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Closest to the People

Local Government Democracy and
Decision-making in Disaster

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VLGA
Victorian
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Summary

Key Points

This Policy Brief makes the following central points:

- (a) Even before the COVID-19 pandemic hit, the 2020 Victorian local government elections were already set to break new ground. With the entry into force of the Local Government Act 2020 and Gender Equality Act 2020, significant reforms to the local government sector were expected to be implemented alongside the election of over 600 councillors across Victoria.
- (b) The pandemic has added to the complexity of implementing these reforms and highlighted the democratic complexities of holding free and fair elections in an environment where the campaign activities of a majority of candidates are limited.
- (c) These challenges have both demonstrated the resilience and adaptability of local government and laid bare the need for greater resourcing for local government to effectively implement the reforms envisaged by new legislation.

Recommendations

This Policy Brief makes six recommendations and observations:

- (a) **Providing Adequate Resources:** As most Victorian councils rely on property rates and charges for 60-70% of income, there is little flexibility in budgets to further resource time critical responses to these new requirements under the Local Government Act 2020.
- (b) **Separating Reforms from Conduct of Elections:** Enacting several major legislative reforms shortly before elections are due to be held was a foreseeable complication – even without the added complexity of a pandemic. Ideally, future legislative changes of this magnitude would be more clearly separated from the conduct of elections.
- (c) **Understanding Difficult Prioritisation:** Faced with limited budgets, some councils have had to prioritise immediate economic recovery over the longer-term public health and civic ramifications of the successful implementation of the Gender Equality Act 2020.
- (d) **Improving Guidance on Election Deferrals:** Arguments over deferral seem to pose a ‘catch-22’, with both deferral and choosing not to defer elections potentially favouring incumbent candidates and limiting real democratic choice. Fuller guidance needs to be put in place to support decision-making on deferral in future crises.
- (e) **Addressing the Local Media Landscape:** Local media, long diminished by digitization, has been dealt a crushing blow by the pandemic as the loss of advertising revenue has seen many outlets move from print to digital format, or close down. Local news outlets contribute to dialogue on local democracy and greater attention is needed to remedial options.
- (f) **Impact on Aspirations and Diversity:** The COVID-19 pandemic has engendered a relative disconnect between candidates and the community, and quelled the civic aspirations of many, including members of diverse and minority communities.

Closest to the People

Local Government Democracy and Decision-making in Disaster

1. Introduction

Even before the COVID-19 pandemic began to disrupt Australian communities and decision-making, the 2020 Victorian local government elections were set to break new ground.

With the Local Government Act 2020 ('the Act') passing into law, significant reforms to the local government sector were expected to be implemented contemporaneously with the election of over 600 local government councillors across 76 (of 79) Victorian local government areas.

The added complication of the COVID-19 pandemic and associated disruptions of a public health disaster have highlighted the challenges for councils in implementing ambitious State Government reforms. It also highlighted the democratic complexities of holding free and fair elections in an environment where the campaign activities of a majority of candidates are limited.

Simultaneously the onset of the pandemic has again demonstrated the resilience and adaptability of local government. In particular regarding its capability to deliver routine and emergency services to communities at this time of particular need.

2. Local Government Act 2020

The Act received Royal Assent on 24 March 2020, bringing a host of new requirements and responsibilities for the local government sector. Described as 'the most ambitious reform to the local government sector in over 30 years', the Act aims to 'improve local government democracy, accountability and service delivery for all Victorians.'

Many of the reforms set out in the Act are required to be implemented by councils prior to this year's local government elections, including several mandated governance rules and policies, requiring councillors to pass a suite of significant policies only a few weeks before the start of the caretaker period (beginning at the opening of nominations on the 17 September 2020).

A number of reforms that fall under the remit of the Minister for Local Government have been implemented ahead of the local government elections. This included the transition of 8 Victorian councils from multi-member to single member ward structures (the default structure set out in the Act).

Victorian council income from rates and charges are capped by the legislation, generally in line with the Consumer Price Index (CPI). Therefore, any

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resourcing required as a consequence of legislated change must be met from within the current funding parameters of each council.

As most Victorian councils rely on property rates and charges for 60-70% of income, there is little flexibility in budgets to further resource time critical responses to these new requirements under the Local Government Act 2020.

3. Mandatory Candidate Training

Another significant reform contained in the Act is the requirement that all candidates complete a mandatory candidate training component prior to nominating for election. It is evident that the requirement for such training has been due to the failure of numerous current and former councillors to understand the scope or the conduct expectations of the role of an elected councillor.

There is a dearth of evidence directly supporting the notion that improved conduct and community outcomes will flow from the implementation of mandatory candidate training. That said, it is reasonable, in the view of the writer, to frame the mandatory candidate training as a well-intentioned attempt to positively influence conduct and outcomes without creating undue barriers for individuals seeking to nominate for office.

The notion that candidates who offer themselves for election (or nominate) for elected representative positions across all levels of government should be first required to complete some type of required pre-candidate training is, in

the view of the author, a concept that is worthy of further research and exploration. Particularly so in these times where public confidence and trust for our politicians is low and matters relating to the conduct of our public officials and questions of governance is an everyday discussion point.

A further purported impact of the mandatory candidate training relates to reducing the number of 'dummy' or illegitimate candidates. In particular, it was hoped that the reforms would avoid the scenario seen in [2016 at Wyndham City Council](#), with 95 candidates running for 11 council positions. Other measures, such as removal of candidate preferences from voter packs are aimed to further discouraging this practice.

The default model under the Act for this mandatory training was that it be undertaken face-to-face and delivered by councils from mid-July.

However, this proved impossible as COVID-19 restrictions were enforced and progressively tightened across Victorian municipalities. Instead, using powers afforded to the Minister under the Act, the mandatory training was adapted into an [online module hosted on the Local Government Victoria \(LGV\) website](#) and released on 18 August 2020 (two weeks after the announced release date).

The conduct of local government elections, including the associated caretaker provisions and integrity measures is an administratively complex and resource-hungry undertaking. Enacting several major legislative reforms shortly before elections are due to be held was a foreseeable complication – even without the added complexity of a pandemic.

A significant reform contained in the Local Government Act is the requirement that all candidates complete a mandatory candidate training component prior to nominating for election, due to the failure of numerous current and former councillors to understand the scope or the conduct expectations of the role of an elected councillor.

Ideally, future legislative changes of this magnitude would be more clearly separated from the conduct of elections.

4. Gender Equality Act 2020

The *Gender Equality Act 2020*, enacted on 25 February 2020, also has significant implications for Victoria's 79 local government areas. It requires Victorian public sector agencies including universities and councils to measure, report on, plan for and progress gender equality in their organisations. Importantly, the *Gender Equality Act* requires councils to consider gender equality not only in their workforce and at an executive level (in this case, elected representatives) but also in the policies, programs and services that they deliver.

Although the implementation of the *Gender Equality Act* does not begin until March 2021, many councils do not currently have gender equality and inclusion strategies, and potentially have not yet planned or resourced to accommodate requirements of the Act. In some cases, pandemic recovery and election preparation have, quite reasonably, taken precedence over the important aims and actions of the *Gender Equality Act*.

Councils operate with limited budgets in a rate-capped environment while attempting to provide relief and recovery efforts for ratepayers and residents. It is understandable (although unfortunate) that some have had to make the difficult decision to prioritise immediate economic recovery over the longer-term public health and civic ramifications of the successful implementation of the *Gender Equality Act*.

5. To Defer or Not to Defer

The Victorian Government has confirmed that local government elections will go ahead as planned on 24 October, with all elections held by postal vote.

This follows speculation from numerous media and stakeholder groups on whether elections would be deferred, with some calling for a 12-month deferral. In March, the NSW government postponed its local government elections which are held by attendance voting, for 12 months, moving them from 12 September 2020 to 4 September 2021. In contrast, Queensland held its local government elections on 28 March 2020, primarily by attendance voting.

The powers of the Minister for Local Government under s257(5) would have afforded the Minister the ability to delay the scheduled local government elections 'to another Saturday as nearest as possible to that election day', whatever time that may mean. However, it is evident that as any deferral lengthened, so too would the consequential complexities, including the likelihood of a requirement that the parliament reconvene to pass consequential legislation.

6. Impacts of a Delay on the Conduct of Elections

There are also significant governance ramifications for the deferral of a local government elections. Most significantly, current councillors are elected for a four-year term ending on 24 October 2020. It is arguable that beyond that date there is no mandate for those councillors.

Practically, an early task for any newly elected Council is to commence the drafting, consultation

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and adoption of strategic documents, including the Council Plan. This work will drive the activities of the organisation over the ensuing four years. Without the mandate described above, any authorities for a council that is 'holding over' beyond 24 October beyond some form of 'caretaker' arrangement would appear to be problematic.

There is also the uncertainty of managing any vacancies that may occur on councils through such an extended period, given that it would be clearly impractical to conduct an extraordinary election (if required) at a time where it is not possible to hold a general election due to the pandemic.

At many points, the arguments over deferral seem to pose a 'catch-22'. For the elections to go ahead during a pandemic and limited campaigning capacity might favour incumbent councillors as discussed below. Equally, a deferral of up to 12 months would extend the term of incumbent councillors, giving them continued profile and decision-making power and taking away the community's opportunity to have their say on their elected representatives in that time.

The Act makes no reference to an election being 'free and fair'. What it does say in s257(5) is that the Minister would need to be satisfied that the 'event or circumstance could adversely affect the conduct of the general election'.

This would certainly include advice from the Victorian Electoral Commission regarding its likely capacity to conduct the election in a manner which is safe to voters and staff, and to maintain the trust of communities. It may also include the extent to which candidates are afforded the opportunity to put their candidacy before the community, noting that many have been actively campaigning for several months.

There is no doubt that campaigning activities have been curtailed at this time. For Victorians under stage 4 restrictions, campaigning has effectively been limited to what can be done from the confines of their own homes.

From the 14 September, candidates in the Greater Metropolitan area will also be able to distribute flyers and posters during their 2 hours of allotted exercise time; following safe hand hygiene and other social distancing measures.

However public policy decisions do require consideration of the full range of issues, as is

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necessary in a healthy democracy. Ultimately it is most important that decision-makers consider those issues thoughtfully and with a watchful eye on that intangible good that we call public interest.

Although the official 'campaign period' only begins on the 17 September, for many candidates, the campaign has been underway for several months. There was continued uncertainty fed by media speculation, interest-group advocacy and lack of clear advice from government. This uncertainty related to issues including whether elections were proceeding, how they would proceed in a COVID-safe manner, and how candidates could effectively campaign in line with changing restrictions.

7. The Local Media Landscape

The digitisation of the media landscape over recent years has come at a significant cost to local democracy. Regional and local outlets have long relied on local government as a source of content. Indeed, the conflict-laden issues that inevitably attach to a local council are well-suited to the needs of local press.

In recent years staffing levels at local media outlets have been shrinking, which has had a consequence for the quality of news and the level of public scrutiny to which each council is subjected. This has been dealt a crushing blow by the coronavirus as the loss of advertising revenue has seen many outlets move from print to digital format, or close down.

Over that time, long-term council personnel report that the extent of serious interrogation of council releases and publications has diminished. The local media outlets are driven by a need for copy and often not resourced to undertake follow-up. As a consequence, it is more likely that that councils and councillors fly 'under the radar'. Despite the inconvenience of media attention,

there is no doubt that local news outlets contribute to dialogue on local democracy and we are all the poorer for its absence.

8. Further Impacts of Covid-19

The pandemic has arrived at a time where a range of programs intended to raise awareness and support a diversity of candidates have been conducted by government and numerous community agencies, including the Victorian Local Governance Association (VLGA).

The position of the VLGA is that the community level of government will best meet its remit when its membership best reflects the make-up of community. Going further, the inclusion of diversity in a decision-making body such as a council is an effective tool in avoiding blind-spots.

In that context the impacts of the pandemic have quelled the civic aspirations of many, including members of diverse and minority communities, as:

- the economy has suffered, meaning the attention of many has shifted from higher-order aspiration to more essential human needs;
- media reach has been curtailed, impacting even inexpensive campaign tools such as letters to the editor and human-interest stories;
- letterboxing and hand-out of leaflets has been prevented; and
- opportunities to interact with community have been severely curtailed.

This has required less-well known candidates to act early, and to be particularly creative. So there has been an obvious emphasis on the potential reach of social media outlets at a time where more traditional media has not been available.

Returning to our heading, 'Closest to the People', we have seen a relative disconnect between candidates and the community because of this COVID-19 isolation. Some candidates have acted early, used technology and tapped into community networks. Others, for a variety of reasons, have been less able to do so.

At its heart local democracy and best outcomes for community rely on participation of candidates and voters, armed with an understanding of the role of the elected councillor and the attributes necessary to fulfill that role effectively.

For a variety of reasons, including those described above, the capacity of our communities to so engage will be compromised in 2020. To the extent that diversity is adversely impacted, that represents an opportunity lost.

So the VLGA will continue its efforts to work with a range of stakeholders promote awareness and practice of good local governance for the 2020 local government elections and beyond. This is a once in four-year opportunity.

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Fig 1 The Victorian Local Governance Association

The Victorian Local Governance Association (VLGA) is an independent organisation supporting councils and councillors in good governance. The VLGA provides opportunities for councillor networking, professional development and information exchange and actively engages with key policymakers and broader stakeholders to inform, influence and lead the conversations that determine the priorities for the local government sector in Victoria. All councillors and staff at a VLGA Member Council are able to access the organisation's programs and services.

<https://www.vlga.org.au/>



References

Note: The references below are provided as hyperlinks within the text.

- 1 [PREMIER OF VICTORIA](#), 'Local Government Elections To Go Ahead In October' (19 August 2020).
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- 3 [VICTORIA STATE GOVERNMENT](#), 'Updated Safe Campaigning Guidelines: Metropolitan Melbourne' (September 2020).
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- 5 [VICTORIA STATE GOVERNMENT](#), 'Local Government Act 2020' (page last updated: 13 August 2020).
- 6 [VICTORIA STATE GOVERNMENT](#), 'Electoral structure changes for 2020' (page last updated: 8 May 2020).
- 7 [VICTORIA STATE GOVERNMENT](#), Protecting integrity: Investigation into 2016 Wyndham City Council election (November 2017).

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Governing During Crises is a research theme established by the School of Government at the University of Melbourne. The series seeks to develop our understanding of governing in the face of different types of crisis, at a time when Australia has recently faced the bushfire crisis, is currently addressing the COVID-19 pandemic, and faces even larger and longer-term challenges including climate change.

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Author

Kathryn Arndt is the CEO of the Victorian Local Governance Association (VLGA). The VLGA is a high profile independent (NGO) governance organisation supporting councils and councillors in effective local governance. As a peak body, the VLGA supports the local government sector through leadership, advocacy and professional development.

Kathryn currently sits on the boards of Diabetes Victoria and is Company Secretary of the Royal Melbourne Tennis Club. Kathryn is a member of the Welcoming Cities Advisory Committee and was a member of the inaugural Victorian Ministerial Council on Women's Equality which concluded its term in mid-2020. In her capacity as CEO of the VLGA, Kathryn sits on the Women's Roundtable for Local Government chaired by the Minister for Local Government and Minister for Women.

Kathryn has a track record in leading teams and delivering success working at a senior and high profile level in the Victorian local government sector; with a demonstrable ability to quickly grasp the issues facing a sector with multiple stakeholders and the legislated responsibility to provide oversight and governance to, and the delivery of, critical services on behalf of state and federal government to Victorian communities.

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