

What can be learned from the implementation of the Victorian Local Government Act 2020?

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What can be learned from the implementation of the Victorian Local Government Act 2020?

What is the question?

What can be learned from the Victorian Local Government Act 2020's mandate of "deliberative engagement practice" for local councils?

Background

When an historic piece of legislation is implemented, it is rarely perfect. This means that its roll-out provides many opportunities for learning—not just for those impacted but also for governments in all jurisdictions. This means that benefits can be replicated while adjusting for any shortcomings.

In 2020, the Victorian Parliament passed a new Local Government Act (the Act). It was an ambitious and unprecedented piece of legislation in that it included a requirement for the use of "deliberative engagement practices" in the development of four local council plans:

- *Community Vision*
- *Community Plan*
- *Financial Plan*
- *Asset Plan*

Local Government Victoria (LGV), the state government body responsible for the review and implementation of the Act did not provide any minimum standards, formal regulation(s) or guidance material on how these requirements should be met. LGV held strongly to the view that this was a principles-based Act, not a prescriptive Act. Although LGV provided *community engagement* principles within the Act, they provided no principles regarding *deliberative engagement*. LGV considered that councils should implement the provisions of the Act in a way that was responsive to their own communities.

What did LGV do? It:

- (1) Set up an advisory group of local government staff on *community engagement* that shared resources that had been developed by various leading councils (See, [Engage Victoria](#)).
- (2) Undertook a very large project (facilitated by Mosaic Lab, the largest and most visible facilitation provider amongst Victorian councils) for council staff across multiple councils to consider what support councils needed in order to achieve the integration of all major strategic plans including the four specified above. This led to a model for integration but no specific guidance on *deliberative engagement*.
- (3) Provided a short training course (2-3 hours) for CEOs and Councillors on deliberation for those who requested it (again delivered by Mosaic Lab).

Victoria has two independent associations for local government: the Victorian Local Governance Association (VLGA) and the Municipal Association of Victoria (MAV). The former provided some information sessions but neither association provided direction about *deliberative engagement*. There is also another network, LGPro, which is made up of council staff. The authors of this paper are unaware of any direction that this group provided.

The intention of the legislation and advice was to encourage deliberative designs as a deeper form of community engagement than is typical for Australian local councils. This did

not mean that other forms of engagement needed to be abandoned. On the contrary, there are many excellent examples of combinations of community engagement and deliberative engagement (For example, a project trial from Madrid that combined an online platform to generate ideas, followed by a deliberative process that examined those ideas, culminating in a referendum) (See, [City of Madrid Citizens' Council](#)). The South Australian Government's project that was focused on nuclear waste storage is another example, combining surveys, public meetings, and kitchen table conversations that started with a citizens' jury of 50 and culminated in a large (300+) citizens' assembly (See, [South Australia Nuclear Fuel Cycle](#)).

However, the aim of the Victorian legislation was to strengthen local government by creating a more inclusive and trusted form of governance—to create a real shift in the culture and that meant increasing deliberative methods across the state. It also sought to capitalise on highly successful project examples for the City of Melbourne (See, [Melbourne](#)) and City of Geelong (See, [Geelong](#)) by seeing these practices adopted across the sector. The Melbourne project had especially highlighted the effectiveness of the deliberative process in financial management within a sector frequently under strain.

What is important to make implementation work?

The newDemocracy Foundation was an active advocate for this path-breaking legislation and watched its implementation with keen interest, knowing that the learnings would be useful for other governments who might introduce similar legislation. Two newDemocracy staff members also participated in an online workshop (November 2021) with staff and elected representatives from various councils that had implemented the legislation using deliberative processes.

The experience taught newDemocracy a great deal, as it did the bold people responsible for its implementation. This note describes those learnings. They emerged through a process of critical reflection and have been categorised as *legislative, organisational capacity, deliverables and resources, service providers and community response*. All are important for effective outcomes.

Legislative

As mentioned, the legislation contains only a general direction: “to include deliberative engagement practices” in the development of four different plans. No models, such as citizens' assemblies are defined as examples. This raises a challenge for well-meaning legislators: to take a prescriptive or descriptive approach?

There is a risk with over-generalising. It can lead to non-deliberative approaches being used and described as deliberative. This is evident in Victoria where many examples exist of work undertaken for the four plans that did not include sufficient time to be considered deliberative or did not include randomly stratified groups of deliberators – thus breaching the two most fundamental principles.

However, choosing a one-size-fits-all approach is equally tricky. In the original draft of the legislation, specific methods were mentioned, i.e., citizens' juries were mandated. newDemocracy advised against that and we stand by our advice.

A better middle ground would be to define some core deliberative principles or essentials: for example, the use of democratic lotteries, diverse information sources, extended time, open questions and more. It definitely would be helpful to include principles of *deliberative*

engagement, not just principles of *community engagement* in the Act. This would foreseeably have resulted in changes to numerous aspects of the subsequent rollout.

Should deliberative engagement be required for *all* plans? It is possible to discern from recent practice the appropriateness of deliberative practices for the four plans. For example, budgets and financial plans and the council plan lend themselves to deliberation given that there are countless examples worldwide and in Australia where a long-term problem has been markedly addressed through their use.

Visioning may require other forms of engagement because of its future orientation—perhaps an initial generation of ideas from the wider population. (e.g., Future Search, design workshops etc.). There is some value in holding a deliberation even for a visioning exercise, to make sense of the wider community input and come up with refined recommendations—otherwise, the council is left with a wish list. Also, the deliberating group is likely to have more access to information, especially on matters that have constraints, for example, those ideas that are beyond the responsibilities of local government. However, of the four areas stipulated in the Act, it is likely of the lowest value and the requirement could have been deferred to allow councils to focus on the high value financial and services areas (Financial Plan & Council Plan).

It is worth noting that one area not considered was urban planning and development approvals. This is frequently raised as an area lacking transparency and trust, so is potentially an area of opportunity for innovation using deliberative methods.

Organisational capacity

It is one thing to insist on *deliberative engagement*, it is quite another to expect that local and state governments are equipped to handle its implementation. LGV and Victoria's many councils were not necessarily familiar with deliberative methods. They should not be expected to be at such an early stage and capacity building will be necessary for such an innovative legislative addition.

Staff turnover can be a problem when they have been educated about deliberative democracy but move elsewhere, leaving a vacuum of knowledge in an organisation. The state government implementation team was created almost entirely of people based on short-term contracts which exacerbated the problem of a lack of understanding of deliberative methods within LGV itself.

For staff in councils, the same issue is evident. Thankfully, for those who remain in councils and who have been educated about deliberative practices, there is an opportunity internally to share their knowledge and also to consider collaboration across councils. It makes sense for a council to start with external mentors and facilitators and to use that talent not just to complete the plans but to train council staff for future efforts. The convening power of LGV and associations—allowing for the easier creation of communities of practice—was not drawn upon and this is a learning for those who follow.

One issue that has arisen is the timing of implanting deliberative engagement. Elections have an unfortunate habit of resulting in high turnovers of elected representatives who may have become advocates for deliberation. Since the educational cycle must restart each time, it makes sense for these practices to occur fairly early in councillors' term of office. At the moment, the Act sets out the timing of all these plans—there is no flexibility available to each new council.

Deliverables and resources

LGV assumed a hands-off stance. This may have been in a quest for neutrality, a limited understanding of deliberative practices, or the impact of limited funding. It was also about delivering a principles-based Act to allow flexibility for councils to implement in response to their own community needs. Whatever the reason, there was an absence of examples of deliberative designs or practical support for implementing this relatively-unknown process. Principles work very well as long as they are accompanied by helpful guides and examples of best practice. These exist but were not offered.

The legislation coincided with some important activity on the part of the OECD. In combination with specialists throughout the world, many from the Democracy R&D network, the OECD produced the *Catching the Deliberative Wave* report, followed by *Good Practice Principles*, then *Evaluation Guidelines*, as well as a paper on *Institutionalising Deliberative Democracy*. The OECD also established a database of almost 600 examples worldwide. These resources plus those created by newDemocracy and others could have been shared with all councils.

For example, advice is available to explain how a democratic lottery can be conducted (See, [Recruitment](#)). Recruitment to achieve a stratified sample of a local population can be one of a council's biggest costs. It's entirely possible to create a state-wide standing panel that could support all councils and thought has been given to that (See, [Electoral Commission role in deliberation](#)).

Thankfully, after only a short time, there exists a considerable growth in knowledge and understanding within councils that did not cut corners but instead sought external assistance to fulfil their obligations. The program leader in one council observed "councils are really maturing in this deliberative engagement space... There's so much room for innovation" (pers.comm. Mosaic Lab workshop 2021). Many affected staff and councillors have observed that there could be real collaboration across council boundaries either with the joint production of some plans or mentoring each other or trading facilitators and more.

Councils are wary of doing sound deliberative work because of the cost implications. There is a definite link for some councils between the cost and benefits of good practice. One council manager advised others to "Invest in deliberative engagement because the outcomes will greatly exceed what you expect... the respect you show your community – their ability to be involved in decision-making will pay you back" (pers.comm. Mosaic Lab workshop 2021).

Facilitators and service providers

Organisational capacity is one issue but determined councils could always draw on outside expertise. Or could they? There is currently a shortage of consultants experienced with deliberative methods in all its aspects: designing methods, recruiting participants using random selection, and facilitating deliberative engagements. This is certainly the case in Victoria where only a few facilitators were available. If a Council drew on the expertise of experienced deliberative designers they were able to satisfy the aims of the legislation. Without doing so, they inevitably defaulted to what was familiar: surveys or submissions or public meetings, thereby failing to meet the legislation's aim.

Clearly, more training and mentoring are needed. There are associations that provide training in *community engagement* methods but few that focus on *deliberative* methods. Thankfully, this is changing. For example, newDemocracy has partnered with the Institute for Sustainable Futures, UTS, to deliver online courses for leaders (elected representatives and council CEOs) and organisers of deliberative engagement (community engagement staff and third-party facilitators) (See, [Doing Deliberative Democracy](#)).

Facilitator networks exist but one should be wary of using standard facilitation practices because deliberation methods give considerably more power to participants, and take a great deal longer than a typical community workshop. Specialist advice is essential. Ultimately, it is a government's responsibility to ensure that training is delivered or available to councils and government agencies. One path worth considering is to direct these networks toward a training option that aligns or is customised to the practices recommended in the Act.

With time, staff will acquire significant skills and understanding in order to undertake or commission deliberative work and see it effectively implemented but they will likely need to call on external support as well. Deliberative democrats stand ready to support such activities and networks can be brought in early to offer this support.

Community response

In the absence of any evaluation by LGV, Mosaic Lab conducted its own evaluation among the 300+ participants who were involved in its 11 deliberative engagements. The findings provide stark evidence: that deliberative processes significantly increase trust in organisations and democratic institutions, build supported decisions, and offer everyday people real influence over the issues that affect them. They saw a 78% increase in the number of participants who said they believe that their council is fairly or very trustworthy and accountable (See, [Mosaic Research](#)).

The increased levels of trust are unsurprising since this regularly occurs worldwide. In the Victorian survey there was a significant increase in the likelihood of people's involvement in civic affairs as well as an increase in their trust in their own council (See, [Deliberation and Democratic Trust](#)).

Further considerations

Given that there will be a new round of deliberative engagements every four years to develop the plans, an opportunity exists to offer training to staff to understand deliberation and plan in advance of the next round. This could be a role taken up by an association such as VLGA or LGPro.

How might the legislation be different?

- (1) A stronger Act could point to OECD standards as published and updated from time to time; these are concise yet specific. This is one simple way of including deliberation principles in legislation.
- (2) The government could offer advice about training and provide access to examples of best practice from the first round.
- (3) A system of oversight is needed. Right now, in the Victorian system, this will not happen unless the Auditor-General decides to do an audit. There is another system in Victoria on engagement in price setting for water authorities and councils rate

increases managed by the Essential Services Commission – they have staff (and sometime have used external panels) to assess the quality of the engagement as part of whether the ESC will agree to the pricing submissions. This system could be emulated for evaluating local councils.

- (4) Evaluation is essential. Again, the OECD has a useful resource: *Evaluation Guidelines* (released in 2022, so too late for the first round). This would be extremely helpful for councils, to enable them to effectively undertake a review of their internal and external efforts.

Resources

[Mosaic Lab](#)

Mosaic Lab, [Deliberation and Democratic Trust](#)

[newDemocracy Research and Development Notes](#)

OECD (2020), [Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave](#), OECD Publishing, Paris, <https://doi.org/10.1787/339306da-en>.

Chwalisz, C. (2020), "[Good practice principles for deliberative processes for public decision making](#)", in *Innovative Citizen Participation and New Democratic Institutions: Catching the Deliberative Wave*, OECD Publishing, Paris, <https://doi.org/10.1787/b40aab2a-en>.

OECD (2021), [Evaluation Guidelines for Representative Deliberative Processes](#), OECD Publishing, Paris, <https://doi.org/10.1787/10ccbfc-b-en>.

OECD (2021), "[Eight ways to institutionalise deliberative democracy](#)", *OECD Public Governance Policy Papers*, No. 12, OECD Publishing, Paris, <https://doi.org/10.1787/4fcf1da5-en>.

Appendix

Excerpt Victorian Local Government Act 2020

Part 3—Council decision making

Division 1—Community accountability

55 Community engagement policy

- (1) A Council must adopt and maintain a community engagement policy.
- (2) A community engagement policy must—
 - (a) be developed in consultation with the municipal community; and
 - (b) give effect to the community engagement principles; and
 - (c) be capable of being applied to the making of the Council's local laws; and
 - (d) be capable of being applied in relation to the Council's budget and policy development; and
 - (e) describe the type and form of community engagement proposed, having regard to the significance and complexity of the matter and the level of resourcing required; and
 - (f) specify a process for informing the municipal community of the outcome of the community engagement; and
 - (g) include deliberative engagement practices which must include and address any matters prescribed by the regulations for the purposes of this paragraph and be capable of being applied to the development of the Community Vision, Council Plan, Financial Plan and Asset Plan and
 - (h) include any other matters prescribed by the regulations.