

7.10 MAV Rules Review Discussion Paper 2021-22 Submission

Executive Summary

Purpose

This report seeks the adoption of a Council position on the matters raised in the MAV Rules review discussion paper via endorsement of a proposed response. The response will be submitted to the MAV Board to inform the Rule change directions paper.

Background

The Municipal Association of Victoria (MAV) State Council adopted a resolution on 21 May 2021 to refer a proposal to the MAV Board for a full MAV Rules of Association (the Rules) review.

The MAV Board has released a discussion paper signalling the commencement of a deliberative engagement process to inform the review of the Rules and have encouraged participating member Councils to provide a response.

Key Issues

A summary of matters raised in the MAV Rules review discussion paper and proposed Council submission is tabled at **Attachment 1**.

Next Steps

The proposed Council response will be provided to the MAV in the form of a submission.

The MAV Board will consider feedback received on the discussion paper and prepare a Rule change directions paper, providing further opportunity for Council feedback during April 2022 prior to consideration and endorsement of the proposed direction for the draft Rules.

Any changes to the Rules will be determined by State Council where 60 per cent of MAV Representatives must vote in favour of any proposed amendments.

The Governor in Council must also approve the changes.

Officers' recommendation

That Council resolve to endorse the proposed MAV Rules review discussion paper response tabled at **Attachment 1** to be put forward to the MAV Board.

Responsible director: Phillip Storer, Chief Executive Officer

1. Purpose

This report seeks the adoption of a Council position on the matters raised in the MAV Rules review discussion paper via endorsement of a proposed response. The response will be submitted to the MAV Board to inform the Rule change directions paper.

2. Policy implications and relevance to community plan and council plan

The matters raised in this report are consistent with the following themes and strategies in the Council Plan 2021-25 and the Boroondara Community Plan 2021-31:

- Strategic Objective 7 - Ensure decisions are financially and socially responsible through transparent and ethical processes.
- Strategy 7.5: The community's interests are represented by the Council, through leadership and strong advocacy to external stakeholders.

3. Background

The Municipal Association of Victoria (MAV) State Council adopted a resolution on 21 May 2021 to refer a proposal to the MAV Board for a full MAV Rules of Association (the Rules) review.

The MAV's current Rules were approved 5 February 2013. This review will be the first comprehensive Rules review undertaken since 2006.

The MAV Board has released a discussion Paper signalling the commencement of a deliberative engagement process to inform the review of the Rules and have encouraged participating member Councils to provide a response, by adopting a position on the matters raised in the discussion paper, by Council resolution.

The MAV Board will then consider and endorse the proposed direction for the draft Rules.

Any changes to the Rules will be determined by State Council where 60 per cent of MAV Representatives must vote in favour of any proposed amendments.

The Governor in Council must also approve the changes.

The MAV Board has appointed Mr. Phil Shanahan as the consultant to conduct the review and, Capire Consulting Group, to oversee the engagement activities which will inform the review.

Mr. Mark Hayes, Partner Public Law at Maddocks Lawyers, has been engaged to provide advice regarding the project and the drafting of the new Rules.

4. Outline of key issues/options

A summary of matters raised in the MAV Rules review discussion paper and proposed Council submission is tabled at **Attachment 1**.

The Municipal Association of Victoria (MAV) Rules Review 2021-22 discussion paper is provided at **Attachment 2**.

The current Municipal Association of Victoria (MAV) Rules 2013 are provided at **Attachment 3**.

5. Consultation/communication

Council is a key stakeholder in the MAV Rules engagement process. Other key stakeholders involved in the review include MAV Representatives, member Councils, Mayors, CEOs, Minister for Local Government, Local Government Victoria and Department of Jobs, Precincts and Regions, Australian Local Government Association, state associations, the Victorian Electoral Commission, the Victorian Auditor-General's Office, other relevant state government departments and agencies.

6. Financial and resource implications

Preparation of the Council submission has been funded through the Council operating budget.

7. Governance issues

Officers involved in the preparation of this report have no general or material conflict of interest requiring disclosure.

The report and proposed actions contained in this report are compatible with the *Charter of Human Rights and Responsibilities 2006* as it does not raise any human rights issues.

8. Social and environmental issues

Council's submission supports the continuous improvement and effectiveness of the MAV, thereby assisting Council in meeting its social and environmental objectives.

Manager: **Adele Thyer, Acting Manager Governance and Legal**

1. Attachment 1 - City of Boroondara - MAV Rules Review 2021-22 [7.10.1 - 16 pages]
2. Attachment 2 - MAV Discussion Paper MAV Rules Review 2021-22 [7.10.2 - 20 pages]
3. Attachment 3 - MAV Rules 2013 [7.10.3 - 28 pages]

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Attachment 1

Submission in response to the Municipal Association of Victoria Rules Review - Discussion Paper 2021-22

Area of Review	Questions	Response
<p>Principles that might guide revised Rules</p> <p>A strong sector leader - highly influential, strongly supported by its participating Councils and respected across a wide constituency</p> <p>Modern and Contemporary- an adopter of best practice and nimble and agile in the way it can respond and adjust to change and opportunity.</p> <p>Credible - well informed, highly skilled, and capable of arguing complex issues with rigour, persuasion, and timely data.</p> <p>Well Governed - seek high performance, be highly accountable to its members and set a shining example of ethical practice</p>	<p>1. Do you think these principles are the right ones to guide Rule changes?</p>	<p>Establishing appropriate principles to support Rule changes can help to establish their final strength. The principles supporting Rule changes should reflect the Association's function and purpose and should be "<i>focused on what the MAV does</i>".</p> <p>The MAV's Strategy for 2021-25 describes its function and purpose as follows: "The MAV's purpose is to advance the interests of local government in Victoria. First through <i>advocacy and policy development</i> and secondly, through providing <i>member-focussed services</i>".</p> <p>Our <i>advocacy and policy development</i> is focussed on:</p> <ul style="list-style-type: none"> • influencing decision-makers with informed data-driven and realistic policy positions • highlighting future opportunities and challenges facing Councils and communities • leveraging local government's expertise to inform our advocacy activities • developing relationships with stakeholders to build understanding of local government • collaborating with governments to shape new initiatives and reform programs. <p>We <i>deliver services to our members</i> focussed on:</p> <ul style="list-style-type: none"> • building the capacity and capability of the local government sector • offering commercial services and programs that meet Council needs • highlighting best practice and sharing knowledge from across Victoria and nationally • engaging with member Councils on emerging needs in relation to procurement and insurance services.

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Area of Review	Questions	Response
		<p>Pursuant to the existing <i>Municipal Association of Victoria Rules</i> 2013 (the Rules) the objectives of the Association are to:</p> <ul style="list-style-type: none"> 1.1.1 promote local government and improve community awareness of the capacity of local government throughout Victoria to act effectively and responsibly. 1.1.2 promote through its advocacy role appropriate powers, functions and responsibilities for local government having regard to the individual needs and characteristics of its individual members. 1.1.3 act as the representative body of local government for the purpose of promoting effective inter-government co-operation. 1.1.4 strengthen the Association's leadership role in local government in Victoria by focusing on: <ul style="list-style-type: none"> 1.1.4.1 targeted advocacy to Government's and relevant organisations; 1.1.4.2 continually improving systems for effective member liaison, communication, and participation. 1.1.5 identify the administrative requirements relating to various matters under the Municipal Association Act 1907 including provisions that: <ul style="list-style-type: none"> 1.1.5.1 establish the management of the Association. 1.1.5.2 provide mechanisms for participation by members. 1.1.5.3 regulate its proceedings. 1.1.5.4 fix subscriptions. 1.1.5.5 regulate and manage the Municipal Officers Fidelity Guarantee Fund; and 1.1.5.6 generally provide for all matters affecting the management of the Association. <p>Officers agree the Rules should reflect the MAV's function and purpose and therefore suggest the current rules which describe the MAV's function and purpose are outdated and should be updated to align with the current MAV Strategy 2021-25.</p>

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Area of Review	Questions	Response
		<p>MAV has suggested the following principles should guide the Rules review:</p> <ul style="list-style-type: none"> • A strong sector leader • Modern and Contemporary • Credible • Well Governed <p>Officers suggest, to better align the principles with the MAV Strategy, an additional principle incorporating '<i>Service Performance and Responsiveness</i>' to members (similar to the principles-based approach of the <i>Local Government Act 2020</i>) which focuses on the following measurable services-based outcomes when considering Rule changes:</p> <ul style="list-style-type: none"> • the delivery and offering of member services which meet Local Government needs as advised through regular consultation with the sector on a range of issues. • highlighting best practice and sharing knowledge from across Victoria and nationally. • engaging with member Councils on emerging needs in relation to procurement and insurance services. • building the capacity and capability of the local government sector. <p>Officers also suggest the MAV Rules would be enhanced by more explicitly outlining the advocacy role played by the MAV particularly in an environment where limitations on revenue raising are imposed by rate capping.</p> <p>The discussion paper distributed by the MAV is silent on whether one of MAV's performance indicators includes no further increases in cost shifting in the delivery of Victorian and Australian Government's services.</p>

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	2. Is the focus of this Discussion Paper on new Rules which enable the MAV to be more effective the right focus?	<p>The MAV has suggested the new Rules “<i>should focus on improving the effectiveness and responsiveness of MAV in addition to improving sector capability and good governance</i>”. This is not debated.</p> <p>Organisational and Board effectiveness is considered a standard and core component of contemporary standards of good governance practices and is pervasive across the organisation’s core governance functions including roles and responsibilities, managing conflicts of interest, organisational culture, stakeholder engagement and risk management. For a Board to be effective it must take a thoughtful, disciplined, and professional approach to its work. This can be achieved through careful forward planning of board business, efficient operation of board meetings, regular performance assessments and effective chair arrangements.</p> <p>An audit completed by the Victorian Auditor-General’s Office (VAGO) in 2015 titled ‘<u>Effectiveness</u> of Support for Local Government’ assessed the <u>effectiveness</u>, efficiency and economy of the support provided to Councils by the Municipal Association of Victoria (MAV). VAGO criticised the MAV stating:</p> <p>“...the MAV has established methods for identifying Council support needs. However, except in a few instances...they are unable to demonstrate whether their support activities are contributing to the <u>effective</u> and efficient operation of Councils...Legislative and broader governance arrangements compromise the <u>effectiveness</u>, efficiency, and economy of support to Councils. MAV is not subject to the range of legislation that applies to many other public sector entities. Weaknesses in MAV’s procurement practices also bring into question whether MAV’s support activities provide Councils with value for money. While MAV has some external accountability requirements, there has been little or no independent scrutiny of its activities. In particular, their monitoring, evaluation and reporting on support activities is not sufficient to provide assurance that intended outcomes are being achieved.”</p> <p>As noted above, and highlighted by VAGO in their Audit, the implementation monitoring, evaluation and reporting on the principles of ‘Service Performance and Responsiveness’ enabling the MAV to be more effective is supported by Officers.</p>

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Area of Review	Questions	Response
Rules affecting the office of the MAV President	1. Do the current MAV Rules sufficiently support the office of the President?	The MAV President's role is critical to the success of the MAV. The current MAV Rules do not sufficiently support the office of the President and may benefit from revision. For example, the Rules should formalise the role and function of the MAV President (it is acknowledged these Roles and responsibilities are presently set out in the MAV Protocols).
	2. Is it important those who nominate for the office of MAV President are, at the time of the election, their Council's nominated MAV Representative?	The current Rules require a Councillor can only nominate for the office of MAV President if they are the current nominated representative for their Council. This Rule ensures the President of the MAV is drawn from the nominated representatives of the participating member Councils. This is a conventional approach to a member-based organisation and is supported by Officers. In contrast, a proposal submitted to the May 2021 State Council sought to remove the requirement that the MAV President always be a nominated Council representative. It would have enabled a President or Interim President who was not a nominated Council representative to nominate for the office of President.
	3. Would changing the qualification required to contest an election for the office of MAV President, by simply requiring a candidate be an elected Councillor at a participating member council, provide an overall benefit to the MAV?	There is an argument which suggests the role of President could be filled by any Victorian Councillor from a participating member Council at the time of the election. The thinking behind this idea revolves around providing a wider range of capable people from which to choose. Presidential elections where any sitting Councillor from a participating member Council could nominate would attract larger candidate fields. This approach is supported by organised political parties. On the other hand, an elected President who was not nominated as a Council's MAV Representative might create questions around the unity of the particular Council. Furthermore, larger numbers of Presidential candidates seems like an unwanted, unintended consequence. On balance, it appears the current practice of nominating for office as the current nominated representative is the most logical approach supported by Officers. Ideally, Councils select representatives who they believe have the capacity to become President or a Board member should the opportunity arise. Therefore, existing arrangements should be retained as long as the representative model for Board membership is retained.

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	<p>4. Would a four-year Presidential term better enable the President to make a more significant impact on the organisation and the sector?</p> <p>5. Would a cap on sequential terms in office for the MAV President provide opportunities for new ideas and a renewal focus?</p> <p>6. Should future Rules provide that a casual vacancy is declared in the office of the President if the council on which the President is a sitting Councillor becomes a non-participating member of the MAV?</p>	<p>The current Presidential term is two years. Officers suggest this is retained. This is particularly important in circumstances where the president is politically aligned, the result of which may be to compromise the degree to which strong advocacy is pursued on behalf of the sector.</p> <p>A cap on the number of consecutive terms is not currently provided for in the Rules. Restricting a President to a maximum number of consecutive terms would be in the interests of contemporary practice and is supported by Officers. Some organisations restrict consecutive terms but do allow for multiple terms with a prescribed gap in-between.</p> <p>The current Rules allow a casual vacancy in the office of MAV President where the President:</p> <ul style="list-style-type: none"> • dies • resigns, or • ceases to be a Councillor. <p>However, the Rules are presently unclear if a casual vacancy occurs if the Council, on which the President is a sitting Councillor, ceases to be a participating member Council of the MAV.</p> <p>In 2017 and 2018, the MAV found itself in the Victorian Supreme Court contesting issues around who could nominate for President and the impact of a Council, where the President was a sitting Councillor, withdrawing from the MAV.</p> <p>Justice Ginnane pointed to the inadequacies of the Rules in this regard. <i>"... While I accept that the court should attempt to avoid anomalous, absurd, or unreasonable interpretations, the MAV Rules may create anomalies whichever interpretation is adopted and which cannot be avoided whichever interpretation"</i></p>

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		<p><i>is adopted...The above analysis suggests that the MAV Rules have been amended from time to time without regard to the effect of the amendments on other parts of the rules. The rules might benefit from a revision."</i></p> <p>It is considered it would be difficult to support a Rule where a President, who is a Councillor at a non-participating Council, could complete their term in office. Therefore, if a Council withdraws its membership, it is considered their representative should immediately resign any position they hold as the councillor only has that role based upon the will of the very Council which has subsequently chosen to withdraw.</p> <p>Officers support Rule changes which remove ambiguity and provide clarity on the above.</p>
Rules affecting the MAV Board	<p>1. Would electing Board members "at large" and equally from the rural and metropolitan areas enable the MAV Board to place less emphasis on a representative role and provide more focus on addressing the MAV's strategic priorities in a conventional board fashion?</p>	<p>Current "representative Board" membership consists of 12 Councillor's elected from "regional groupings". The strength of the current "regional groupings" Rule is it ensures a geographic distribution of Board members around Victoria. This geographic distribution enables the MAV Board to better understand the important issues all over the State.</p> <p>The weakness in this arrangement is it may create a perceived obligation for Board members to represent the interests of their region at the MAV. Practically, this 'representation' composition, whilst representing the primary stakeholders (regions) does not necessarily exemplify conventional Board members' key responsibilities and the "functional" skills required, which will become increasingly relevant and essential for the Board to deliver on MAV's strategic priorities and lead on contemporary challenges.</p> <p>There are important differences between a representative and functional approach to board membership. A representative approach sees board members elected to represent the primary stakeholders of the organisation, whereas a functional approach to board membership requires members to be elected for the skills they bring to the board to address the strategic priorities of the organisation.</p>

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	<p>2. Would “at large” Board elections be better served by a proportional representation model to ensure the kind of diversity that often accompanies high performing boards?</p> <p>3. Would a four-year term for Board members, aligned with local government general elections, enhance the Board’s ability to govern successfully?</p> <p>4. Should Board members have a limited tenure?</p> <p>5. Could fewer Board members’ be elected to govern the MAV as</p>	<p>Officers are of the opinion, the existing “representative board” membership arrangements should be retained as it facilitates the MAV Board to better understand the issues at a state-wide level.</p> <p>There is evidence which substantiates that ‘diversity of thought’ and ‘inclusive leadership’ results in better outcomes and stronger organisational performance. The diversity of the Board may also be influenced by its electoral structure. A more proportional election model is often adopted to generate greater diversity and a different type of representation. Proportional models would, however, necessarily move representation further away from the geographic immediacy of the current regional model. It is also important to remember that metropolitan councils pay higher membership fees compared to rural councils, but rural councils are likely to impose greater demands upon the MAV’s resources because they do not have the same capacity as metropolitan councils.</p> <p>On balance, Officers support the retention of the representative board membership model, electing members from regional groupings.</p> <p>A four-year term for board members is supported to ensure there is the capacity for board members to develop knowledge and experience to benefit the sector. A two-year term is suggested for the role of President.</p> <p>A cap on the number of consecutive terms is not currently provided for in the Rules. Restricting Board members to a maximum number of consecutive terms would be in the interests of contemporary practice and is supported by Officers.</p> <p>Electing a discrete number (of skill-based) Board members equally from the Rural and Metropolitan sectors at “large”, effectively abandoning the regional groupings of Councils would mean Board members would no longer be required</p>

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	<p>distinct from representing regional interests at the MAV?</p> <p>6. Should the Board be empowered to add a small number of skill-based members to the Board to enhance its commercial capability or to address any obvious skill gaps?</p> <p>7. Should new Rules abolish the concept of an Interim Board and replace the current “caretaker” provisions with simpler checks and balances to ensure Board decisions, in the period between local government general elections and the declaration of electoral polls for the office of President and the Board, are supported by more than a simple majority of the Board?</p>	<p>to primarily act in a representative role. The role and function of a Board member would ultimately shift to more conventional Board issues. As noted above, Officers support the retention of the representative board membership model, electing members from regional groupings.</p> <p>The Review of the MAV Rules provides an opportunity for the MAV to clarify its commercial interests and sector advocacy role. If following a review of the MAV commercial interests it is determined the commercial operations shall continue for the long term, then it would be appropriate for Board membership to include at least one commercially experienced Director.</p> <p>Current Rules require the Board to operate as an Interim Board (with an Interim President) in the period between local government general elections and the declaration of the results of the election for the President and the Board members in March the following year (“caretaker” conventions).</p> <p>Current Rules prohibit an Interim Board making any “significant decisions” except by a unanimous vote. A significant decision relates to:</p> <ul style="list-style-type: none"> • a change in the policy position of the MAV • entering into contracts with a value of \$200,000 or more • the expenditure of unbudgeted funds, or • the employment or remuneration of the CEO. <p>The caretaker conventions are a series of practices which governments facing an election follow at every level of government in Australia. Other conventions are observed in many areas of political life and the administration of government. It is Officers opinion the “caretaker” provisions in the Rules should remain.</p>

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	<p>8. Should the Rules allow a Board member who has been dis-endorsed by his or her Council to complete their term on the Board?</p> <p>9. Should the Rules require the Board to periodically evaluate its own performance?</p>	<p>Current Rules, address the situation where a Council revokes the appointment of its representative and nominates another Councillor to be the representative (Note, all Councils are free to nominate a Councillor to be their MAV representative at any time). Current Rules provide that if the dis-endorsed Councillor has been elected to the MAV Board then the Councillor's Board membership is unaffected, enabling them to remain a Board member for the rest of their term. This could create complications if for example, the Rules are amended to provide for a Board term of four years, instead of two years, the situation might arise where the dis-endorsed Board member could remain for three or more years on the Board yet not even have a vote on matters at State Council. Therefore, if a representation model is retained the Rules need to reflect a casual vacancy. The dis-endorsed councillor should be required to resign immediately upon their Council withdrawing support.</p> <p>Officers are supportive of Rule changes to incorporate the requirement for periodic Board performance evaluation. MAV established an Audit Committee in 2004 to monitor internal and external audit activities and advise the MAV Board on its governance framework. The MAV is subject to prudential regulation (by virtue of its insurance business) required by the <i>Corporations Act 2001</i>. Therefore, many changes will be necessary to maintain compliance with the Act.</p> <p>A key purpose of the <i>Public Administration Act 2004</i> (PAA) is to provide a framework for good governance in the Victorian public sector and in public administration generally in Victoria. The PAA does not apply to MAV as it does not fall within its definition of a 'public entity'.</p> <p>While the PAA does not apply to the MAV Board it is an indicator of best practice. It requires relevant public sector Board's to have adequate procedures in place for:</p> <ul style="list-style-type: none"> • assessing the performance of individual directors • dealing with poor performance by directors • resolving disputes between directors.

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		<p>An audit completed by the Victorian Auditor-General's Office (VAGO) in 2015 titled 'Effectiveness of Support for Local Government' criticised the MAV's performance management system noting "<i>there is no formal performance management system in place for any MAV staff other than the chief executive officer, so it is not clear how staff or managers are held to account for their performance</i>".</p> <p>Officers support the implementation of VAGO audit recommendation, including its application to the MAV Board. A Board self-assessment should also be implemented, and results reported to members. There is a strong argument to incorporate periodic Board performance evaluation within the Rules.</p>
Rules affecting the State Council	1. Should new Rules require the MAV Board to play a stronger role in policy development and establish better standards for the matters which members wish to bring before State Council?	<p>The State Council, comprising the participating MAV Representative's, meet at least twice per year (s18). Motions adopted at the State Council form MAV policy.</p> <p>Members may submit matters, in accordance with a form determined by the Board, for consideration at meetings of the State Council which may be included in the business to be dealt with. Current Rules (s21) empower the MAV CEO and Board to collaboratively exclude motions at State Council that are not matters of widespread local government significance.</p> <p>There is evidence to indicate that these particular Rules are perhaps not utilised consistently with the MAV suggesting 'these powers are less often brought to bear. The "<i>benefit of the doubt</i>" is almost always given to the membership. These distractions are at the expense of sector wide issues of significance'.</p> <p>MAV State Council motions should be limited to the confines of a previously adopted MAV Strategic Plan adopted by majority support of members unless a matter of significance has arisen since the adoption of that plan. In this case there may need to be a means of amending the plan and focusing on the new matter(s).</p>

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	<p>2. Could State Council be modified to strategically introduce review processes, informed by expert and stakeholder advice and analysis that better ensure the quality of strategy development?</p> <p>3. Is plural voting at State Council in the long-term best interests of the MAV?</p>	<p>For several years the arrangements made for State Council have had a wider scope than debating member motions and have included a combination of policy forum, conference, and celebration. Including additional expert and stakeholder advice and analysis should be welcomed as to encourage and provoke conversation on key issues being addressed through MAV Strategy. This advice and expert analysis will of course need to mirror and or complement cascading advice and expert analysis at relevant committee's and issue forums to ensure changes to MAV Strategy are adequately understood, implemented, and adopted. Prescribing Rules for the State Council to oversee and monitor the MAV Strategy in addition to the inclusion of Rules for the MAV Board to monitor and report on MAV Strategy objectives would achieve the dual purpose of 'involving' the State Council in direction setting and providing the Board with a stronger mandate to develop policy, monitor and evaluate strategy implementation and provide accountable reporting to the State Council.</p> <p>Under the current MAV Rules, "larger" Councils receive two votes on matters before the State Council whereas "smaller" Council's receive one vote on such matters (plural voting). It is important to note that the election of the President and the Board is not determined by plural voting.</p> <p>The relevant rule at Schedule 3 Rule 27 s15 states:</p> <p>At any meeting of State Council, voting entitlements on any motion or amendment will be:</p> <p>15.1.1 the representative of each participating member Council paying an annual subscription to the Association which exceeds the mid-point between the lowest and highest subscriptions will have two (2) votes; and</p> <p>15.1.2 the representative of each participating member Council paying an annual subscription to the Association which does not exceed that mid-point will have one (1) vote.</p> <p>The current Rule is intended to recognise the constituencies of larger Councils are often many times greater than smaller Councils. Larger Councils "represent"</p>

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	<p>4. Should MAV Rules require State Council members to declare and manage their conflicts of interest?</p>	<p>more people. Plural voting hasn't always been a feature of MAV Rules and the State Council meetings. There have been past years where it was one Council / one vote.</p> <p>Officers suggest the current Plural voting rules appropriately represent demographic distribution, membership fees and should be maintained.</p> <p>Conflict of interest, whether general or material, can undermine good governance and the effective and economical provision of support to Councils, through perceptions of unfair treatment and a lack of process transparency. In extreme cases it may constitute corruption or other criminal behaviour. Although the Public Administration Act does not apply to MAV, section 81(1)(f) provides useful guidance, which includes some basic requirements for managing conflicts of interest. Similar requirements are included in <i>Managing Conflicts of Interest</i>, a guide developed in consultation with the Victorian Ombudsman, VAGO and the Independent Broad-based Anti-Corruption Commission (IBAC).</p> <p>Current MAV Rules are silent about dealing with conflicts of interest held by the members of State Council. Current MAV Rules do prescribe how some conflicts of interest will be dealt with by Board members. It is conceivable situations will arise whereby MAV Representatives do have a conflict of interest in matters under consideration at State Council.</p> <p>MAV has proposed a guiding principle of the Rule revision which is 'Well Governed - seek high performance, be highly accountable to its members and set a shining example of ethical practice'. Therefore, it is appropriate the State Council is required to uphold best practice ethical standards.</p> <p>Findings of the Victorian Auditor-General's Office (VAGO) in 2015 pursuant to the Audit titled '<u>Effectiveness</u> of Support for Local Government' noted "<i>In the absence of a conflict-of-interest policy it is not clear how MAV could have effectively managed any conflicts of interest in the past. This audit also found insufficient assurance over probity and potential conflicts of interests, which were neither declared nor managed by MAV.</i>"</p>

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	<p>5. Should new Rules require participating member Councils, and not the Council's representative, to submit matters for the consideration of the MAV, through State Council or other appropriate "pathways", and should such matters being submitted be confirmed by a resolution of the Council concerned?</p> <p>6. Should member Councils wishing to discontinue their financial membership be required to provide reasonable notice of their intention?</p>	<p>It is Officers opinion the MAV Rules should require the declaration of State Council member's conflicts of interest and prescribe how any member's conflict of interest must be handled.</p> <p>Current Rules provide only a Council's nominated representative may submit matters for consideration at meetings of the State Council. This has not been custom and practice for the MAV for many years. Councils have regularly submitted matters for State Council's consideration. It is also worth noting current Rules require a Council representative to exercise their vote at State Council in accordance with a resolution of his or her Council or the view of the majority of Councillors where it is known.</p> <p>It is Officers opinion amended Rules should require participating member Councils, and not the Council's representative, to submit matters for the consideration of the MAV, through State Council, and all motions submitted be confirmed by a resolution of the Council.</p> <p>The MAV is a membership-based organisation. All 79 Councils are currently participating members.</p> <p>Peak organisations often require members to provide reasonable notice of a member's intention to withdraw from membership. The intention of such notice provides the organisation with time to adjust programs and budgets. It mitigates against members using the tactic of withdrawing their membership to achieve a political purpose.</p> <p>It is the opinion of Officers, Council participation and continued membership in the Association by all 79 Councils should not be taken for granted. Councils should not be penalised for discontinuing a service they no longer believe provides value to their organisation. This decision is Council's alone. Financial Management and effective financial planning is a function of the MAV Board and should be taken into account in the development of the MAV Strategy to enable the continued delivery of services to "participating" members', as assured.</p>

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Submission in response to the Municipal Association of Victoria Rules Review - Discussion Paper 2021-22

Area of Review	Questions	Response
	<p>7. Should the new MAV Rules retain provisions for excluding a non-participating Council from using any MAV services?</p>	<p>Current MAV Rules provide a non-participating member Council is not entitled to avail itself of the privileges and benefits of any of the functions or services carried out by the MAV.</p> <p>Given the significance of the insurance services and procurement services on offer from the MAV, this operates as a significant disincentive for a Council considering discontinuing its membership.</p> <p>Given the present state (tight) of the global insurance market, and the challenges faced by Councils in the procurement of commercial insurance, Officers recommend the adoption of a structure to allow non-participating Councils access to commercial services at the same rate as participating Councils. Rules should be updated to reflect this.</p> <p>The MAV has commercial interests including insurance and procurement. It is considered these functions should be separated from the other roles performed by the MAV with a separate skills-based board. The reason for this suggestion is to avoid inherent conflicts of interest in the MAV's roles. Recently, the MAV has been advocating for Councils to reduce the maternal and child health service provided to their residents and to allocate nurses to assist in COVID responses. When queried about the implications for insurance and the fact that there is no COVID protection in the MAV insurance scheme, the MAV has had to modify its approach. The same issue exists in relation to Councils becoming involved in vaccination centres.</p> <p>It may be this issue is considered a matter for the MAV Act rather than Rules, but it is considered the point should be made so the Rules can contemplate a limitation upon the matters the MAV Board is able to consider.</p>
Modernising the Rules	<p>The modernisation of the Rules will include provisions like:</p> <ul style="list-style-type: none"> virtual meetings 	<p>Officers welcome changes relating the modernisation of the Rules to allow for virtual meetings, the option of digital elections, bringing the Rules into line with current Victorian legislation and eliminating references to redundant legislation.</p>

City of Boroondara

Attachment 1

Submission in response to the Municipal Association of Victoria Rules Review - Discussion Paper 2021-22

Area of Review	Questions	Response
	<ul style="list-style-type: none"> digital elections referencing current legislation not redundant legislation conducting MAV Presidential and Board elections according to Victorian Electoral Commission's best practice arrangements. <p>This will entail re-writing Rules to provide Rules that are clearer, more easily and widely understood and less likely to produce unintended consequences. Better written Rules will not make any fundamental changes to the intention of the current Rules. Changes will simply make them easier to understand. And, of course, the exact changes to the Rules must always be presented to State Council, in full detail, for adoption.</p>	<p>New Rules should address oversights and incorporate best practice and good governance principles in the current rules. Conducting Board elections, using best practice as recommended by the Victorian Electoral Commission, should also be provided for in the new rules.</p>

Attachment 2



2021-22 Rules Review

*A future focused MAV*_____

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Foreword



From the MAV President

On behalf of the MAV Board, it is with great pleasure we release this Discussion Paper on the review of the MAV Rules of Association.

The Rules are the foundation of the MAV's governance framework. The existing Rules have been in place for many years and were last amended in 2013. It is timely as the peak body for local government in Victoria that we undertake a comprehensive review of our Rules to ensure we are best placed to support the sector now and into the future.

The release of the Discussion Paper marks the commencement of this process. This Paper poses some thought-provoking questions, critical issues for consideration and includes draft principles on which the new Rules could be based.

The MAV has engaged expert consultants to assist us. Local government professional, Mr. Phil Shanahan is the lead consultant and will be supported by Capire, a specialist community engagement company who design and deliver stakeholder engagement processes. Mr. Mark Hayes, Partner at Maddocks Lawyers, has been appointed to provide legal expertise throughout the process and in the later stages of the review will draft the new Rules for consideration by State Council.

We are committed to a deliberative engagement process and look forward to receiving feedback about this Discussion Paper by 28 February 2022.

Details about how to make a written submission are at the end of the Paper. In addition, we will be conducting stakeholder sessions commencing in early December and continuing into February 2022 to enable us to engage in fuller discussion about the issues canvassed in the Paper.

The Rules review will continue into the later half of next year. The MAV Board is committed to listening to all views. We will ensure our stakeholders have opportunities to provide feedback as we progress.

The release of this Discussion Paper is the first step in shaping the future of our MAV to ensure it best delivers its role in support of our member councils and their communities.

We look forward to engaging with you.



Cr David Clark
MAV President

22 November 2021

Background

For several years the MAV Board has sought a comprehensive review of the Rules of the MAV. The MAV State Council on 21 May 2021 adopted a resolution to refer a proposal to the MAV Board for a full MAV Rules review.

The MAV's current Rules were approved by an Order in Council dated 5 February 2013. This review will be the first comprehensive Rules review undertaken since 2006.

Rule changes, however, have tended to be incremental. That has led to a set of Rules that no longer serves the MAV well.

What are the MAV Rules?

The MAV is established by the *Municipal Association Act 1907*. The MAV is not a Council and is governed by its own legislation. The MAV's operations are subject to normal review mechanisms of the State, like the Victorian Auditor-General. In addition, the MAV is subject to prudential regulation (by virtue of its insurance business) required by the Federal *Corporations Act 2001*. It is reasonable to characterise the MAV entity as something between a corporation (in terms of its independence) and a statutory body (in terms of the accountability mechanisms applied to it).

It is the *Municipal Association Act 1907* which empowers the MAV to make Rules. The Act says:

"It shall be competent for the Association with the approval of the Governor in Council to make rules (a) for the management of the association; (b) for the regulation of its proceedings; (c) for fixing the amount of the subscription to be paid annually to the Association by each municipality; (d) for the regulation and management of and for fixing the rate of contributions to the Municipal Officers Fidelity Guarantee Fund and terms and conditions upon which the benefit of such fund shall be available; and (e) generally for all matters whatsoever affecting the management of the Association not inconsistent with the laws of Victoria."

This power to make Rules is a broad one. Any change to the Rules requires a State Council resolution. The resolution must be **both** carried by a majority of votes (noting the plural voting system) **and** have 60% of the representatives of participating member councils voting in favour. The Rules, and of course any changes to the Rules, require the approval of the Governor in Council and that will mean securing positive support from the Department of Jobs, Precincts and Regions and Local Government Victoria through to the Minister for Local Government.

The MAV's current Rules are on the MAV website at mav.asn.au.

2021-22 Rules Review



Why review the Rules?

There are four key reasons for the current review of the Rules.

Firstly, the current Rules need to be **modernised**. The MAV needs Rules which enable good corporate governance "2021 style and beyond". Things like conducting virtual meetings and the option of digital elections, bringing the Rules into line with current Victorian legislation and eliminating references to redundant legislation. Conducting Board elections, using best practice as recommended by the Victorian Electoral Commission, should also be provided for in the new rules.

Secondly, new Rules should provide **more clarity**. The current Rules can be difficult to understand. They are complex and sometimes produce unintended and unsatisfactory consequences. New Rules should strive to be clearer. They need to be:

- less prescriptive
- streamlined
- more easily and widely understood
- generally enable better organisational governance without creating more problems than they solve.

Thirdly, new Rules should **address oversights** in the current Rules. For example, the Rules should require that the MAV establishes and maintains an Audit and Risk Advisory Committee. This should not be left to the good sense of the Board.

Finally, the current Rules need to enable the State Council, the MAV Board and the office of MAV President to **undertake their roles and functions effectively**.

The MAV has all 79 Victorian Councils as participating member councils. The MAV occupies a strong position as Victoria's peak body for Victorian local government. Better Rules will directly improve the performance of the MAV and keep up with contemporary good governance practices.

What is the process to review the Rules?

The MAV has engaged Mr. Philip Shanahan, an experienced former Local Government CEO and current consultant, to undertake the Rules review. Mr. Shanahan will be assisted by Capire Consulting Group, who have expertise and experience in stakeholder engagement and local government. The brief for the Rules review requires the consultants to undertake four key activities.

1. **A Discussion Paper** – which will outline a framework, principles and the opportunities for new Rules. The Discussion Paper will canvass possible Rule changes and seek sector and stakeholder responses.
2. **A Directions Paper** – based on feedback to the Discussion Paper, the Directions Paper will provide clarity around the kind of Rules that are under consideration. The Directions Paper will be sufficiently detailed to enable stakeholders to understand exactly what is being contemplated and to convey responses to those proposals.
3. **State Council deliberations** – the State Council scheduled for June 2022 will consider the Directions Paper and the feedback provided by stakeholders to that Paper. The State Council will decide on the matters set out in the Directions Paper and, by doing so, provide clear advice and direction to the MAV Board about State Council preferences in relation to the new set of Rules under consideration.
4. **Revised Rules and a Special State Council Meeting scheduled for September 2022** – the MAV Board will receive the State Council directions from the meeting in June 2022 and the consultant's final Report. The Board will then provide instructions to Mr. Mark Hayes, Partner at Maddocks Lawyers, to prepare the detailed and precise Rules which will go before a Special State Council in September 2022 for adoption. The new Rules will subsequently be submitted to the Minister for Local Government to seek Governor in Council approval.

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The process will be supported by extensive stakeholder engagement and consultation particularly around the Discussion Paper and the Directions Paper. MAV Representatives will be fully engaged through:

- A representatives and CEOs on-line workshop on 26 November 2021
- Small round table, on-line discussion groups to consider both Papers during December- February 2022 (Discussion Paper) and April and May 2022 (Directions Paper)
- Participation in the June State Council to provide clear direction on Rules change preferences to the Board, and
- The final adoption of new Rules at the Special State Council in September 2022.



The following important stakeholders will be included in engagement processes:

- MAV Representatives
- member councils
- mayors
- CEOs
- Minister for Local Government
- Local Government Victoria and Department of Jobs, Precincts and Regions
- Australian Local Government Association
- state associations
- the Victorian Electoral Commission
- the Victorian Auditor-General's Office
- other relevant state government departments and agencies.

The engagement process will encourage interested parties to take part to inform the various phases of the process.

The process is, by necessity, a long one. Current MAV Rules are specific about the kind of notice members must be given to consider any Rules changes. This Rules review can only reach a successful conclusion if timelines are kept. The consultant team will ensure stakeholders are keenly aware of the key dates in the process. Our focus will be on facilitating stakeholder responses.

Principles that might guide revised Rules

Establishing appropriate principles to support Rules changes can help to establish their worth.

In the first place, the MAV Rules should be heavily influenced, of course, by what it is the MAV does. That is, the purpose and the functions it performs. The MAV's Strategy for 2021-2025 describes its function and purpose as follows:

The MAV's purpose is to advance the interests of local government in Victoria. We do this in two primary ways. First through advocacy and policy development and secondly, through providing member-focussed services.

Our advocacy and policy development is focussed on:

- influencing decision-makers with informed data-driven and realistic policy positions
- highlighting future opportunities and challenges facing councils and communities
- leveraging local government's expertise to inform our advocacy activities
- developing relationships with stakeholders to build understanding of local government
- collaborating with governments to shape new initiatives and reform programs.

We deliver services to our members focussed on:

- building the capacity and capability of the local government sector
- offering commercial services and programs that meet council needs
- highlighting best practice and sharing knowledge from across Victoria and nationally
- engaging with member councils on emerging needs in relation to procurement and insurance services.

The MAV works diligently with Victorian Councillors through targeted training and development programs to continually improve sector capability. The role and functions of the MAV **remain important to the sector and are highly contemporary**.

Has there ever been a previous time when Australian society has so heavily relied upon the Australian federal system of government? Local governments are not fading into the background. Quite the contrary. It is local governments that lead on so many contemporary challenges. From climate change to First Peoples reconciliation, it is councils taking direct action. From bushfires and floods, it is councils partnering with state and federal agencies to protect and recover communities. No, local governments are grown up members of federalism in Australia. The intergovernmental challenges for local government may be more important than they have ever been. And the challenge for the MAV is to be **highly effective and influential** in this space.

The pace of change only increases. Digital transformation has and continues to sweep the nation. The 24 hour news cycle has turned conventional advocacy on its head. Councils are seeing the overwhelming need to be **agile, nimble and to create new ways of cutting through**. The MAV cannot afford to use outmoded models of decision making and governance while the world around it operates so differently.

The task of exerting influence on decision makers at State and National levels continues to evolve. There is a significant and growing concentration of power and control in the Private Offices of the Prime Minister in Canberra and the Premier in Victoria. The central public service departments, Prime Minister and Cabinet and Premier and Cabinet, are also expanding to support the concentration of power at the top. The practical outcome is the majority of important policy development and reform is now run centrally. At the same time, governments are becoming more adept at using competing voices to control debate, minimise valid policy alternatives and compress timelines for consultation and engagement.

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As a result, a refreshed approach is required to influence the policy agenda. The new "tools" that organisations like the MAV must employ to successfully influence government policy are **expert analysis, complex evidence-based policy development and sophisticated political positioning**. And these "tools" do not come cheap!

Finally, only high standards of good governance, accountability and ethical practices can address the growing cynicism felt about governments and institutions around the world. The MAV must aspire to gain and keep these credentials.

All of these trends and influences impact the MAV, its purpose and function. MAV Rules should respond to these trends and influences. Success for the MAV may well depend upon how successfully it can be:

- **A strong sector leader** – highly influential, strongly supported by its participating Councils and respected across a wide constituency.
- **Modern and contemporary** – an adopter of best practice and nimble and agile in the way it can respond and adjust to change and opportunity.

- **Credible** – well informed, highly skilled and capable of arguing complex issues with rigour, persuasion and timely data.
- **Well governed** – seek high performance, be highly accountable to its members and set a shining example of ethical practice.

It is through this kind of lens that new MAV Rules should be evaluated. This Discussion Paper will focus on contemplating new Rules that can help **the MAV** play its role more effectively. In many cases the changes may be quite significant. There will be a departure from the incremental approach taken over many years to make Rules changes.

This Discussion Paper will probably attract divergent views from stakeholders. That will largely be a consequence of the scope of changes being contemplated. The process of changing the Rules to meet the challenges of **now and the next decade or two** will not be well informed by looking in the rear vision mirror at where the MAV and the sector have been. The focus must be on what it is that we need the MAV to achieve and which Rules support that endeavour best.



Questions to consider

1. Do you think these principles are the right ones to guide Rule changes?
2. Is the focus of this Discussion Paper on new Rules which enable the MAV to be more effective the right focus?

Rules affecting the office of the MAV President

Who may nominate for the office of President?

The MAV President's role is critical to the success of the MAV. It is fundamental to the MAV's strength of **leadership and organisational credibility**.

New MAV Rules should set out the role and function of the MAV President. This is currently accomplished by a Board protocol but is more appropriately included in the MAV Rules.

In many ways, the current Rules provide support for the President's role. For example, as soon as a member is elected as President, the Council on which the elected President is a sitting Councillor is invited to appoint an additional representative to the MAV. The elected President is then free to provide **independent organisational and sector leadership**.

The current Rules require that a Councillor can only nominate for the office of MAV President if they are the current nominated representative for their Council. This Rule addresses the issue of credibility. It also protects the interests of participating member councils. The Rule ensures the President of the MAV is drawn from the nominated representatives of the participating member councils. That is a conventional approach to a **member-based organisation** seeking to elect a President.

A proposal submitted to the May 2021 State Council sought to do away with the requirement that the MAV President always be a nominated Council representative. It would have enabled a President or Interim President who was **not** a nominated Council representative to nominate for the office of President. Note that the MAV is governed by an Interim Board during the 'Caretaker Period' between local government elections and the MAV Board elections.

It is difficult to think of any political structure where that kind of special entitlement extends to a former President or Interim President. The Interim President may or may not be the former President. It could be an Interim President, elected by the Board, in office for a short period, in a caretaker mode and not the nominated representative of their Council. Alternatively, such an Interim President might have extensive Board experience, or have previously made a strong and effective contribution to the MAV and be well regarded as a possible future President. The circumstances of their dis-endorsement as the MAV representative may, or may not, be a reflection of local issues as distinct from their capability in any Presidential role.

If such a proposal has merit, there might be a more significant and simpler reform to achieve a similar end. There is a school of thought which suggests the role of President could be filled by **any Victorian Councillor** from a participating member council at the time of the election. The thinking behind that idea revolves around providing a wider range of capable people from which to choose. There is no doubt that the role of MAV President demands serious skills and experience. The real role of the President is nothing like any kind of figurehead role. The role requires special leadership capabilities, a sophisticated understanding of contemporary intergovernmental relations, and a deep understanding of local government. Sound commercial skills are also important given the extent of the MAV's commercial services.

On the one hand, a broader field from which to elect a President might provide an opportunity to attract more "ideal candidates". On the other hand, an elected President who was not nominated as a Council's MAV Representative might create questions around the unity of the organisation. MAV credibility or even the independence of the President may come into question.

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Presidential elections where any sitting Councillor from a participating member council could nominate would attract larger candidate fields. This approach would be supported by organised political practices. Furthermore, larger numbers of Presidential candidates seems like an unwanted, unintended consequence. After all, there will only be 79 votes cast in the election and an exhaustive preferential voting system is currently in place. It is not difficult to imagine that, with a large field of candidates, the drawing of lots might determine the fate of some candidates!

The Presidential term

A strong argument can be made that a two year Presidential term is too short. A two year term may not provide sufficient time for building the relationships, networks and trust that accompany influential intergovernmental relations.

A four year Presidential term, synchronised with local government general elections, seems to be a viable alternative. At the same time, it would be useful to consider whether restricting a President to a maximum number of consecutive terms would be in the interests of contemporary practice. Good organisations excel at renewal and reinvigorating themselves. It shows an agility that keeps everyone on their toes.

A casual vacancy in the office of President

The current Rules allow a casual vacancy in the office of MAV President where the President:

- dies
- resigns, or
- ceases to be a Councillor.

However, it is unclear if a casual vacancy occurs under the current Rules if the Council, on which the President is a sitting Councillor, ceases to be a participating member council of the MAV. A Victorian Supreme Court judgment in 2018 pointed to the inadequacies of the Rules in this regard. On the one hand, it might be difficult to support a Rule where a President, who is a sitting Councillor at a non-participating Council, could complete their term in office. Could such a Rule be supportable on the grounds of MAV **credibility**?

While the MAV Rules do seek to protect the office of the President from destabilisation, it does seem unlikely that the MAV's credibility would be enhanced if a President's Council was not a participating member of the MAV. On the other hand, perhaps the MAV Rules should assist in removing the President's vulnerability to the whims of any particular local council. This would guarantee greater leadership stability and ensure the President represents the whole municipal sector rather than one particular constituency.

Rules for the MAV President

There is no doubt that the MAV Rules need a thorough overhaul. Under the current MAV Rules, in 2017 and 2018, the MAV found itself in the Victorian Supreme Court contesting issues around who could nominate for President and what was the impact of a council, where the President was a sitting Councillor, withdrawing from the MAV.

In the second matter Justice Ginnane had this to say:

"... While I accept that the court should attempt to avoid anomalous, absurd or unreasonable interpretations, the MAV Rules may create anomalies whichever interpretation is adopted and which cannot be avoided whichever interpretation is adopted.....The above analysis suggests that the MAV Rules have been amended from time to time without regard to the effect of the amendments on other parts of the rules. The rules might benefit from a revision."

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1. Do the current MAV Rules sufficiently support the office of the President?
2. Is it important those who nominate for the office of MAV President are, at the time of the election, their Council's nominated MAV Representative?
3. Would changing the qualification required to contest an election for the office of MAV President, by simply requiring a candidate be an elected Councillor at a participating member council, provide an overall benefit to the MAV?
4. Would a four year Presidential term better enable the President to make a more significant impact on the organisation and the sector?
5. Would a cap on sequential terms in office for the MAV President provide opportunities for new ideas and a renewal focus?
6. Should future Rules provide that a casual vacancy is declared in the office of the President if the council on which the President is a sitting Councillor becomes a non-participating member of the MAV?

Rules affecting the MAV Board

Board responsibilities

The Board's role is central to the MAV's success. The MAV Board must perform the same sort of role and functions as most corporate entities. The Board's key responsibilities are:

- **Establish strategic direction.** It is the MAV Board's responsibility to create and review the MAV's goals and the strategies to achieve those goals. The Board should allow Council representatives to have a strong voice in the goals and strategies of the MAV.
- **Appoint, support and evaluate the CEO.** The MAV Board is responsible for recruiting and appointing a high performing CEO. The Board will ensure the CEO has the necessary support and professional development opportunities to remain a skilled, capable and contemporary leader. The Board will monitor the performance of the CEO and appraise the CEO's performance against agreed Performance Criteria.
- **Ensure effective planning.** The MAV Board will participate in a planning process by establishing long term goals and strategies.
- **Provide oversight of programs and services.** The MAV Board is responsible for determining which services and programs are consistent with the MAV's Strategy. The Board will delegate powers to its management, and will monitor and evaluate the implementation of policies, strategies and business plans.
- **Oversee financial management and the protection of assets.** The MAV Board is responsible for developing and approving an annual budget supporting the organisation's programs and services. The Board is responsible for ensuring proper financial controls are in place to protect the assets of the organisation. The Board is also responsible for maintaining an effective Audit and Risk Advisory Committee and to respond to the results of external and internal audit procedures regularly.
- **Develop and maintain a competent Board.** The Board has a responsibility to explain to Board candidates the key responsibilities of Board members. This includes ensuring new Board members are inducted and supported. The Board is also responsible for evaluating its own performance.
- **Ensure legal and ethical integrity.** The MAV Board must set the ethical tone of the organisation and should articulate the values and principles that set that tone. The Board is ultimately responsible for adherence to legal standards and ethical norms.
- **Enhance the MAV's reputation.** The Board will be ambassadors for the organisation, articulating the importance of the goals and value of the organisation's work. The Board will work to garner support from its key stakeholders.

These responsibilities are usual for a Board. For the MAV, it will always be important that the Board can represent the interests of its member councils. The functions of the MAV Board currently set out in the Rules unfortunately do not adequately reflect those described above. As a part of the Rules review a contemporary description of the Board's role and function will be developed for consideration.

What kind of Board does the MAV need?

It would be a mistake to underestimate the breadth and depth of conventional Board responsibilities required at the MAV. The MAV's two primary functions (advocacy and member services) need much from Board governance. This Discussion Paper has already referred to the modern day challenges of exerting influence in a noisy, fast changing world. Commercial services, like insurances and procurement, represent large investments and risks for the MAV. These services are competitive and operate in well developed markets. The Board's oversight and understanding of these businesses

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are essential. They sometimes require very sound commercial skills. The MAV Board must be prepared to provide effective corporate governance to these enterprises.

Current Board membership consists of 12 Councillors elected from small groupings of Councils. It is a highly **representative** Board. When electing Board members, the current Rules require the Board divide the State into 12 regional groupings. The strength of the current "regional groupings" Rule is it ensures a geographic distribution of Board members around Victoria. This geographic distribution enables the MAV Board to better understand what issues are important all over the State.

The weakness in this arrangement is it creates an obligation for Board members to **represent the interests of their region at the MAV**. And the practice of that representation has too little to do with conventional Board members' key responsibilities.

There are important differences between a **functional and representative** approach to board membership. A functional approach to board membership requires members to be selected (elected) for the skills they bring to the board to **address the strategic priorities of the organisation**. A representative approach sees board members elected to **represent the primary stakeholders of the organisation**.

The representative model is the dominant characteristic of the MAV Board. Although it is an obvious generalisation this representative model usually brings Councillors who:

- have a deep and practical understanding of local government in Victoria
- understand their region, its opportunities and challenges, and
- are effective Councillors respected by their peers in their region.

Are these capabilities sufficient? Does the representative model regularly bring to the Board the range of skills, experience and motivation needed to be more focussed on their functional role and less on their representative role? Could new Rules, electing Board members "at large" from both rural and metropolitan areas, enable a transition from a Board that has been created to represent diverse local government interests to a Board more concerned with the issues that conventional boards address?

The notion of abandoning the "geographic representative model" should not be construed as an argument against a Board of diverse interests, knowledge and skills. There is considerable research which substantiates the proposition that Board diversity usually results in stronger performance. The MAV Board should be reflecting the diversity of opinions and experiences of Victorians. The diversity of the Board may also be influenced by its electoral structure. A more proportional election model is often adopted to generate greater diversity and a different type of representation. Proportional models would, however, necessarily move representation further away from the geographic immediacy of the current regional model.

The democratic mandate of regional representatives is also an interesting consideration. On the one hand, the current model facilitates geographic immediacy, with close accountability to a small number of Council MAV Representatives in each region. On the other hand, elections for regional board members are frequently determined by names drawn from a hat whenever there is a tie following any distribution of preferences.

Managing the MAV's commercial interests

The MAV's commercial imperatives are evident, for example, in the MAV insurances business. Commercial risks are currently addressed by an expert Insurance Board, operating under a MAV Board delegation, with the MAV Board retaining final decision making powers and responsibilities. Is this a sound and sustainable model for the MAV into the future? The arrangement is seeking to "cover" for the skills gap on the MAV Board in relation to the insurances business. Would the addition of a small number of skill-based Board members, appointed by the Board, provide a more comprehensive governance arrangement? Would skill-based Board members enhance the Board's commercial credentials and function?

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What might be the right size for the Board?

In the event of electing the Board "at large" from the rural and metropolitan areas, the **size of the Board** would also be a matter to consider. A President and 12 Board members is a considerable size for an organisation with a maximum of 79 members. The MAV Board probably contains 12 elected Board members for those **representative** reasons previously discussed. The right number of Board members to actually **govern** the MAV is probably a lesser number, especially if a small number of skill-based Board members were appointed.

Is it necessary to have an Interim Board?

Current Rules require the Board to operate as an **Interim Board (with an Interim President)** in the period between local government general elections and the declaration of the results of the election for the President and the Board members in March the following year. Current Rules prohibit an Interim Board making any "significant decisions" except by a unanimous vote. A significant decision relates to:

- a change in the policy position of the MAV
- entering into contracts with a value of \$200,000 or more
- the expenditure of unbudgeted funds, or
- the employment or remuneration of the CEO.

Current Rules require the Board to play something of a "caretaker" role during that time. Does that serve the MAV well? The label of "Interim" doesn't seem to sit well with the member councils' expectations that the Board is elected by the membership to govern. The four month hiatus represents a significant chunk of the Board term. Perhaps a simpler set of checks and balances, aimed at mitigating the circumstance of significant Board changes arising from the local government general elections, would suffice and not require the MAV Board to "tread water".

How does the MAV deal with a Board member who is no longer their Council's nominated representative?

There are strong arguments to suggest the **Board's accountability to its members** should be reflected in the Rules. Current Rules, aimed at **Board stability**, address the situation where a Council revokes the appointment of its representative and nominates another Councillor to be the representative (Councils are free to nominate a Councillor to be their MAV representative at any time). Current Rules provide that if the dis-endorsed Councillor has been elected to the MAV Board then the Councillor's Board membership is unaffected, enabling them to remain a Board member for the rest of their term.

This Rule seeks to provide **stability and continuity** on the Board and respect the regional groupings of Councils. However, it is somewhat at odds with the MAV's accountability to its membership. If the Rules are amended to provide for a Board term of four years, instead of two years, the situation might arise where the dis-endorsed Board member could remain for three or more years on the Board yet not even have a vote on matters at State Council. If the new Rules provide that a casual vacancy does occur if a Board member is dis-endorsed by his or her Council, the MAV Board might be favoured with discretion around how quickly an election would need to be conducted.

Should such a dis-endorsed Board Member complete their term? Or should a casual vacancy on the Board be declared and an election held, in due course, to fill that vacancy?

Performance appraisal and accountability

The MAV Board has in place a Board Performance and Assessment Policy. The Policy sets out how the individual and collective performance of MAV Board members will be assessed. There is a strong argument to say the requirement for periodic Board performance evaluation should form part of the Rules.

Some Rules changes will be necessary to ensure the Board at all times complies with the *Corporations Act 2001* requirements. (These requirements are mandatory, in spite of the MAV Insurances Board and its operation, to which the same provisions apply.)

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Possible new Rules affecting the Board

MAV stakeholders might consider the following suite of Rule changes that may strengthen the MAV Board.

- Abandoning the regional groupings of Councils and electing a discrete number of Board members equally from the Rural and Metropolitan sectors at large. Under such a change, Board members would no longer be required to primarily act in a representative role and the MAV organisation, in a professional capacity, would provide the necessary "link" between members and organisational issues and progress.
- Changing the electoral system, in the event of "at large" Board elections using a proportional representation system to encourage Board diversity.
- A four year term for Board members along the same lines and for similar reasons to those advanced for a four year Presidential term.
- A limit on tenure for Board members by capping the number of consecutive terms a member can serve on the Board.
- Enabling the MAV to make a transition to a function based Board, by empowering the Board to add a small number of skill based "directors" to complement existing Board skills and capabilities and to add significant value to the Board's deliberations.
- Changing the number of Board members to be elected to be consistent with the task of governing the MAV rather than representing regional interests on the Board.
- Changing the Rules so that a casual vacancy on the Board is created if a Board member is no longer a Council's nominated representative.
- Changes to the "qualifications" required of Board candidates to ensure compliance with the *Corporations Act 2001*.
- Rules requiring the Board to periodically evaluate Board performance.



Questions to consider

1. Would electing Board members "at large" and equally from the rural and metropolitan areas enable the MAV Board to place less emphasis on a representative role and provide more focus on addressing the MAV's strategic priorities in a conventional board fashion?
2. Would "at large" Board elections be better served by a proportional representation model to ensure the kind of diversity that often accompanies high performing boards?
3. Would a four year term for Board members, aligned with local government general elections, enhance the Board's ability to govern successfully?
4. Should Board members have a limited tenure?
5. Could fewer Board members be elected to govern the MAV as distinct from representing regional interests at the MAV?
6. Should the Board be empowered to add a small number of skill based members to the Board to enhance its commercial capability or to address any obvious skill gaps?
7. Should new Rules abolish the concept of an Interim Board and replace the current "caretaker" provisions with simpler checks and balances to ensure Board decisions, in the period between local government general elections and the declaration of electoral polls for the office of President and the Board, are supported by more than a simple majority of the Board?
8. Should the Rules allow a Board member who has been dis-endorsed by his or her Council to complete their term on the Board?
9. Should the Rules require the Board to periodically evaluate its own performance?

Rules affecting the State Council

An anecdote

When I was a young local government officer in the early 1970s a part of my job was to attend to the fox shooters. I would count their fox scalps and arrange payment for their bounty at the rate of 75 cents per scalp. The more interesting part of my job was to light the incinerator in the council carpark and burn the scalps.

I attended my first MAV State Council as a Shire Secretary in 1976 (or was it 1977...) and listened to the debate about whether the state government should be pressed to increase the fox scalp bounty to \$1.

I thought then, "Is that what we should be talking about..?"

Phil Shanahan
Former Local Government CEO

How the MAV adopts Policy

State Council is a major strength but also a less obvious weakness in the MAV's governance framework. Usually twice each year, the participating MAV Representatives come together at State Council. They debate the various propositions submitted by the members. When propositions are agreed to at State Council, these matters are adopted as MAV policy.

The great strength of State Council is the diverse membership. Participating Councils bring a wide range of issues, from across the State, into a forum that establishes MAV policy. The *Achilles' heel* of this approach are parochial issues, important for too few of the members, which find their way into the MAV policy framework. Most participating Councils have learned how to use State Council as a forum to garner support for local, regional or sectoral causes. It is open to the members

of State Council to reject parochial propositions, but a strong spirit of "empathetic collegiate endeavour" sometimes means that doesn't happen.

Similarly, current Rules empower the MAV CEO and Board to collaboratively exclude proposals that are not matters of widespread local government significance. These powers are less often brought to bear. The "benefit of the doubt" is almost always given to the membership.

The MAV's limited resources must be strategically applied to achieve high influence across State and National policy. The MAV cannot afford the luxury of pursuing the parochial, and sometimes peripheral, issues that come from State Council. These distractions are at the expense of sector wide issues of significance. The great challenge in reviewing the MAV Rules is to **create a framework for the MAV's policy development which is a shared responsibility between participating member councils and the MAV Board through its responsibility for strategic planning.**

If a partnership between councils, the MAV Board and the State Council is an answer to better policy development, the MAV Rules might establish, in broad form, how that partnership would work. The Rules might provide that Councils could submit policy proposals to the MAV Board at any time during the year and would be encouraged to do so. The Board would determine the "pathway" for such policy proposals. Some would be rejected as failing to meet acceptable criteria like:

- sufficient widespread significance to Victorian Local Governments, or
- relevant to the adopted MAV Four Year Strategy, or
- responding to important emerging issues that require urgent policy direction.

Others might need further development, more research or be informed by better data and information. Still others would be quickly adopted into the MAV policy framework. And many others would form the policy agenda for the State Council debates.

2021-22 Rules Review



It does seem possible to achieve better outcomes from State Council if the Rules can create different classes of proposed motions, each being dealt with in different ways by the Board. As a consequence, many proposals would be dealt with in a more timely manner.

In part, this Discussion Paper is testing whether it is the MAV Board that should assume a stronger leadership role in more effective policy development. It is critical to achieve a convergence of MAV policy with MAV Strategy – **the two are inseparable**. Whilst there has always been much to admire and to excite about the debates at State Council, with all of the theatre and passion on show, it might be argued that those twice yearly debates about all and sundry no longer represents a best practice model. Those debates must be supported with critical information and context. The debates should be better connected to the MAV's primary goals and strategies.

A more important role for State Council

It would also seem there is an important role for State Council in the development and monitoring of the MAV's Four Year Strategy. For several years the arrangements made for State Council have had a wider scope than debating member propositions. In many ways the entire event has been a combination of policy forum, conference and a celebration. All of these ingredients are important enough.

It could be argued, however, that State Council plays too small a role in effective stewardship around the MAV Strategy. Can the Strategy's implementation and continuing relevance be more regularly evaluated through expert information and analysis at State Council? Whilst members are regularly exposed to high quality guest speakers in the "conference" mode of State Council, this would entail a more targeted use of expert participants and stakeholders to inform and alert members to emerging trends impacting the MAV's strategic approach. This kind of format would encourage members to bring to the Board's attention what they see and hear from contemporary thinkers about the key issues being addressed through the MAV Strategy. **A more dynamic, less insular model is one that may improve policy and strategy development and elevate the impact of State Council.**

State Council meetings that can convert quality information and expert analysis into opportunities for the Board to investigate and evaluate, and a Board that has a stronger mandate to develop policy,

monitor and evaluate strategy implementation and provide accountable reporting to the State Council, seem to represent a better balance or partnership between the two MAV organs that could advance the interests of the MAV.

Matters for consideration at State Council meetings

Current Rules provide only a Council's nominated representative may submit matters for consideration at meetings of the State Council. This hasn't been custom and practice for the MAV for many years. Councils have regularly submitted matters for State Council's consideration.

It would seem, however, that this custom and practice are sensible. There is a strong argument to say participating member councils should submit such matters for consideration. Furthermore, it might be further argued that Councils should be required to specifically resolve which matters are submitted for consideration by the MAV. It is also worth noting current Rules require a Council representative to exercise their vote at State Council in accordance with a resolution of his or her Council or the view of the majority of Councillors where it is known. And, of course, it would be up to a Council to ensure its representative was meeting this obligation.

Feedback from State Council

The MAV surveyed participants from the May 2021 State Council. Overall satisfaction was quite strong. However, among the commentary received from participants about their experience of State Council were the following:

- need to review the purpose of State Council as part of the review of the MAV Rules as too many motions are not relevant to Councils
- several motions relate to local issues or specific types of Councils
- the workload is unsustainable for MAV and dilutes what can be achieved
- motions not related to state issues or the MAV plan should be excluded from the process.

2021-22 Rules Review



Plural or weighted voting

Under the current MAV Rules, "larger" councils receive two votes on matters before the State Council whereas "smaller" councils receive one vote on such matters. The relevant Rule says:

"At any meeting of State Council, voting entitlements on any motion or amendment will be:

- the representative of each participating member council paying an annual subscription to the Association which exceeds the mid-point between the lowest and highest subscriptions will have two (2) votes; and*
- the representative of each participating member council paying an annual subscription to the Association which does not exceed that mid-point will have one (1) vote."*

This Rule is, of course, intended to recognise the constituencies of larger councils are often many times greater than those of smaller councils. Larger councils "represent" more people. However, plural

voting isn't commonly found in member based organisations. By and large, each of the 79 Councils in Victoria exercise the same set of functions and powers and are treated as equals under the law. Victorian laws do not differentiate between larger and smaller councils. None is regarded as more or less important. They are simply uniquely different in many ways, including size.

The questions that arise from this Rule are clear enough but quite complex to answer definitively.

- Does plural voting make the MAV stronger?
- Does plural voting contribute to strengthening and uniting the MAV's member councils in setting the policy framework for Victorian local government?
- Does plural voting have any unintended consequences at the MAV, like creating any kind of city/country divide?

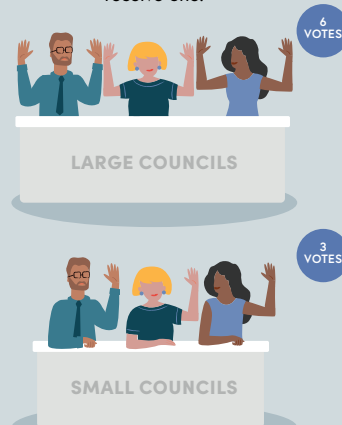
And finally, some of the most important matters settled by State Council include the election of the President and the Board, and neither of those processes is determined by plural voting.

Interesting to consider

Plural voting hasn't always been a feature of MAV Rules and the State Council meetings. There have been many past years when it was one council /one vote.

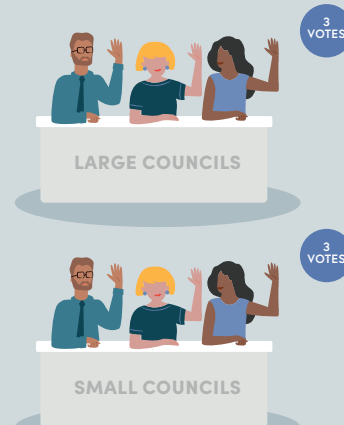
PLURAL VOTING

Under the current MAV Rules, large councils receive two votes, while smaller councils receive one.



NORMAL VOTING

Sometimes in the past, each council received one vote, regardless of size.



2021-22 Rules Review



High standards of ethical behaviour

Current MAV Rules are silent about dealing with conflicts of interest held by the members of State Council. Current MAV Rules do prescribe how some conflicts of interest will be dealt with by Board members. It is conceivable situations will arise whereby MAV Representatives do have a conflict of interest in matters under consideration at State Council.

State Council should uphold best practice ethical standards. The MAV Rules should require the declaration of member's conflicts of interest and prescribe exactly how any member's conflict of interest must be handled.

Councils discontinuing their MAV financial membership

From time to time some Councils discontinue their financial membership of the MAV. The MAV is a membership based organisation. It currently enjoys a strong membership position – all 79 Councils are participating members. However, when Councils withdraw their financial membership the consequences are significant for the MAV. Firstly, the unanticipated loss of membership subscription directly affects MAV services. Job losses are sometimes an outcome.

Secondly, discontinuing financial membership has very occasionally been used to undermine the MAV or the President and Board for a political purpose. These situations are less than satisfactory. Membership of a local government peak body is surely not a year-to-year decision. Of course, the organisation must deliver value to its members, but it also requires a partnership with member councils to flourish. It requires member councils to appreciate the kind of commitment that is required to build an effective organisation that can lead the sector.

Across Australia similar peak organisations often require members to provide reasonable notice of a member's intention to withdraw from membership. Such notice provides the organisation with time to adjust programs and budgets. It mitigates against members using the tactic of withdrawing their membership to achieve a purely political purpose. These matters should require a mature approach.

Current MAV Rules provide a non-participating member council is not entitled to avail itself of the privileges and benefits of **any of the functions or services** carried out by the MAV. Given the significance of the insurance services and procurement services on offer from the MAV, this operates as a significant disincentive for a Council considering discontinuing its membership. The MAV is a membership based organisation and it would seem reasonable to continue with the current Rules in this respect.



Questions to consider

1. Should new Rules require the MAV Board plays a stronger role in policy development and establish better standards for the matters which members wish to bring before State Council?
2. Could State Council be modified to strategically introduce review processes, informed by expert and stakeholder advice and analysis that better ensure the quality of strategy development?
3. Is plural voting at State Council in the long term best interests of the MAV?
4. Should MAV Rules require State Council members to declare and manage their conflicts of interest?
5. Should new Rules require participating member councils, and not the Council's representative, to submit matters for the consideration of the MAV, through State Council or other appropriate "pathways", and should such matters being submitted be confirmed by a resolution of the Council concerned?
6. Should member councils wishing to discontinue their financial membership be required to provide reasonable notice of their intention?
7. Should the new MAV Rules retain provisions for excluding a non-participating council from using any MAV services?

Modernising the Rules

This Discussion Paper previously referred to the importance of modernising the MAV Rules. These changes will not intrude on the fundamental arrangements which apply to the role or function of the MAV President, Board or State Council. Any fundamental changes to be contemplated in these areas have already been outlined in this Discussion Paper. As examples, the modernisation of the Rules will include provisions like:

- virtual meetings
- digital elections
- referencing current legislation not redundant legislation, and
- conducting MAV Presidential and Board elections according to Victorian Electoral Commission's best practice arrangements.

Adopting clearer Rules

This will entail re-writing Rules to provide Rules that are clearer, more easily and widely understood and less likely to produce unintended consequences. Better written Rules will not make any fundamental changes to the intention of the current Rules. Changes will simply make them easier to understand. And, of course, the exact changes to the Rules must always be presented to State Council, in full detail, for adoption.

Responding to this Discussion Paper

The MAV wants widespread responses to this Discussion Paper.

Persons and organisations intending to make a response to the Discussion Paper should do so by close of business on Monday 28 February 2022. Responses will be posted on the MAV's website after the close of the submission period unless submitters indicate otherwise.

To assist in receiving your response, please complete the electronic survey form which is available on the MAV website at mav.asn.au. Alternatively, we would encourage more comprehensive submissions with expanded commentary about the ideas in the Discussion Paper. These submissions can be emailed to rules@mav.asn.au.

The MAV would encourage participating member councils to provide a response by adopting a position to the matters raised in the Discussion Paper by Council resolution, if possible.

Councils and other stakeholders wanting to ask questions about the content of the Discussion Paper, the processes to be followed to arrive at new Rules or avenues available to make a response to the Discussion Paper can contact Ms. Celia Robinson, MAV Manager Governance at (03) 9667 5535 or crobinson@mav.asn.au. The lead consultant, Mr. Phil Shanahan, will also be available to assist those with enquiries and can be contacted through Celia.

Attachment 3

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MAV RULES 2013

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MUNICIPAL ASSOCIATION OF VICTORIA**RULES 2013****PART 1 – PRELIMINARY****1 Objectives**

- 1.1 The objectives of the Association are to:
- 1.1.1 promote local government and improve community awareness of the capacity of local government throughout Victoria to act effectively and responsibly;
 - 1.1.2 promote through its advocacy role appropriate powers, functions and responsibilities for local government having regard to the individual needs and characteristics of its individual members;
 - 1.1.3 act as the representative body of local government for the purpose of promoting effective inter-government co-operation;
 - 1.1.4 strengthen the Association's leadership role in local government in Victoria by focusing on:–
 - 1.1.4.1 targeted advocacy to Governments and relevant organisations; and
 - 1.1.4.2 continually improving systems for effective member liaison, communication and participation.
 - 1.1.5 identify the administrative requirements relating to various matters under the **Municipal Association Act 1907** including provisions that:
 - 1.1.5.1 establish the management of the Association;
 - 1.1.5.2 provide mechanisms for participation by members;
 - 1.1.5.3 regulate its proceedings;
 - 1.1.5.4 fix subscriptions;
 - 1.1.5.5 regulate and manage the Municipal Officers' Fidelity Guarantee Fund; and
 - 1.1.5.6 generally provide for all matters affecting the management of the Association.
- 1.2 The Association may exercise all functions and powers which are necessary or convenient for it to carry out its objectives provided it is not inconsistent with the **Municipal Association Act 1907** or any other Act.
- 1.3 Revocation
Any previous Rules made under the **Municipal Association Act 1907** are revoked.
- 1.4 These Rules are made under the **Municipal Association Act 1907**.

2 Definitions

'Act'	means the Municipal Association Act 1907 .
'Association'	means the Municipal Association of Victoria.
'Board'	means the Management Board or the Interim Management Board.
'Chief Executive Officer'	means the person appointed by the Board to be the Chief Executive Officer of the Association or any person acting in that position.

‘Councillor’	means a person who holds the office of member of Council; and includes a person appointed by Order in Council under section 219 or section 220R of the Local Government Act 1989 .
‘Member’	means – (a) in relation to meetings of the State Council or annual meetings, a representative; (b) in relation to meetings of the Board, a member of the Board; (c) in relation to a committee – a person who is a member of that committee.
‘Non participating member council’	means any council which is not a financial member of the Association because it has not complied with clause 4 of the Rules.
‘Local Government General Election’	means a general election held in accordance with the Local Government Act 1989
‘Participating member Council’	means a Council which is a financial member of the Association under clause 4.
‘Regional groupings of councils’	means – (a) the councils within the metropolitan area that comprise the 6 metropolitan regions; and (b) the councils outside the metropolitan area that comprise the 6 rural regions – that are determined and classified from time to time by the Board.
‘Representative’	means a councillor and includes, in the absence of the representative of the council at a meeting, the substitute representative of that council who exercises a vote on any matter as if he or she were the representative of the council.
‘State Council’	means the body consisting of all the representatives of councils which are financial members of the Association.
‘Significant Decision’	means a decision relating to: (a) a change in the policy position of the MAV; (b) entering into contracts with the value of \$200,000 or more; (c) the expenditure of unbudgeted funds; or (d) the employment or remuneration of the Chief Executive Officer.

3 Alteration of Rules

3.1 An amendment to the Rules may be proposed by:

- 3.1.1 any member notifying the Chief Executive Officer; or
- 3.1.2 the Board.

- 3.2 The Chief Executive Officer must provide written notice of the proposed amendments to the Rules to members thirty five (35) days before submission of the amendments to the State Council for determination.
- 3.3 Despite clause 15 of Schedule 3, the State Council may amend the Rules where 60% of the representatives of participating member councils vote in favour of the proposed amendment.
- 3.4 When the Rules obtain the approval of the Governor in Council under section 3 of the Act, they become the Rules of the Association.

PART 2 – MEMBERSHIP AND MEMBERSHIP PARTICIPATION

Division 1 – Council Membership

4 Membership of the Association

- 4.1 Subject to clause 5.1, a council is a financial member of the Association:
 - 4.1.1 if it has paid the amount of the annual subscription and any other monies levied on it by the Association for membership within 2 months of a notice requiring payment being given or by 31 August in every year (whichever is earlier); or
 - 4.1.2 for the period of any financial year subsequent to its payment of its annual subscription; and
 - 4.1.3 remains a financial member until 31 August in the financial year after the year for which the payment of the annual subscription is made.
- 4.2 A council which is a financial member of the Association is entitled to participate in the activities of the Association in the way provided for in these Rules.

5 Non participating member councils

- 5.1 A council which fails to pay in full its annual subscription or other monies levied on it by the Association in accordance with clause 4.1.1. will become a non participating member council and will remain as a non participating member council until that annual subscription or the next year's annual subscription is paid.
- 5.2 A non participating member council is not entitled to avail itself of the privileges and benefits of any of the functions or services performed or carried on by the Association.
- 5.3 A representative of a non participating member council is not eligible to participate in the activities of the Association or to exercise the powers of a representative to:
 - 5.3.1 vote on any motion or matter under consideration at a meeting of the Association;
 - 5.3.2 nominate any person or be nominated for any office or position on a committee of the Association; and
 - 5.3.3 hold the position of President or be a member of the Board of the committee of the Association.
- 5.4 When the annual subscription or any other monies levied on a council remain unpaid for two months after a notice requiring payment has been sent, the Chief Executive Officer of the Association must notify the Chief Executive Officer of the council of the ineligibility of the council and its representative to participate in the matters identified in sub-clauses 5.2. and 5.3.

Division 2 – Appointment and Obligations of Representatives

6 Appointment of representatives

- 6.1 A council which is a financial member of the Association must appoint a representative and a substitute representative of the council to the Association and must notify the Association in the form specified in Schedule 1 as soon as possible after the Council has made the appointment and, where an Election Day has been appointed by the Chief Executive Officer, no less than four weeks prior to that date.

- 6.2 Appointments must be made by resolution of council.
- 6.3 The Council from which the President is elected must appoint an additional representative to vote on matters under consideration by the State Council.

7 **Obligations of representatives and Board members**

- 7.1 A person appointed as a representative of the Association must use his or her reasonable endeavours to attend all meetings of the Association which the person is eligible to attend.
- 7.2 A representative must:
 - 7.2.1 attend every meeting of the State Council and if he or she is unable to attend a meeting, must encourage the council's substitute representative to attend;
 - 7.2.2 if present, vote on every matter under consideration by the State Council, in accordance with either the resolution of his or her council or the view of the majority of the Councillors where known, unless prohibited from doing so;
 - 7.2.3 provide regular reports to his or her council on matters discussed and considered by the Association and on the decisions made; and have regard to any codes or guidelines published by the Board that relates to his or her functions as a representative.
- 7.3 A representative elected as a regional member of the Board must liaise with other representatives and councils within the region that he or she represents by meeting with them on a regular basis and by providing written reports and information on the Association's activities and by any other means which is convenient and satisfies the needs of the regional grouping of councils.

Division 3 – The Management Board and Elections

8 **The Management Board**

- 8.1 There will be a Municipal Association of Victoria Management Board that is comprised of the President and twelve (12) other members who are the representatives of the twelve regional groupings of councils.
- 8.2 Subject to the provisions of Clause 8, the President and the twelve regional members of the Board go out of office at 6.00 am on the Election Day or 6.00 am on the day of the Local Government General Election.
- 8.3 Despite the provisions of Clause 8.2, the Management Board may make recommendation to State Council for a longer term of office of the President and the twelve regional members of the Management Board.
- 8.4 Despite the provisions of Clause 15 of Schedule 3, for the purposes of this clause 8 the State Council may approve such longer term of office for the President and the twelve regional members of the Board where 60% of the representatives of participating member councils vote in favour of the proposed term of office.

9 **The Interim Management Board**

- 9.1 Subsequent to each Local Government General Election, an Interim Management Board comprising members of the immediate past Management Board who are declared elected following that General Election will be formed.
- 9.2 The Interim President of the Association will be the immediate past President if that person is declared elected following the Local Government General Election and, if that person is not declared elected following the Local Government General Election, the Interim Management Board must elect a member to be the Interim President.
- 9.3 The quorum for the Interim Management Board is a majority of the members.

- 9.4 The Interim Management Board may not make a Significant Decision except by unanimous vote by all members of the Interim Management Board.
- 9.5 The members of the Interim Management Board go out of office at 6.00 am on the Election Day.
- 10 Conduct of elections**
- 10.1 The Chief Executive Officer is the Returning Officer and is responsible for the conduct of elections for the office of President and the twelve (12) regional members on the Board.
- 10.2 The Chief Executive Officer may appoint another person or organisation to be the Returning Officer responsible for the conduct of elections.
- 10.3 The Election Day is the first Friday in March 2009 and thereafter on the first Friday in March in the second year after the last general election was held.
- 11 Election of the President**
- 11.1 The President of the Association will be elected by the representatives that comprise the State Council.
- 11.2 The Chief Executive Officer may after advising the Board, determine whether postal, attendance or electronic voting will apply to the election of the President and must notify the representatives of all participating member councils at least 42 days before Election Day of the voting method to apply.
- 11.3 An election for the position of President must be conducted in accordance with the provisions in Schedule 2.
- 12 Election of regional Board members**
- 12.1 A representative of a regional grouping of councils will be elected by the representatives in each region to be that region's member on the Board.
- 12.2 The Chief Executive Officer may, after advising the Board, determine whether postal, attendance or electronic voting will apply to the election of the twelve regional members of the Board and must notify the representatives of all participating member councils at least 42 days before the Election Day of the voting method to apply.
- 12.3 An election for a regional member position on the Board must be conducted in accordance with the provisions in Schedule 2.
- 13 Voting entitlements for elections**
- 13.1 For the purposes of electing the President, each representative of the State Council has one vote.
- 13.2 For the purposes of electing a representative of each of the regional groupings of councils to the Board each representative has one vote for the representative of the region within which his or her council is located.
- 14 By elections**
- 14.1 Subject to 14.2 and 14.3, an election must be held to fill a casual vacancy on the Management Board and must be conducted by postal ballot or at a special meeting of the State Council.
- 14.2 If a casual vacancy occurs in the position of President within nine months of the date at which the President goes out of office the Management Board must elect a member of the Board as an Acting President for the remainder of the term.
- 14.3 If any other casual vacancy occurs on the Management Board within two months of the date at which that member goes out of office the Board may decide that the casual vacancy is not to be filled.
- 14.4 If a casual vacancy occurs on the Interim Management Board it is not to be filled.

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15 Vacancies and resignations

15.1 A casual vacancy is created either on the State Council or the Board where a representative:

15.1.1 dies;

15.1.2 resigns in writing to the Chief Executive Officer; or

15.1.3 ceases to be a councillor.

15.2 A casual vacancy on the Board also occurs if the council for which that Board member is a representative ceases to be a participating member of the Association.

16 Revocation of Appointment

The revocation of the appointment of a representative, who has been elected as the representative of a region by a Council, will not affect that Councillor remaining a Board member for the remainder of their term, subject to Rule 14.

17 Filling of casual vacancies – State Council and Regional Representatives

17.1 Where a vacancy occurs on the State Council for any of the reasons specified in clause 15.1 the council to which that vacancy relates may appoint a replacement representative.

17.2 Where a vacancy occurs on the Management Board for any of the reasons specified in clause 15, the representatives of the region may as soon as practicable, elect another representative from the region in which the vacancy has occurred to fill the vacancy until the next election of a new Management Board falls due.

Division 4 – Meetings and Forums of the Association**18 The State Council**

18.1 The appointed representatives of participating member councils meeting together in accordance with the Rules comprise the State Council.

18.2 The State Council will meet at least twice in each year and may meet at any other time appointed by the President.

18.3 A special meeting of the State Council may be called by the President or any ten representatives of participating member councils to deal with the matters specified in the notice calling the meeting.

18.4 The quorum necessary to transact business at a meeting of the State Council is the number of representatives capable of exercising 20 votes and no business may be transacted at a meeting of the State Council unless that number of representatives is present.

18.5 Meetings of the State Council may be adjourned or deferred at any time by the President or by a resolution to adjourn to a date to be fixed carried at the meeting.

19 Annual Meeting

19.1 The annual meeting of the State Council will be held in October of each year or at such other time as the Board may determine.

19.2 Preliminary notice in writing giving a general description of the business to be transacted and the date, time and place of the annual meeting will be given to members not less than 35 days before the date fixed for the meeting.

19.3 The purpose of the annual meeting is to:

19.3.1 consider an annual report from the President about the activities and financial affairs of the Association;

19.3.2 appoint an auditor whenever the appointment of auditor is about to expire; and

19.3.3 generally deal with the business of the Association.

20 Additional State Council meetings

- 20.1 In addition to the annual meeting of the State Council, the Association will hold a State Council meeting in November of each calendar year or at such other time as may be determined by the Board, for the purpose of:
- 20.1.1 identifying and determining the issues, objectives and strategic direction of the Association to enable it to fulfil its primary advocacy role;
 - 20.1.2 communicating councils' views about issues impacting on local government;
 - 20.1.3 providing a forum in which effective communication between the Association and councils occurs; and
 - 20.1.4 dealing with any other matter which the Association considers is critical to achieve effective and efficient local government.
- 20.2 Preliminary notice in writing giving a general description of the business to be transacted and the date, time and place of the meeting will be given to members not less than 35 days before the date fixed for the meeting.
- 20.3 Except for items of business to be dealt with at the annual meeting of the Association or for the conduct of elections to which a separate postal voting procedure applies, the Board may determine that members of the State Council may vote on any item of business by post, facsimile or email or any combination of those methods.

21 Submission of business by members

- 21.1 Members may submit matters, in accordance with a form determined by the Board, for consideration at meetings of the State Council which may be included in the business to be dealt with provided that –
- 21.1.1 notice of such matters has been given to the Chief Executive Officer not less than 28 days before the meeting; and
 - 21.1.2 the Chief Executive Officer considers that the matters raised by the member is of state-wide significance to local government and ought to be considered at the meeting; and
 - 21.1.3 where the Chief Executive Officer is of the view that a matter submitted ought not be dealt with at the meeting, he or she must submit the matter to the Board for final determination.
 - 21.1.4 matters which relate to the same subject may be consolidated into a single matter, with such amendments as the Board in its discretion determines are warranted, prior to inclusion in the business papers and circulation to members.

22 Business papers

Business papers must be forwarded to members not less than 14 days before the date specified for any meeting of the State Council.

23 Committees

- 23.1 The Management Board may appoint committees of persons to undertake any function of the Board.
- 23.2 A committee may consist of:
- 23.2.1 representatives;
 - 23.2.2 members of staff of the Association;
 - 23.2.3 council staff; or
 - 23.2.4 any other person that the Board considers necessary or convenient to facilitate the function to be performed.

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24 Issues Forums

- 24.1 The Association may from time to time conduct issues forums for the purposes of:
- 24.1.1 developing a local government response to the State or Federal Government or any other organisation on specific issues which have not been addressed by the State Council;
 - 24.1.2 providing a forum for councils to participate in the formulation of local government policy on issues of significance to local government;
 - 24.1.3 providing a forum for councils to exchange information or to engage in problem solving on issues of significance or concern to local government;
 - 24.1.4 providing a means by which information can be given about new and emerging issues or by which new and emerging issues can be developed and assessed; and
 - 24.1.5 presenting information or decisions of the Board.

25 Holding of Issues Forums

- 25.1 Issues forums may be held by the Association at any time after the Association has given 7 days notice to members.
- 25.2 Issues forums must be chaired by a member of the Board.

26 Attendance at Issues Forums

- 26.1 Any person who is a councillor or a member of council staff may attend issues forums.
- 26.2 Each council attending an issues forum is entitled to one vote which may be cast by any person irrespective of whether that person is a representative or not.
- 26.3 A matter before an issues forum is passed by a majority of votes.
- 26.4 Except where an issue is considered urgent by the Chief Executive Officer any decision which results in a policy position of the Association must be submitted to the next meeting of the Board for endorsement.

Division 5 – Regulation of proceedings**27 Conduct of meetings**

- 27.1
- 27.1.1 The meetings of the State Council and the Board will be conducted in accordance with the procedures in Schedule 3.
 - 27.1.2 Meetings of the State Council and the Management Board will be chaired by the President or, in his or her absence by a Deputy President or in the absence of the President and the Deputy Presidents, by a representative appointed by the State Council or the Management Board to chair the meeting.
 - 27.1.3 Meetings of the Interim Management Board will be chaired by the Interim President or, in his or her absence, by a member elected by the Interim Management Board to chair the meeting
- 27.2
- 27.2.1 At any meetings of the Association other than a State Council meeting, each representative present is entitled to one vote.
 - 27.2.2 At any meeting of the State Council, voting entitlements will be those set out in clause 15 of Schedule 3.
- 27.3 At meetings of the State Council if the representative of a participating member council is not present the substitute representative of that council may vote in place of that representative.

- 27.4 At State Council the President may not exercise a deliberative vote.
- 27.5 A question arising at a meeting is determined by the majority of votes of the members present who are eligible to vote and in accordance with their respective eligibility to vote on that question and, if voting is equal, the chairperson or other person presiding, has a casting as well as a deliberative vote. If voting is equal at a meeting of State Council, the President, if present, has a casting vote only.
- 27.6 Business which is not included in the notice for a meeting of any State Council or the Board may not be dealt with unless 50% of the members eligible to attend and vote at the meeting are present and agree.
- 27.7 The Association must ensure that accurate records are kept of its meetings.

PART 3 – MANAGEMENT AND ADMINISTRATION OF THE ASSOCIATION

Division 1 – The Board

28 The Board

- 28.1 The Board has responsibility for the conduct of the affairs of the Association in accordance with the Rules.
- 28.2 Notice of meetings of the Board must be given to Board members not less than seven days before the meeting, unless the meeting is to deal with business which the President considers to be urgent or requiring immediate resolution by the Board.
- 28.3 The quorum necessary to transact business at a meeting of the Management Board will be 7 and no business may be transacted at a meeting of the Management Board unless that number of representatives is present.
- 28.4 The quorum for the Interim Management Board is a majority of the members.
- 28.5 The Interim Management Board may not make a Significant Decision except by unanimous vote by all members of the Interim Management Board.
- 28.6 Meetings of the Board may be deferred or adjourned at any time by the President, Interim President or member presiding, as the case may be, to a date to be fixed.
- 28.7 Meetings of the Board must be conducted in open session unless the Association will be prejudiced by the requirement to do so.
- 28.8 Where the business of the Board requires urgent or immediate resolution by the Board, Board members may participate in a meeting of the Board by phone, closed circuit television or any other means of communication and a member who participates for the duration of the meeting is deemed to be present at the meeting.

29 Election of Deputy Presidents

- 29.1 The Management Board must elect two of its members to be Deputy Presidents of the Association; one Deputy President must be a representative of a rural grouping of councils and the other a representative of a metropolitan grouping of councils.
- 29.2 The role of the Deputy Presidents will be determined by the Management Board.
- 29.3 A Deputy President may act in the place of the President when requested by the President to do so.
- 29.4 The Management Board may appoint a Deputy President to act in the place of the President when the President is absent, incapable or refuses to act.

30 Functions of the Board

- 30.1 The functions of the Board will be to:–
 - 30.1.1 determine and classify the regional groupings of councils after consultation on proposals for the regional groupings has been undertaken with councils;
 - 30.1.2 define the detail of the broad policies, objectives and strategies determined by the State Council;

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- 30.1.3 implement the broad policies, objectives and strategies of the Association;
- 30.1.4 regularly liaise with representatives of participating member councils and regional groupings of councils;
- 30.1.5 set service standards and priorities and monitor the performance of the Association;
- 30.1.6 publish practice notes, guidelines or codes to be used and applied by representatives when they are acting as representatives of the Association;
- 30.1.7 determine the budget including the level of subscription to be paid by participating member councils and monitor the financial performance of the Association after consultation with the State Council on the level of subscriptions to be paid.
- 30.1.8 determine the levels of cover, guarantees and other matters associated with the Municipal Officers' Fidelity Guarantee Fund;
- 30.1.9 operate and manage liability and workcover insurance schemes;
- 30.1.10 determine issues of policy, legislative and financial significance to local government;
- 30.1.11 appoint a Chief Executive Officer who will be responsible for the day to day management and administration of the Association;
- 30.1.12 annually set performance appraisal objectives for the Chief Executive Officer and regularly monitor the performance of the Chief Executive Officer;
- 30.1.13 determine the allowances (if any) to be paid to representatives;
- 30.1.14 provide appropriate insurance cover for representatives; and
- 30.1.15 appoint representatives and persons to committees.
- 30.2 The Board must provide notice to councils of the classification of Metropolitan, interface and rural councils into regional groupings of councils within 14 days of its decision.

31 Delegation

The Board may, by instrument of delegation, delegate to a committee appointed by the Board or to the Chief Executive Officer of the Association any power or function of the Board, other than this power of delegation.

32 Disclosure of Pecuniary Interests

- 32.1 If –
 - 32.1.1 a member has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Board; and
 - 32.1.2 the interest could conflict with the proper performance of the member's duties in relation to the consideration of the matter –

the member, as soon as practicable after the relevant facts come to a member's knowledge, must disclose the nature of the interest at a meeting of the Board.
- 32.2 A member who has made a disclosure under sub-clause 32.1 may remain in the room in which the meeting is being held during any consideration or discussion of the matter, and may take part in discussion, but must leave the room while any vote is taken on the matter.
- 32.3 A disclosure under sub-clause 32.1 must be recorded in the minutes of the meeting.
- 32.4 Sub-clause 32.1 does not apply in relation to a matter relating to the supply of goods or services to the member if the goods or services are, or are to be, available to other members of the Association on the same terms and conditions.

Division 2 – Revenue of the Association**33 Accounts and records**

The Association must ensure that proper accounts and records of its transactions and affairs and other appropriate records are kept so that its financial operations and financial position can be adequately explained at any time.

34 Audit

The Association must appoint an independent person or firm to be the auditor of the Association for a period up to five years.

35 Duties of auditors

The auditor must audit the financial statements of the Association in accordance with applicable Australian Auditory Standards and Statutory requirements including reporting in accordance with those requirements.

36 Subscriptions

The subscription to be paid by member councils and the date of sending subscription notices will be determined each year by the Board.

37 Investments

The Association may invest in any of the funds that councils may invest in under section 143 of the **Local Government Act 1989** or the **Trustee Act 1958**.

Division 3 – Municipal Officers' Fidelity Guarantee Fund**38 Members of the Fund**

For the purposes of this Division, 'Authority' includes the bodies referred to in section 5 of the Act contributing to the fund.

39 Management of the fund

Subject to these Rules, the Board is responsible for the management and operation of the Municipal Officers' Fidelity Guarantee Fund.

40 The Municipal Officers' Fidelity Guarantee Fund

40.1 The Municipal Officers' Fidelity Guarantee Fund consists of:

- 40.1.1 all premiums received by the Association by way of premiums on guarantees;
- 40.1.2 all monies received by the Association under section 7 of the Act;
- 40.1.3 all monies received by the Association by way of interest on moneys invested under these Rules;
- 40.1.4 all other moneys received by the Association in connection with the activities of the Fund.

41 Decisions of the Board

41.1 The Board will from time to time determine:

- 41.1.1 the manner and form of an application for a guarantee;
- 41.1.2 the form of the policies to be issued;
- 41.1.3 the level of premium payable; and
- 41.1.4 the level of cover available.

42 Expiration of Policies

Unless renewed, all policies will terminate on the 30th June next following the date of their issue.

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43 Application for guarantee

Any Authority may make application for a guarantee in respect of its employees. Upon acceptance of any application and upon acceptance and payment of the appropriate premium fixed by the Board, the Association will issue to the Authority a policy in the appropriate form determined by the Board.

44 Renewal of policies

Before becoming entitled to the renewal of any policy, the Authority in the name of which the policy has been issued must submit to the Board a statement of its revenue from general rates and charges during the preceding financial year and the Board will fix the premium payable on the basis of such revenue and such other information as the Board may determine from time to time; including, without limitation, claims history and risk management practices.

45 Cancellation of policies

45.1 Any policy may be cancelled:

- 45.1.1 at any time at the written request of the Authority, in which case the Association will be entitled to retain the premium for the period during which the policy has been in force; and
- 45.1.2 by the Association in the event of the Authority;
 - 45.1.2.1 failing to comply with its duty of absolute good faith;
 - 45.1.2.2 failing to comply with its duty of disclosure;
 - 45.1.2.3 making a misrepresentation to the Association during negotiations for the policy before it was entered into;
 - 45.1.2.4 failing to comply with a condition or other provision of the policy, including the provision with respect to payment of the premium; or
 - 45.1.2.5 making a fraudulent claim under the policy.

46 Notice of cancellation

- 46.1 The Association may give written notice to the Authority that it has cancelled the policy and that the cancellation will take effect 14 days from the date of the written notice.
- 46.2 Where the Association cancels the policy of an Authority the Association will refund to the Authority an amount of premium proportionate to the unexpired term of the policy.

47 Liability of the Association

The liability of the Association under any blanket policy to pay out of the Municipal Officers' Fidelity Guarantee Fund any loss sustained by the Authority will be based on the absolute good faith of the application and of the truth and completeness of any information supplied by and on behalf of the Authority and will depend upon the due payment of the premium.

48 Investment of funds

The Board may invest the fund or any part of it in the funds in which councils may invest under section 143 of the **Local Government Act 1989** or the **Trustee Act 1958**.

49 Expenses

All expenses incurred in the management of the Fund will be paid out of the Funds and the Fund will contribute from time to time an amount determined by the Board towards the overall cost of management and administration of the Association.

PART 4 – GENERAL PROVISIONS**50 Seal**

- 50.1 The Seal of the Association may only be used in accordance with the direction of the Board and affixed in the presence of any member of the Board and the Chief Executive Officer or any other Director of the Association.
- 50.2 Any documents to which the Seal has been affixed must be kept in a register maintained for that purpose.
- 50.3 The Chief Executive Officer must report to the Board at each meeting, the documents to which the Seal has been affixed.

51 Business Name

The Association in conducting its activities may use with the approval of the Board any business name which it determines to register under the **Business Names Act 1962**.

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Municipal Association of Victoria
SCHEDULE 1
Notification of appointment (Rule 6)

The Chief Executive Officer
Municipal Association of Victoria

At the meeting of the _____ on _____
(insert name of council) (insert date)

Cr _____ was appointed as the council's
representative to the Association.

Cr _____ was appointed as the substitute
representative to the Association.

Chief Executive Officer
(insert name of council)

Municipal Association of Victoria**SCHEDULE 2****Election Procedures for President and members of the
MAV Management Board (Rules 11 & 12)****Division 1 – General requirements applying to elections****1 Nomination**

- 1.1 Any representative wanting to nominate as a candidate for election either to the position of President or as a regional representative of the Board must submit to the Returning Officer a nomination in the form specified in Schedule 4.
- 1.2 A nomination must be received by the Returning Officer no later than 4.00 pm on the twenty first day before Election Day and may be posted, hand delivered or sent by facsimile.
- 1.3 A representative nominating for election may nominate himself or herself or be nominated by another representative but must be the council's representative appointed by the council under rule 6.1. and notified to the Association in the form of Schedule 1.
- 1.4 The Returning Officer must reject the nomination if:
 - 1.4.1 the person nominating is not the representative appointed by a participating member council; or
 - 1.4.2 the person nominating has been nominated by a person who is not the representative of a participating member council; or
 - 1.4.3 the nomination has not been received by the specified closing time.

2 Candidate's entitlements

- 2.1 Each candidate for election may provide to the Returning Officer a statement containing no more than 150 words and a photograph of himself or herself a copy of which must be lodged with the nomination form so that it is circulated under clause 12 of this Schedule.
- 2.2 Each candidate may appoint a scrutineer in writing to the Returning Officer to be present at the ballot to determine the order of candidates on the ballot paper and at the count of the votes.
- 2.3 A scrutineer appointed in accordance with sub-clause 2.2. has the right to attend either or both of a ballot or count of votes for which he or she is appointed.

3 Withdrawal or death of a candidate

- 3.1 If the withdrawal or death of a candidate before the conduct of an election means that only one candidate remains in the election, the Returning Officer must declare the remaining candidate to be elected.
- 3.2 If the withdrawal or death of a candidate before the conduct of an election means that there are no candidates for an election, the election fails and the Returning Officer must:
 - 3.2.1 if the failure relates to the election of President, advise all the representatives;
 - 3.2.2 in any other case, advise the representatives within the relevant region – that the election has failed and that a new election will be conducted.
- 3.3 The Returning Officer must proceed to conduct an election in accordance with these Rules to fill an extraordinary vacancy as soon as practicable.

4 Returning Officer's duties

If an election is to be conducted for the office of President and for any of the regional member positions on the Board, the Returning Officer must:

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- 4.1 as soon as practicable after 4.00 pm on the closure of nominations hold a ballot by lot to determine the order in which the name of each candidate is to appear on the ballot paper;
- 4.2 within 7 days of the close of nominations send to each representative eligible to vote a statement setting out the names of the representatives who have nominated, the positions for which they have nominated and the order in which candidates names will appear on the ballot paper; and
- 4.3 prepare separate ballot papers for each of the elections setting out the names of the candidates who have nominated.

5 Election of President

- 5.1 If only one representative nominates for the office of President, he or she will be declared elected by the Returning Officer.
- 5.2 If two or more representatives nominate for the office of President, an election must be conducted by the Returning Officer.

6 Marking of ballot papers for election of President

- 6.1 Where there are more than two candidates for the office of President, the representative must mark his or her vote on the ballot paper delivered to him or her by placing –
 - 6.1.1 the figure 1 opposite the name of the candidate for whom he or she votes as his or her first preference; and
 - 6.1.2 the figures 2, 3, 4 (and so on as the case requires) opposite the respective names of all remaining candidates so as to indicate by numerical sequence the order of his or her preference for each candidate.
- 6.2 Where there are only two candidates a ballot paper will be deemed to be sufficiently marked if marked with the figure 1 so as to indicate the representative's first preference.
- 6.3 At any election where there are more than two candidates the requirements of this sub-clause will be deemed to be sufficiently complied with if the ballot paper is marked with the figures 1, 2, 3, 4, (and so on as the case requires) opposite the names of all the candidates on the ballot paper except one, and in any such case the representative will be deemed and taken to have given his or her last preference vote for the candidate opposite whose name no figure is placed.
- 6.4 A ballot paper must be rejected if it is not marked in the manner required.
- 6.5 If the election is conducted by attendance voting, each representative must within 30 minutes after the delivery of the ballot papers, place his or her ballot paper in the appropriate box provided by the Returning Officer.

7 Election Results for the office of President

- 7.1 If an election for the office of President has been conducted, the candidate who has received the greatest number of first preference votes, if that number constitutes an absolute majority of votes, is to be declared elected by the Returning Officer.
- 7.2 'Absolute majority of votes' means a number of votes greater than one-half of the total number of ballot papers (excluding ballot papers which are rejected) and if necessary, includes a vote by lot.
- 7.3 If no candidate has received an absolute majority of votes, the Returning Officer must –
 - 7.3.1 arrange the ballot papers by placing in a separate parcel all those on which a first preference is indicated for the same candidate and preference votes are duly given for all (or all but one) of the remaining candidates, omitting ballot papers which are rejected; and
 - 7.3.2 declare the candidate who received the fewest first preference votes a defeated candidate; and

- 7.3.3 distribute the ballot papers counted to the defeated candidate amongst the defeated candidates next in order of the voters' preference; and
- 7.3.4 after the distribution, again ascertain the total number of votes given to each non-defeated candidate.
- 7.4 The candidate who has then received the greatest number of votes, if that number constitutes an absolute majority of votes, is declared elected by the Returning Officer.
- 7.5 If no candidate then has an absolute majority of votes, the process of declaring the candidate who has the fewest votes a defeated candidate and distributing the ballot papers counted to the defeated candidate amongst the non defeated candidates next in order of the voters' preference is to be repeated until one candidate has received an absolute majority of votes and is declared elected by the Returning Officer.
- 7.6 If on any count two or more candidates have an equal number of votes and one of them has to be declared a defeated candidate, the result is to be determined by lot by the Returning Officer.
- 7.7 If on a final count two candidates have an equal number of votes, the result is to be determined by lot by the Returning Officer.
- 8 Election of 12 regional members of the Board**
 - 8.1 If only one representative from a regional grouping of councils nominates for the position of Board member for that region he or she will be declared elected as the Board member for that region.
 - 8.2 If two or more representatives from a regional grouping of councils nominate for the position of regional member of the Board, an election must be conducted by the Returning Officer.
- 9 Marking of ballot papers for election of regional member of the Board**
 - 9.1 Where an election is conducted for a position as a regional Board member, the representative must mark his or her vote on the ballot paper delivered to him or her by placing –
 - 9.1.1 the figure 1 opposite the name of the candidate for whom he or she votes as his or her first preference; and
 - 9.1.2 the figures 2, 3, 4 (and so on as the case requires) opposite the respective names of all remaining candidates so as to indicate by numerical sequence the order of his or her preference for each candidate.
 - 9.2 Where there are only two candidates a ballot paper will be deemed to be sufficiently marked if marked with the figure 1 so as to indicate the representative's first preference.
 - 9.3 At any election where there are more than two candidates the requirements of this sub-clause will be deemed to be sufficiently complied with if the ballot paper is marked with the figures 1, 2, 3, 4, (and so on as the case requires) opposite the names of all the candidates on the ballot paper except one, and in any such case the representative will be deemed and taken to have given his or her last preference vote for the candidate opposite whose name no figure is placed.
 - 9.4 A ballot paper must be rejected if it is not marked in the manner required.
 - 9.5 If the election is conducted by attendance voting, each representative must within 30 minutes after the delivery of the ballot papers, place his or her ballot paper in the appropriate box provided by the Returning Officer.
- 10 Election results for regional members of the Board**
 - 10.1 If an election for any of the regional members of the Board has been conducted, the candidate who has received the greatest number of first preference votes, if that number constitutes an absolute majority of votes, is to be declared elected by the Returning Officer.

- 10.2 'Absolute majority of votes' means a number of votes greater than one-half of the total number of ballot papers (excluding ballot papers which are rejected) and if necessary, includes a vote by lot.
- 10.3 If no candidate has received an absolute majority of votes, the Returning Officer must –
- 10.3.1 arrange the ballot papers by placing in a separate parcel all those on which a first preference is indicated for the same candidate and preference votes are duly given for all (or all but one) of the remaining candidates, omitting ballot papers which are rejected; and
 - 10.3.2 declare the candidate who received the fewest first preference votes a defeated candidate; and
 - 10.3.3 distribute the ballot papers counted to the defeated candidate amongst the non defeated candidates next in order of the voters' preference; and
 - 10.3.4 after the distribution, again ascertain the total number of votes given to each non-defeated candidate.
- 10.4 The candidate who has then received the greatest number of votes, if that number constitutes an absolute majority of votes, is declared elected by the Returning Officer.
- 10.5 If no candidate then has an absolute majority of votes, the process of declaring the candidate who has the fewest votes a defeated candidate and distributing the ballot papers counted to the defeated candidate amongst the non-defeated candidates next in order of the voters' preference is to be repeated until one candidate has received an absolute majority of votes and is declared elected by the Returning Officer.
- 10.6 If on any count two or more candidates have an equal number of votes and one of them has to be declared a defeated candidate, the result is to be determined by lot by the Returning Officer.
- 10.7 If on a final count two candidates have an equal number of votes, the result is to be determined by lot by the Returning Officer.
- 11 Where representative has nominated for President and Board member**
- 11.1 If any candidate declared elected as President has also nominated for a position as a regional member of the Board that nomination must be declared to be invalid and any vote expressed for him or her for that other position will be dealt with as if his or her name had not been on the ballot paper and the numbers indicating subsequent preferences had been altered accordingly.
- 11.2 In the event that such a procedure results in no candidate for a regional member of the Board, an election must be held for the vacancy.
- Division 2 – Optional postal voting**
- 12 Application of postal voting**
- 12.1 If the Chief Executive Officer has determined that postal voting will apply to an election, then in addition to the notification required to be given a representative under clause 4, the Returning Officer must at least 10 days before the last day of voting, deliver or send to each representative who is entitled to vote at the election –
- 12.1.1 a postal vote certificate or declaration;
 - 12.1.2 a ballot paper for postal voting;
 - 12.1.3 a prepaid envelope for the return of the certificate and the ballot paper;
 - 12.1.4 instructions on how to vote;
 - 12.1.5 notice of how and when the ballot paper must be returned by; and
 - 12.1.6 any other material that the Returning Officer thinks is appropriate.
- 12.2 If an election is conducted by postal voting, a reference in the Rules to 'Election Day' is to be taken as a day fixed by the Chief Executive Officer as the last day on which postal ballots may be validly received by the Returning Officer.

13 Ballot papers and declaration envelopes

- 13.1 Subject to sub-clause 13.2, the Returning Officer must ensure that –
- 13.1.1 ballot papers are made of marked security paper; and
 - 13.1.2 declaration envelopes are opaque.
- 13.2 Each replacement declaration envelope issued under clause 14 must be identified as a replacement declaration envelope.
- 13.3 The Returning Officer must keep a record of all persons who have been issued with a postal voting envelope and must keep a record of all those who have returned a declaration envelope.

14 Issuing duplicate voting materials

- 14.1 If on or before the last day of voting a representative –
- 14.1.1 claims that he or she has lost or destroyed the declaration envelope or ballot paper or both; or
 - 14.1.2 claims that he or she has not received a postal ballot envelope; or
 - 14.1.3 satisfies the Returning Officer that he or she has spoilt the declaration envelope or ballot paper or both and returns the spoilt declaration envelope or spoilt ballot paper or both,
- the Returning Officer must issue the voter with the appropriate replacement material.
- 14.2 If a spoilt declaration envelope or ballot paper has been returned under sub-clause 14.1.3 the Returning Officer must cancel the spoilt declaration envelope or ballot paper.
- 14.3 The Returning Officer may use any means of identifying declaration envelopes, ballot papers and postal ballot envelopes issued under this provision which he or she considers appropriate to comply with clause 16.

15 Requirements applying to representatives

- 15.1 A representative voting must –
- 15.1.1 mark his or her preference on the ballot paper in the manner required in this Schedule;
 - 15.1.2 sign his or her name on the declaration envelope in the place provided and complete any details where indicated;
 - 15.1.3 insert the completed ballot paper in the declaration envelope provided and seal the envelope; and
 - 15.1.4 place the declaration envelope in the prepaid envelope provided.
- 15.2 The representative must post or deliver the prepaid envelope containing the declaration envelope and ballot paper to the Returning Officer at the address on the envelope so as to reach the Returning Officer not later than 6.00 pm on the last day of voting or to deliver it to the address designated by the Returning Officer for that purpose not later than 6.00 pm on the last day of voting or by any other time specified by the Returning Officer.

16 Receipt of declaration envelopes

- 16.1 The Returning Officer may before the close of voting –
- 16.1.1 remove the declaration envelopes from the prepaid envelopes;
 - 16.1.2 separate the signed declaration envelopes from the unsigned declaration envelopes;
 - 16.1.3 disallow the unsigned declaration envelopes;
 - 16.1.4 arrange all signed declaration envelopes according to the appropriate regional grouping of councils.

- 16.2 The Returning Officer must –
 - 16.2.1 identify the declaration envelopes issued under clause 14;
 - 16.2.2 satisfy himself or herself that –
 - 16.2.2.1 the person voting was entitled to vote; or
 - 16.2.2.2 the person has not voted or attempted to vote more than once at the election; or
 - 16.2.2.3 the replacement declaration envelope was signed by the same person whose name appears on the list of representatives entitled to vote.
- 16.3 If the Returning Officer is satisfied he or she must accept the ballot paper within the declaration envelope for further scrutiny without opening the declaration envelope in which it is contained, but if the Returning Officer is not satisfied the ballot paper within the declaration envelope must be disallowed without opening the declaration envelope within which it is contained.
- 16.4 The Returning Officer must arrange all the declaration envelopes containing accepted ballot papers in accordance with sub-clause 16.1.4.
- 17 Security of declaration envelopes**
 - 17.1 The Returning Officer must ensure that all declaration envelopes received are placed in a properly secured postal ballot container until after the close of voting.
 - 17.2 The Returning Officer must ensure that all declaration envelopes remain unopened until the close of voting.
- 18 Handling of election materials**
 - 18.1 The Returning Officer must as soon as practicable after the close of voting do the following in the presence of any scrutineers and any other person who is authorised –
 - 18.1.1 open the postal voting container and remove its contents;
 - 18.1.2 make up into separate parcels –
 - 18.1.2.1 the records kept of persons who have returned a declaration envelope;
 - 18.1.2.2 the spoilt ballot papers and the declaration envelopes;
 - 18.1.2.3 the unsigned declaration envelopes;
 - 18.1.2.4 the declaration envelopes disallowed under sub-clause 16.1.3 and 16.3;
 - 18.1.2.5 the unused declaration envelopes;
 - 18.1.3 open the signed declaration envelopes and take out the ballot papers;
 - 18.1.4 make up the signed declaration envelopes into separate parcels and ascertain the number of votes received by each candidate and the number of informal votes;
 - 18.1.5 set aside the informal ballot papers;
 - 18.1.6 make up into separate parcels –
 - 18.1.6.1 the used ballot papers;
 - 18.1.6.2 the informal ballot papers;
 - 18.1.6.3 the unused ballot papers;
 - 18.1.7 prepare and sign a certificate which may be signed by any of the scrutineers specifying the number of –
 - 18.1.7.1 votes received by each candidate;
 - 18.1.7.2 ballot papers set aside as informal;

- 18.1.8 make a statement on the outside of each parcel containing –
 - 18.1.8.1 a description of its contents;
 - 18.1.8.2 the name of the council and the regional grouping of councils;
 - 18.1.8.3 the date of the count;
 - 18.1.8.4 enclose and properly fasten each parcel and sign the statement made under paragraph (h) and permit any scrutineer to sign the statement.
- 18.2 As far as practicable, the Returning Officer must ensure that the ballot paper is removed from a signed declaration envelope in a way that prevents any person from seeing how a representative voted.
- 18.3 The Returning Officer must as soon as practicable ascertain from the certificate prepared under sub-clause 18.1.7 the number of first preference votes given to each candidate.

19 Safe custody of ballot materials

- 19.1 The Returning Officer is responsible for the safe custody of postal ballot envelopes and all documents and materials, including during the adjournment of any count of the vote, and must –
 - 19.1.1 keep a record of the ballot papers that have been printed; and
 - 19.1.2 reconcile that number with the number of ballot papers which have been issued, spoilt or unused
- 19.2 The Returning Officer must –
 - 19.2.1 certify the record kept under sub-clause 19.1. as being true and correct; and
 - 19.2.2 submit the record to the Association as soon as practicable after election day.

Municipal Association of Victoria**SCHEDULE 3****Regulation of proceedings (Rule 27)****1. Definitions**

In this Schedule, unless the context or subject matter otherwise requires –

‘Member’ means and includes any representative appointed under clause 3 of the Rules, or in his or her absence, any substitute representative who has been appointed or any person appointed by the Board to a committee.

2. Application of Parliamentary Procedures

Where the Rules do not make provision for any matter, the members may determine by a majority of votes the procedure to apply to the particular meeting of the Association.

3. Confirmation of the Minutes

3.1. A copy of the minutes of the preceding meeting of the State Council must be sent to the members at least a day before the meeting, or in the case of any other meeting, must be sent to the members at least 48 hours before the meeting.

3.2. The minutes of any meeting are to be confirmed at the next following meeting of the State Council, Board or committee to which they relate and are to be the first business dealt with at that meeting.

3.3. If a copy of the minutes of the preceding meeting has not been delivered within the period specified in sub-clause 3.1., members will be permitted to read the minutes prior to the confirmation of such minutes.

3.4. No discussion will be permitted on the contents of the minutes except as to their accuracy as a record of proceedings.

3.5. When the minutes have been confirmed by the meeting they will be signed by the Chairperson.

4. Order of Business

The order of business at the meeting will be the order in which the business stands in the notice of the meeting, unless the members present agree to alter it.

5. Meeting Protocol

5.1. Any member wishing to make a motion or amendment or take part in discussion on any matter or subject will address the Chairperson and must not be interrupted unless called to order, when he or she must sit down until the member (if any) calling to order has been heard and the question of order disposed of, when the member making the motion or amendment or taking part in the discussion may proceed with the subject.

5.2. Any other person in attendance at any meeting may take part in discussion only at the discretion of the chairperson of the meeting but may not move a motion or amendment or vote on any question.

6. Proposing Motions or Amendments

6.1. Any member wishing to propose an original motion or amendment must state the nature of the motion or amendment before he or she addresses the meeting.

6.2. No motion or amendment may be withdrawn except where leave of the meeting has been given.

6.3. No motion or amendment may be discussed or put to the vote unless it has been seconded.

6.4. A member moving a motion will be held to have spoken on the matter, but a member merely seconding a motion will not be held to have spoken to it.

- 6.5. If two or more members rise to speak at the same time, the Chairperson will decide who is entitled to priority.
- 6.6. No member may speak a second time on the same question, unless entitled to reply or to ask a question of clarification or to give an explanation when he or she has been misrepresented or misunderstood.
7. **Submission of Motions**
If required by the Chairperson, all motions (whether original motions or amendments) will be put in writing, signed by the mover and delivered to the Chief Executive Officer immediately on their being moved or seconded.
8. **Dealing with amendments**
 - 8.1. No second or subsequent amendment (whether on an original proposition or on an amendment) will be taken into consideration until the previous amendment has been dealt with and finalised.
 - 8.2. If any words of an original question are rejected, the insertion of other proposed words will form the next question, whereupon any further amendment to insert other words may be moved.
 - 8.3. If an amendment is lost, then a second amendment may be moved to the question to which the first amendment was moved, but only one amendment may be submitted to the meeting for discussion at a time.
9. **Right of Reply**
The mover of every original motion, but not of any amendment, will have a right of reply immediately after which the question will be put from the chair, except no member will be allowed to speak more than once on the same question unless permission is given to explain or the attention of the chair is called to a point of order.
10. **Time limits**
 - 10.1. The original mover of a motion will not speak for more than four (4) minutes and all other speakers will be allowed not more than three (3) minutes to speak on any motion or amendment.
 - 10.2. Any speaker may be granted an extension of time for a further three (3) minutes upon a motion being moved, seconded and carried by the meeting, but no discussion will be allowed upon a motion to grant an extension of time.
11. **Adjournment of meeting**
 - 11.1. No discussion will be allowed on any motion for adjournment of the meeting.
 - 11.2. If the question for adjournment is lost, the subject then under consideration or the next subject on the business paper, or any other matter that may be allowed precedence, will be discussed before any subsequent motion for adjournment is made.
12. **Enforcement of Standing Orders**
A member may require the enforcement of any standing order by directing the Chairperson's attention to any failure to observe it.
13. **Points of Order and Members' Conduct**
 - 13.1. When called upon to decide on points of order or practice, the Chairperson will state the provision, rule or practice which the Chairperson deems applicable to the case without discussing or commenting on it, and the Chairperson's decision as to order or practice in each case is final.
 - 13.2. No member may digress from the subject matter of the question under discussion or comment on the words used by any other member in a previous debate; and all imputations of improper motives and all personal reflections on members will be deemed out of order.

- 13.3. Whenever any member makes use of disorderly expression or one which is capable of being applied offensively to any other member, the member so offending will be required by the Chairperson to withdraw the expression and to make an acceptable apology to the meeting.

14. Voting Entitlements at Meetings

At any meeting of the Association other than a meeting of State Council, members will vote by a show of hands and the Chairperson in taking the sense of the meeting will put the question first in the affirmative, then in the negative, and the result of the vote will be recorded in the minutes.

15. Voting Entitlements at State Council Meetings

- 15.1 At any meeting of State Council, voting entitlements on any motion or amendment will be:

- 15.1.1 the representative of each participating member council paying an annual subscription to the Association which exceeds the mid point between the lowest and highest subscriptions will have two (2) votes; and
- 15.1.2 the representative of each participating member council paying an annual subscription to the Association which does not exceed that mid point will have one (1) vote;

- 15.2 and questions will be decided on the basis of the votes of the representatives voting. Should there be an equality of votes on any question before a meeting, the Chairperson has the casting vote.

16. Absence of a Quorum

If debate on any motion which has been moved or seconded is interrupted by the absence of a quorum the debate may be resumed at the next meeting.

17. Suspension of Procedures

Any one or more of the clauses to this Schedule may be suspended by resolution for a special purpose at any meeting.

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Municipal Association of Victoria
SCHEDULE 4
Nomination Form (Clause 1 of Schedule 2)

Nomination for election of Board Members held on _____

I, the undersigned _____

Being the representative of the _____
(insert name of council)

do hereby nominate _____
(insert name of councillor in full)

as a candidate for election to the following position:

☐ President

☐ Board member for the _____ region
(insert name of region)

(Mark with an 'X' the election for which the candidate is nominated)

Signature _____

And I, the above-named _____
(insert name in full)

consent to the nomination and declare that I am the appointed

representative of _____
(insert name of council)

Signature _____

NOTE: A separate nomination form must be completed and delivered to the Returning Officer for each election for which a candidate is to be nominated.