has not expired.

Clause 34 of the Bill, which is similar to the provision under Section 67 of the current *Local Government Act*, provides an ouster from office procedure where the Minister, the Chief Municipal Inspector or a Council of which a particular Councillor is a member may apply to the Supreme Court for the ouster from the office of Councillor of any person whom the Minister, the Chief Municipal Inspector or the Council believes is declared elected or holds the office of Councillor contrary to the qualification/eligibility criteria.

CfG position: While the CfG supports these provisions it is interesting to contemplate the relationship between these provisions and the provisions in Part 7 of the Bill which refer to councillor conduct. In a case of councillor misconduct could the Minister, Chief Municipal

Inspector or a Council bypass the processes set out in Part 7 of the Bill and instead trigger action against a councillor 'holding office contrary to this Act' by applying to the Supreme Court?

5.7 Conduct of Councillors

Part 7 of the Bill includes provisions relating to: Improper Conduct, Conflict of Interest, Personal Interests Returns, Gifts, and Councillor Conduct.

Given the recent history of the Council of the City of Greater Geelong, this is an area which greatly interests the CfG and it is pleased to observe that Part 7 – a whole part of the Bill – is aptly entitled 'Council Integrity' where the issue of Councillor conduct has been treated quite comprehensively, and seemingly carefully programmed to protect the rights of the alleged offender (to comply with the Charter of Human Rights) but with sanctions and penalties that range from moderate to severe.

No doubt past inquiries into the Greater Geelong City Council have influenced the designers of the Bill to strengthen the provisions relating to councillor conduct.

Councils will be required to have a Code of Conduct prepared according to a set of principles set down in the Bill.

The internal and external processes for handling allegations of misconduct are comprehensive, starting with an internal review and proceeding on to a hearing by a Government appointed Councillor Conduct Panel and reviewed by VCAT. Councils are required to appoint a Councillor Conduct Officer, who must not be the CEO, whose role is to assist the Council with the implementation of the Code of Conduct and the internal resolution procedure. An external procedure is presided over by a Government appointed Principal Councillor Conduct Registrar who receives complaints and sets up panels to hear and rule on allegations of misconduct. Those councillors found guilty of misconduct can experience sanctions and penalties ranging from being required to make an apology, being ordered to undertake training and counselling through to being declared ineligible to hold higher office (Mayor/Deputy Mayor) and in worst cases suspension for a period of time.

The Minister has the power to recommend to the Governor in Council the suspension of a councillor or of an entire Council where there has been an identified, serious failure of good governance.

Definitions in the Bill describe a hierarchy of misconduct, ranging from misconduct, to gross misconduct to serious misconduct. Bullying is defined, conflict of interest is clarified and there is a provision that a councillor must not intentionally direct, or seek to direct, a member of Council staff.

Interestingly, there is no definition of sexual harassment, a matter that has surfaced with dramatic consequences in local government in recent times. Just as bullying is defined it is also vital to specifically include a definition of sexual harassment so that it could be included in Council Code of Conduct.

CfG position: The CfG agrees that more autonomy for Councils should be balanced by having an increased expectancy of councillors, both in terms of calibre and conduct, and reinforcing council integrity and requiring councils to give effect to the principles based governance framework should serve that expectancy.

The test for the new provisions will be whether instances of alleged misconduct can be acted upon expeditiously. Too often, and certainly in the case of Greater Geelong Council, matters of misconduct were allowed to develop and fester for far too long. The processes for handling these matters must be transparent, very accessible, easily triggered, investigated and judged without any undue delay.

While the comprehensive measures to deal with councillor misconduct are welcomed by the CfG, it is observed that a proposal advanced by the CfG that councillors be required to undertake extensive and ongoing training to optimise the chances of ‘good conduct’ has not been embraced. It could be argued that it is considered inappropriate to impose training given that everyone who is eligible to stand for, and sit on a Council, has a democratic right to do so. However, training for good conduct may serve as prevention, with penalties for misconduct viewed as a cure. In the absence of any requirement in the Act it is possible, and hoped, that the Municipal Association of Victoria will see merit in offering comprehensive training for councillors as a worthy part of its role ‘to build the capacity of Councils’.

6. CONCLUSION

Geelong needs strong civic, economic, social and environmental leadership to meet the complex challenges of an Australian economy in transition, and as Victoria’s second largest city facing its own particular issues.

Subject to the modifications suggested in this submission, the CfG believes that the draft Bill will enhance the ability of the Greater Geelong City Council to meet those leadership needs and challenges.

The draft Local Government Bill has advanced the local government system from previous legislation and, when implemented, should allow Councils to be much more responsive to current and future community needs and expectations, and provide a strong support network for future leaders at the local government level.

7. CONTACT DETAILS

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