

Submission Template

Local Government Bill – Exposure Draft

Name	Dr Stephen Morey
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If you work in an organisation or council, please provide the following information:

Organisation or council name	Proportional Representation Society of Australia (Victoria-Tasmania) Inc.
Position	President
Are you providing this submission on behalf of the organisation or council?	Yes

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 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?
12(1)	Do not support.	<p>Substitute '15' for '12' in Sub-clause 12(1).</p> <p>Direction 34 of 'Act for the Future – Directions for a New Local Government Act' explained well the MAV's argument for giving governments the flexibility to have a future large Council of 15 members, as is possible in adjoining mainland States. Fifteen is a much better upper limit, as it enables, but does not require, the excellent patterns of either five 3-councillor wards, or three 5-councillor wards.</p>	<p>It is disappointing that an updating of the Act does not, as was initially suggested in Direction 34 of 'Act for the Future – Directions for a New Local Government Act', provide for future governments to enable Councils - given the rapid rise in many municipal populations – to have as many councillors as New South Wales and South Australia can, without having to resort to <i>ad hoc</i> amendments to the Act.</p>
12(4)(b)	Do not support.	<p>Change '... equal number of councillors ...' to read, '... equal odd number of councillors ...'.</p> <p>This change is to be consistent with the change sought for Sub-clause 14(1)(e) below.</p>	

<p><u>12(4)(c)</u></p> <p>Shown wrongly as 12(4)(b) in the exposure draft.</p>	<p>Do not support.</p>	<p>Omit Sub-clause 12(4)(c).</p> <p>Single-councillor wards - unlike multi-member electoral districts with PR-STV – can, and do, deny reasonable democratic representation for almost half the voters per ward.</p> <p>Such hegemonic wards, which were not available until <i>ad hoc</i> amendments were made to the Principal Act in the 1990s, should not be available as an option if the percentage of votes in a ward that makes a difference in actually electing voters’ preferred candidates is to be increased to at least the 75% achievable in 3-councillor wards.</p>	<p>Until single-councillor wards were introduced in Victoria in the 1990s, they had only existed in certain municipalities in Queensland, which is not a State noted for the quality of its electoral arrangements.</p> <p>It is notable that none of the other States or the Northern Territory has single-councillor wards, although the former City of Botany Bay in New South Wales briefly had such wards before it was amalgamated with the City of Rockdale, to become Bayside Council. That former City was notorious for its continuous <i>winner-take-all</i> domination by councillors endorsed by the same political party since 1938, which included having, as its second-last Mayor, the same person for 31 years.</p>
<p><u>14(1)(e)</u></p>	<p>Do not support.</p>	<p>Change 14(1)(e) to read, ‘specify or alter the number of Councillors to be elected for each ward of the municipal district of the Council, <i>except that number must be the same odd number for each ward</i>’.</p> <p>The change is to ensure parity between all the wards, and to avoid ‘stalemate’ wards, which result from having an even number of councillors in a ward, where half the councillors can be elected by as many as 66.7% of the votes, with the other half elected by as few as 33.3% of the votes, yet in a polarized vote in the Council the vote of half such ward councillors can exactly cancel that of the other half.</p>	<p>See comment on the importance, for electoral equality, of parity, and not disparity, between all the wards, at www.prsa.org.au/2014-06-25_parity_among_wards_in_municipality.pdf</p> <p>See comment on the disadvantage of having an even number of positions to be filled in a proportional representation election at www.prsa.org.au/odd_even.htm - even</p>
<p><u>25</u></p>	<p>Support.</p>	<p>-</p>	<p>It is a good feature of the Bill that it ends the failed experiment of establishing a popularly-elected Mayor for Greater Geelong, and does not attempt to extend it to other Councils. If popularly-elected Mayors and Deputy Mayors were to be legislated for, Tasmania’s much superior practice, at www.prsa.org.au/history.htm#TAS_municipal_in, ought apply.</p>

<u>26</u>	Support.	-	
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<u>27</u>	Support.	-	If the election of Mayor and Deputy Mayor by the Council were not to apply, Tasmania's much superior practice for that, at www.prsa.org.au/history.htm#TAS_municipal_in ought to apply.
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Do you have any overall comments on Part 2 of the Exposure Draft Bill?

No, but this whole document may be accessed at www.prsa.org.au/2018-02_submission_template_exposure_draft_bill_prsavt.docx

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?
59(4)(d) and 59(5)	Do not support.	Omit Sub-clauses 59(4)(d) and 59(5). Omitting those sub-clauses would remove the undemocratic device of empowering a presiding officer to deem a motion that lacks a majority of votes to be carried. Imposition of a casting vote <ul style="list-style-type: none">• privileges one councillor over all the others,• is contrary to common law, and• is contrary to practice in all Australia's legislative chambers and in local government in South Australia and Tasmania.	See the comment at www.prsa.org.au/history.htm - VIC_municipal_unlike
60(4)	Do not support.	Substitute for Sub-clause 60(4), 'Section 59 applies to a joint meeting as if it were a Council meeting'. Substituting this shorter expression would be appropriate if Clause 59 is altered as advocated above.	

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

No

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?
272	Do not support.	Omit Sub-clauses (6) and (7). Those sub-clauses should be omitted as they conflict with the case that PRSAV-T Inc. makes for Clause 299 below, which is that the proposed new method for filling casual vacancies by a total recount of the general election in respect of the ward or wards in question not be introduced, and that the present countback procedure remain in force.	
278	Support.	-	This requirement for maximizing the equality of effectiveness among voters in a municipality is strongly supported, but it is wrongly undermined by Clause 59 , which provides that a presiding officer can have a second vote, thereby deeming a motion that fails to win majority support to be a resolution, and thus possibly reversing what would have resulted from a vote where all councillors were equal in voting power.

<p>283</p>	<p>Do not support.</p>	<p>Clause 283 should be altered so that its requirement for a formal ballot provides, at the very least, for partial optional marking of preferences, instead of the full marking of preferences proposed.</p> <p>The proposal for full marking of preferences is inconsistent with the provision in the two other electoral systems that Victorians are required to use, that for the Legislative Council, and the recently-changed Senate provision, for partial optional marking of preferences, and is thus likely to keep confusing voters and maintaining an unnecessarily high incidence of informal ballots.</p> <p>The proposal goes against Direction 38 of 'Act for the Future – Directions for a New Local Government Act', which proposed partial optional preferential marking of preferences, and that Direction 38 actually stated that this reform would be consistent with the formality rules for marking of preferences for Legislative Council elections.</p>	<p>Direction 38 also quoted the Victorian Electoral Commission as having stated, 'Under the full preferential voting system, where voters are required to mark a preference for every candidate listed on the ballot paper, elections with a large number of candidates show a marked increase in informality. Other voting systems may reduce this risk, such as partial preferential voting where voters are required to mark candidates for at least as many candidates as there are vacancies in the election.'</p> <p>Requiring an open-ended number of preferences to be marked is a consequence of mandatory full marking of preferences, whereas a defined number equal to the number of vacancies poses a predictable, manageable task for voters, with a readily understandable rationale.</p> <p>The number of possible ways of ordering n candidates is the factorial of n [$n!$], which balloons at an astronomical rate as n increases. If there are 3 positions to be filled, but 9 candidates, $n!$ is 6 if only 3 preferences are mandatory, but is 362,880 if 9 preferences have to be marked.</p> <p>Victorian Electoral Commission data show a mean of up to 6 candidates per seat in metropolitan councils, so in a typical 3-councillor ward there, one could expect the number of candidates to often exceed 20. It is rather daunting for voters that 20! exceeds 2 sextillion possible voting orders i.e. 2,432,902,008,176,640,000 voting orders to choose from.</p>
<p>287</p>	<p>Do not support.</p>	<p>Omit Clause 287.</p> <p>As shown under Sub-clause 12(4)(c) above, single-councillor wards are opposed, as they minimize the representation of voters to the greatest degree of the options proposed.</p>	

<p><u>288</u></p>	<p>Support.</p>	<p>There is no objection to this Clause, but it, and Division 6, would not be necessary if Clause 287 is omitted, as advocated above.</p>	
<p><u>289</u></p>	<p>Do not support.</p>	<p>Substitute for Clause 289 the wording of <u>Schedule 1</u> of the <i>Electoral Act 1907</i> of Western Australia.</p> <p>Clause 289 prescribes for the transfer of surplus votes other than those arising from first preferences the <u>Unweighted Inclusive Gregory Transfer</u> method, which transfers such votes at inequitable transfer values. That injustice should be removed by substituting for Clause 289 the much superior <u>Weighted Inclusive Gregory Transfer</u> method that is set out in the above Schedule and has operated fairly since it was introduced <u>in 2006</u> following research commissioned by the Western Australian Electoral Commission.</p>	<p>The PRSA first raised with Senator Alan Missen the significant problem with the Unweighted Inclusive Gregory Transfer when it was introduced for Senate elections, and he referred to that in the Senate debate in <u>1983</u>.</p> <p>Worked examples in Table 1 on Page 1 of a <u>2014 PRSA submission</u> to the Federal Parliament’s Joint Standing Committee on Electoral Matters elucidated the case for adopting the Weighted Inclusive Gregory Transfer method by comparing its operation with that of the Unweighted and Original versions of the Gregory Transfer.</p>

<p>299</p>	<p>Do not support.</p>	<p>Clause 299 should be altered so its requirement for a total recount of all ballots for the filling of a casual vacancy is replaced by a requirement for a countback of the quota of votes that elected the vacating candidate, as specified in Schedule 3A of the existing Local Government Act 1989.</p> <p>The existing method in that Schedule 3A is essentially the same as the method used since last century to fill casual vacancies in Tasmanian municipal councils and House of Assembly, and in the Legislative Assembly of the Australian Capital Territory. Its rationale is that it ensures that the ballots that are re-examined to determine who should fill the casual vacancy are confined to the very same ballots that provided the single quota of votes that elected the vacating candidate.</p> <p>The proposed replacement of the existing countback method by a full recount method is quite faulty as it would allow ballots and votes that were insufficient to justify representation at the general election to unjustifiably have a role in deciding who filled the vacancy. That intrusion of sub-quota votes could introduce an unpredictable element into the outcome in that it could alter the balance of opinion and direction on a Council as the result of an arbitrary event such as a councillor's death or other departure from office. It would also create on a Council a second category of councillor that was not elected solely based on ballots that provided a single quota of votes cast at the preceding general election.</p>	<p>See why the Bill's recount method is inferior to the existing countback method at www.prsa.org.au/casu_vac.htm - total</p> <p>An obvious weakness in the proposed recount method is the need, which does not occur with the present countback method, for the savings provision of the Sub-clause 299(5), which reads, '<i>A countback under this section does not affect the election of a previously elected candidate</i>'. The existence of that Sub-clause 299(5) will have full legal effect, but it, and the need for it, which does not exist with the well-established and proven countback system, will not fully dispel many citizens' lingering concerns that a recount - unlike the established countback - involves extraneous votes from more than a single quota being anomalously included in the recount, and could seem to delegitimize an existing elected councillor's position.</p> <p>Clause 299 is the most retrograde provision in the Bill. See PRSA comment on Direction 39 refuting misguided claims of 'greater representation' etc.</p>
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Do you have any overall comments on Part 9 of the Exposure Draft Bill?

Yes.

The Bill should also require [Robson Rotation](#), which is the printing of ballot papers with different prescribed orders of candidates' names so that each

candidate's name has an equal incidence of occurrence at a particular place down the single column of all candidates' names. Robson Rotation is prescribed, in accordance with Section 288(2) of Tasmania's Local Government Act 1993, by Clause 18 of [Local Government \(General\) Regulations 2015](#).

Part 11: Consequential amendments and repeals

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?
343	Support	As stated above for Clause 25, the placing of the City of Greater Geelong under essentially the same rules as the bulk of Victoria's municipalities is commendable, particularly given the recent history of its operation.	
347	Support	<p>The Bill would commendably, for Section 6(1)(c) of the City of Melbourne Act 2001, substitute—</p> <p style="text-align: center;">"(c) 9 Councillors."</p> <p>The greatest value of the extra two councillors is its dilution of the undue voting power in the Council of the non-proportionally elected Lord Mayor and Deputy Lord Mayor (<i>because of the quite undemocratic joint nomination imposition, the latter is also essentially an unelected councillor</i>).</p>	
348	Support	This provision, which applies the same rules in this case as apply to other Victorian municipalities, is supported.	
351	Do not support.	The PRSAV-T Inc. does not support a corporation being entitled to more than one vote.	

356	Support	This provision, which applies the same rules in this case as apply to other Victorian municipalities, is supported.	
359	Do not support.	<p>Clause 359 should be rewritten to discontinue the undemocratic device of joint nomination of Lord Mayor and Deputy Lord Mayor, which removes the power of either the citizens or the Council to directly elect the Lord Mayor or the Deputy Lord Mayor, as this extraordinary device prevents, for no good reason, either the citizens or the Council from voting directly for either position individually. In practice the Deputy Lord Mayor is nominated by the successful candidate for Lord Mayor, and is a <i>de facto</i> unelected councillor.</p> <p>The present device has not improved upon the previous system of electing such officers, and it certainly dilutes the proportionality of the Council in relation to the votes cast by its citizens.</p> <p>Clause 359 should provide for the same procedure as applies for Victoria's other municipalities.</p>	

Do you have any overall comments on Part 11 of the Exposure Draft Bill?

Yes. The Bill should also provide for the election of the Lord Mayor, Deputy Lord Mayor and the Councillors of the City of Melbourne in exactly the same way as is proposed for all of Victoria's other municipal councils, by discontinuing the present popular, but indirect, [election](#) of the Lord Mayor and Deputy Lord Mayor, any *above-the-line* voting option for councillors, and the grouping of candidates in columns by their mutual consent, although the Lord Mayor and Deputy Lord Mayor could instead be elected separately, directly and popularly if the [far superior and democratic procedure](#) specified in Tasmania's Local Government Act 1993 were to apply.