



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.

A handwritten signature in black ink that reads "David Clark". The signature is stylized with a large, looped 'D' and a cursive 'Clark'.

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.

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.

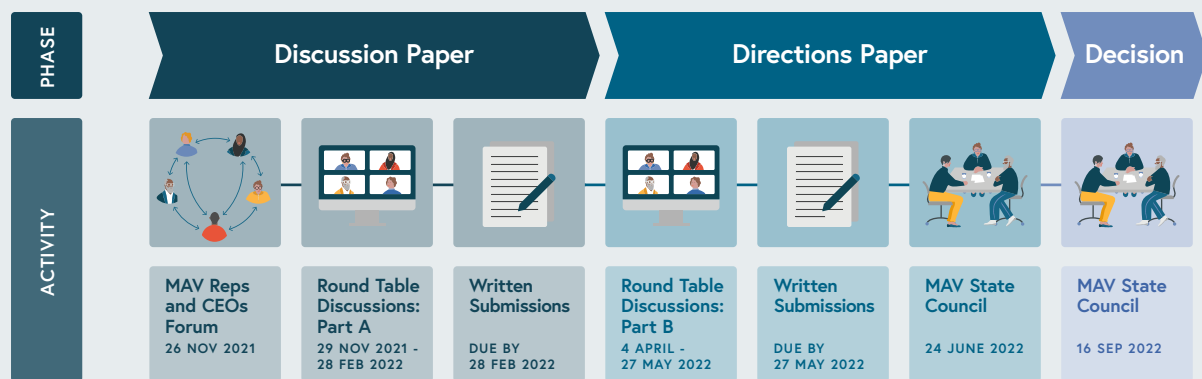
1. **A Discussion Paper** – which will outline a framework, principles and the opportunities for new Rules. The Discussion Paper will canvass possible Rule changes and seek sector and stakeholder responses.
2. **A Directions Paper** – based on feedback to the Discussion Paper, the Directions Paper will 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.

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 decision making journey



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.

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.

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."



Questions to consider

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

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?

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.)

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.

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.

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?

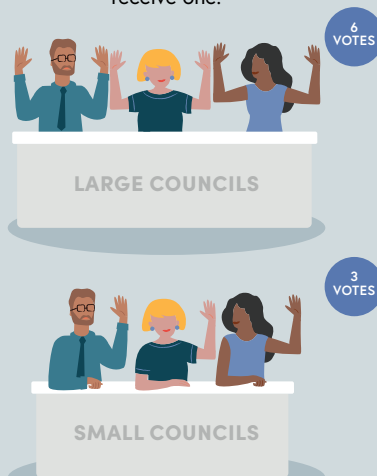
And finally, some of the most important matters settled by State Council include the election of the President and the Board, and neither of those processes is determined by plural voting.

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.

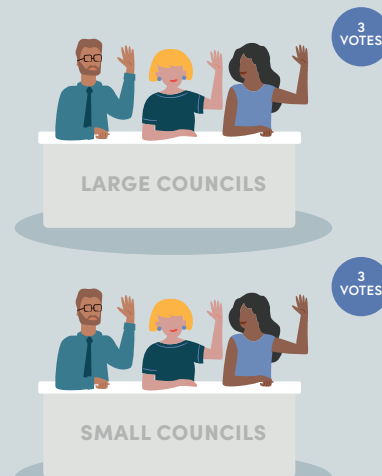
PLURAL VOTING

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.



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.