

14 December 2015

The Hon Natalie Hutchins MP
Minister for Local Government
C/o Local Government Act Review Secretariat
Local Government Victoria
PO Box 500
MELBOURNE VIC 3002

Dear Minister

Boroondara Submission - Review of Local Government Act

Thank you for the opportunity to make a submission to the Review of the Local Government Act.

On behalf of my colleagues, please find attached a copy of our submission.

Council trusts the feedback provided will assist to build an Act that creates strong, accountable and responsive local government.

Yours sincerely



Cr Jim Parke
MAYOR

C.c Councillors



Review of the Local Government Act 1989 (LGA)

Chapter 2	Provision: The role of councils	Commentary
Question 1	What should the key roles and functions of council be?	<p>Council believes that local government is a distinct and essential tier of government and this principle must be paramount in the review of the LGA.</p> <p>Council is also of the view that local government should not be a delivery agent for the state government. Local government should become a “partner” of the state government, thereby leaving individual councils free to make decisions in the best interests of their respective local communities.</p>
2	Does describing the key objectives, roles and functions of councils in the Local Government Act 1989 assist councillors, council staff and members of the community understand the role that councils play? Should these key objectives, roles and functions be retained in the Act or revised in any way?	<p>Council acknowledges that there is no settled list of local government functions and powers (or for that matter for the State and Commonwealth). Therefore, on balance, Council believes the key objectives, roles and functions should be retained in the LGA. However, the role of the Mayor and councillors should be clearly and unambiguously defined within the LGA.</p> <p>The LGA should establish a clear division between the key objectives, roles and functions of the council and the administration to avoid ambiguity or confusion.</p>

3	<p>What powers are required by councils to perform these roles and functions? Should there be any limitations to council powers?</p>	<p>As a principle, enabling rather than prescriptive legislation is the way forward. As the Minister has acknowledged, the majority of councils 'do the right thing' and the LGA should not attempt to respond to the lowest common denominator.</p> <p>As suggested in the discussion paper, Council is of the view that a general power of competence, subject to restrictions, is an appropriate reform direction for the LGA.</p> <p>Given the broad interpretation of Section 3E(1)(h), it is not anticipated that such a change would produce dramatic differences to local governance.</p> <p>Importantly however, such a change would avoid any uncertainty as to whether a council has a power by changing the default position to "yes, unless specifically excluded".</p> <p>This is particularly important for councils facing ever greater financial constraints, as they look for innovative opportunities to drive greater efficiency in their operations.</p>
4	<p>Which provisions in the Act should be normative (setting out desirable behaviour) general (setting out broad principles to be followed) and which should set out prescriptive (detailed) requirements?</p>	

5	Should the legislation provide consequences such as penalties or sanctions, for any non-compliance with either the general and prescriptive provisions? If so, what form should these take?	<p>As a general principle, wherever the LGA provides for penalties or sanctions, be they upon Council or an individual, the LGA must be clear as to the minimum requirements that constitute compliance.</p> <p>For example, Section 98(4) is a general provision which currently includes no sanctions for non-compliance:</p> <p>(4) The Council must keep a register of delegations to members of Council staff.</p> <p>Section 98(4) is presently too ambiguous to attract sanctions for non-compliance because it is arguably unclear what constitutes "a register of delegations". For example, is it:</p> <ul style="list-style-type: none"> • the name and operational date of current delegations? • the name and operational date of all delegations since amalgamation in 1994? • a copy of each delegation in force? Or executed since 1994?
Chapter 3	Provision: How councils are elected	
Question 1	What are the key elements of a system aimed at ensuring the integrity of council elections that should be included in the Act?	<p>Recent legislative change establishing the Victorian Electoral Commission (the VEC) as the statutory provider of election services and non-voting enforcement is an appropriate reform contributing to the integrity of council elections.</p> <p>Boroondara is comprised of 10 single member wards, which is well accepted in the City. Council believes the use of single-member wards, as used in the lower house of both State and Federal Parliament is an appropriate reform to the LGA. This will ensure consistency across the sector and avoid the confusion and complexity by having different models in operation across the sector.</p> <p>Council is of the view that the voter franchise for council elections should be broadened to bring it into closer alignment with the 'local community' as defined in the LGA.</p>

Council believes that Australian citizenship should be a prerequisite to stand for council elections as it is at the state and federal level.

Council is supportive of any measures that enable the community to make an informed choice about candidates. Council is of the opinion that the LGA and Regulations should be amended to require that:

- candidates nominate in person on a no exceptions basis.
- candidates demonstrate a minimal level of endorsement of their candidature (i.e. from six of their peers enrolled in the municipality).
- candidates complete a revised candidate nomination form, which requires them to note and respond to all disqualification conditions, unambiguously confirming that none of the disqualification conditions apply to them.
- each candidate be asked a standard set of questions as part of the nomination process to address the insufficiency of comparable information about candidates. The answers to these questions be made available to voters in the form of a candidate information template in the postal ballot packs provided by the VEC and this information be made available on the VEC website. While candidates would have the right to withhold answers to some or all of the prescribed questions, all their answers (including 'no response') would be made available to voters.
- candidates' how-to-vote recommendations not be contained in the postal packs circulated by the VEC.

Council does not support a business having an automatic right to vote under the LGA. The current LGA prescribes a process to enable business owners to vote in Council elections. This provision should be retained.

Council is of the view that any campaign donation cap must achieve a balance between the reasonable costs of running an election campaign and not result in a barrier so as to exclude less affluent candidates who wish to represent their community.

		<p>Council is of the view that that the same caretaker provisions that apply to the state government should apply to local government.</p> <p>Council acknowledges the different views regarding the merits of postal voting and attending voting. Council believes that it is preferable to have consistency across local government with respect to the voting method and is supportive of the state government adopting a uniform postal voting method for local government elections.</p> <p>The application of compulsory voting being extended to persons aged 70 and over to bring Victoria into line with other jurisdictions is supported.</p> <p>The biggest driver of complaints about the elections in Boroondara however, relate to the actions and activities of candidates. As such, the integrity of the electoral system would benefit from additional powers and resourcing to the Local Government Inspectorate, enabling them to take timely and appropriate action in response to complaints.</p>
2	<p>To ensure integrity of the electoral system should additional powers be provided to:</p> <p>a) the Minister for Local Government? b) the Victorian Electoral Commission? c) council CEOs?</p>	<p>Council is supportive of recent legislative reforms that have enabled the Victorian Electoral Commission (VEC) to assume responsibility for all aspects of the prosecution process in council elections, including prosecution for failure to pay fines for failing to vote.</p> <p>In the opinion of Council should the VEC or one of its returning officers discover an irregularity in some aspect of an election, they should have the power to request a Municipal Electoral Tribunal (MET).</p>

<p>Chapter 4</p>	<p>Provision: How councils operate</p>	
<p>Question 1</p>	<p>What are the critical elements of a council's operations that should be governed by the Local Government Act 1989 (e.g. requirements for mayoral elections, notice of, and requirements for open meetings)?</p>	<p>The LGA needs to achieve clarity on the key objectives, roles, functions and responsibilities of the State, the Council, the Mayor, councillors and the administration to avoid ambiguity, confusion and tension. This can assist to enhance the effective and efficient functioning of councils.</p> <p>As previously indicated, Council is supportive of reforming the LGA in the direction of a general power of competence. However, in Council's view there are a range of fundamental operations that should be regulated consistently across the local government sector. These include matters are covered in:</p> <ul style="list-style-type: none"> • Part 4, Division 1, The Mayor and other councillors <ul style="list-style-type: none"> - Consideration could be given to the purpose of "leave of absence" provisions in Section 66B and the inclusion of normative provisions as to when it is appropriate to take such leave. - As it is the practice of a many councils, consideration should be given to general provisions that would apply if councils choose to elect a deputy mayor. Such provisions should regulate allowances payable to a deputy mayor. - Clause 73 should be redrafted as a normative provision. It is not necessary for example, to elect an acting Mayor to chair an ordinary council meeting if the Council's Meeting Procedure Local Law includes appropriate provisions for the appointment of a temporary Chairperson. • Part 4, Division 2, Procedure and proceedings <ul style="list-style-type: none"> - The current arrangements for council meetings, including the capacity to establish special committees with delegated powers; hold confidential meetings in certain circumstances; and establish local laws governing the conduct of meetings; afford councils sufficient latitude to tailor and conduct their affairs according to the needs and expectations of their community. In general, Council is in favour of retaining the

largely normative or general regulatory approach to the conduct of council meetings.

- Part 4, Division 3, Council staff
 - Consideration could be given to the purpose of giving public notice of an intention to reappoint a CEO. As section 94(4)(c) does not create any right of objection or submission, the requirement imposes administrative costs upon councils with no apparent public benefit.
 - Section 94B imposes prescriptive requirements upon councils regarding the appointment of senior officers. Section 94B should be a more general provision setting out broad recruitment principles, complementing those in Section 94C. In particular, the requirement to advertise senior officer positions in a newspaper should be removed, in favour of a broad principle requiring senior officer positions to be publically advertised in a manner widely accessible to the Victorian and broader community. Newspaper advertising does not reflect contemporary recruitment practice and in many cases adds unnecessary cost to the recruitment process. Staff appointed to senior roles in LG should not be treated differently to those appointed to senior roles in the state government where these same obligations do not apply.
- Section 208B(e) - Consultation and engagement
 - The discussion paper canvasses the prospect of mandating citizen bodies similar to the "People Panel" convened by the City of Melbourne. Such a reform could not be supported by Council without matching funding commitments given the City of Melbourne was widely reported to have spent \$150,000 on the project, in addition to the commitment of significant staff resources.
 - Council also notes that while each local government must engage with their communities, attempting to prescribe a homogenous consultation process applying equally to each local government is considered unlikely to result in genuine improvement to community participation. As such, Council would advocate for normative or general provisions requiring for example, the preparation of a suitable consultation or engagement policy.

		<p>At a minimum, councils should have mechanisms for handling complaints. Council believes there would be merit in adopting a uniform approach to recognising what a complaint is.</p> <p>Council believes the enabling provisions in the LGA with regard to Local Laws should remain. However, the current penalty units for contravention need to be reviewed and increased to ensure they remain effective as a deterrent to ensure compliance. Council is of the view they should be indexed to keep pace with State penalty units.</p> <p>The policy rationale in the LGA for a council to indemnify and hold insurance for their councillors and employees is sound. Council believes it is a matter for each council to determine their own indemnities and insurance cover having regard for their own unique circumstances.</p>
2	<p>What penalties or sanctions should be imposed on councils which do not comply with the requirements relating to their operations?</p>	<p>The same penalties as apply to the state government and its bureaucracy in similar circumstances.</p>

Chapter 5	Provision: Planning and reporting	
Question 1	What requirements should be imposed in the Act on councils in relation to planning and reporting on their strategy, budget and operations?	<p>As noted in the discussion paper, local government is a distinctive environment which gives rise to particular challenges to strategic planning when balancing individual interests of councillors and the longer-term plan of a local government.</p> <p>Council would not be supportive of any proposal requiring councils to set rates four years in advance as part of a council's priority setting. Section 126 of the LGA already requires Council to plan for its required financial resources four years in advance. Requiring councils to set rates four years in advance would remove any flexibility councils have to respond to the needs of their respective communities through the annual budget process.</p>
2	Can council planning and reporting processes be streamlined? If so, how?	<p>Council is of the view that the LGA should streamline the planning and budgeting requirements of Councils so they are more coherent and integrated, including the provision of financial planning that spans 10 years.</p>
3	What rights should be granted to ratepayers to better contribute to council planning and reporting processes?	<p>It is pertinent to note that council planning and reporting considers a far more diverse range of stakeholders than simply "ratepayers". While ratepayers are inevitably key stakeholders in council decisions, local government serves the whole community, whether ratepayers or not.</p> <p>Council recognises that involving our community through the provision of information or through shared problem-solving, and using community feedback to inform Council's decisions ensures contribution to decisions that meet current and future needs of the community. Boroondara has developed the Community Engagement Policy specifically to "to ensure that members of the community have genuine opportunities to participate in community engagement programs about matters that affect them, and to provide feedback to Council that is taken into account by Council when making a decision". The policy is consistent with, and based upon, existing industry frameworks for public participation with particular reference to the International Association of</p>

		<p>Public Participation (IAP2) Spectrum.</p> <p>Council acknowledges it is incumbent upon local governments to involve their communities in council planning and reporting processes. However, local governments, like their state and federal counterparts, operate extremely diverse businesses. Attempts to prescribe a homogenous consultation process applying equally to each local government, and to each part of each local government's business, are considered unlikely to result in genuine improvement to community participation.</p> <p>Council is of the view that individual councils are best placed to understand their businesses and their communities, and therefore best placed to understand how best to engage with them.</p> <p>Boroondara is therefore of the view that the LGA should move away from prescriptive consultation mechanisms, towards general provisions, for example, requiring councils to prepare and adopt a Community Engagement Policy.</p> <p>This allows councils the flexibility to develop processes and procedures that guide when and how they engage with their communities, tailored to their unique businesses, tailored to the subject matter, and taking into account their knowledge of how best to elicit the views of their community.</p> <p><u>Specific comments regarding Sections 125 and 129 in Part 6 of the Act.</u></p> <p>These sections require the adoption of a Council Plan and a proposed or revised budget to follow the prescribed consultation requirements of Section 223.</p> <p>The provisions of Section 223 of the LGA regarding publication of public notices in newspapers do not reflect the new digital paradigm in contemporary society. Diminishing newspaper readership suggests that classified advertising in daily newspapers is unlikely to reach a broad cross-section of the community, let alone the target audience within a particular local</p>
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		<p>government area. With readership around 30-35% of the Victorian population^(a) mandatory advertising in newspaper classifieds is both costly and inefficient.</p> <p>Procedurally, the notice requirements also engender debate as to whether a significant change to a council's plan or budget in response to community consultation, can be implemented immediately or requires a second round of public notice.</p> <p>Council therefore supports a change to the definition of public notice for the purposes of Section 223 of the LGA to remove the requirement publish public notices in a newspaper.</p> <p>^(a) According to the Victorian Population Bulletin 2012, Special Edition Part 2 (Victorian Government, June 2014) the estimated resident population of Greater Melbourne in 2011 was 4,169,366. Weekday readership of Melbourne's two major dailies in June 2015 was 1.401 million according to figures published by Roy Morgan Research (www.roymorgan.com/industries/media/readership/newspaper-readership)</p>
4	<p>What sanctions should be imposed on councils not complying with planning and reporting requirements?</p>	<p>The same sanctions as apply to the state government and its bureaucracy in the same circumstances. The LGA provides for councils to be accountable to their local communities. Every four years through the ballot box the community holds their councillors to account. The last resort should be Ministerial intervention if poor performance cannot be resolved through training and support mechanisms.</p>

<p>Chapter 6</p>	<p>Provision: Council rates and charges</p>	
<p>Question 1</p>	<p>Is the current method of declaring rates and charges based on “land” still appropriate?</p>	<p><u>Rates & charges generally</u></p> <p>Council agrees with the discussion paper about the primacy of rates for local government currently, noting that taxation reviews (such as the 2010 ‘Henry’ review) consistently reinforce the appropriateness and efficiency of land-based taxation.</p> <p>The discussion paper states that there are many sources of revenue available to a local government. It is important to highlight however, the widely varying capacity to make use of alternatives by different local governments, and the different levels of vulnerability to change to state and commonwealth grant levels.</p> <p>With demographic and economic changes, this variability is increasing in pace and intensity, hence while councils do have access to different sources of revenue (such as rates and charges) revenue levels are very unequal and shaped by external circumstances. In this context it is important to consider not only the State Government’s policy of capping rates, but the wider taxation system and how it might be changing in response to the current Commonwealth review.</p> <p>While major structural changes (such as providing local government’s access to a growth tax, or, following ‘Henry’, looking at ways to link rates and land taxation) may be unfeasible in the current environment a comprehensive review of the LGA could reasonably give consideration to such factors and not be limited in assessing the specifics of the current local government financial framework.</p> <p>Council is of the view that rates should remain property based and that councils should retain the power to set rates and charges having regard to their own unique circumstances and capacity to generate alternate sources of income. Council is supportive of the rights of stakeholders to have input into the annual process for setting rates and charges and it is also pertinent to note that like state governments, councils will ultimately be held to account for</p>

		<p>their budget decisions at the ballot box.</p> <p>Council agrees with the comment in the discussion paper about a review of rating exemptions. It will be important for this to be done with reference to taxation principles including simplicity, equity and capacity to pay. For example, Council has previously written to private schools within its municipality encouraging them to consider voluntarily paying rates in recognition of the services and facilities that Council provides to their school communities.</p> <p><u>Special Rate Schemes</u></p> <p>Renewal of Special Rate and Charge Schemes is particularly onerous on councils and traders' associations in terms of the amount of information and resources required to review and renew each scheme. The lengthy statutory process which includes public notice and letters to affected parties; two very detailed reports to Council; consideration of submissions and objections; and a 30 day right-of-review period to VCAT. Depending on the size of the shopping centre, the renewal process can often take 12 to 18 months.</p> <p>Given the complexities of the statutory process, the process usually includes several costly requests for legal advice.</p> <p>Council is therefore of the view that there is merit in considering clearer provisions regarding the documentation and information required to renew a Special Rate and Charge Scheme. Council is also of the view that consideration should be given to options that give councils greater flexibility regarding the duration of a scheme. One suggested option is to allow four-year schemes to match a council's term subject to annual reviews. Such annual reviews would not be subject to an extensive statutory process, but would review a scheme against prescribed criteria which if not met, could result in the termination of a scheme.</p>
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2	What powers do councils require in relation to levying rates and charges?	<p><u>Special Rate Schemes</u></p> <p>Council relies on property owners and occupiers to provide occupancy information that is used to inform the development of special rate schemes. Obtaining this information is often difficult, despite Council's existing statutory powers.</p> <p>The LGA could be improved by providing greater clarity and direction on how councils should treat occupiers in the context of special rate schemes. Consideration should also be given to imposing greater penalties on owners who fail to update councils regarding occupancy changes.</p>
3	What obligations or restrictions should be imposed on councils in relation to these powers?	
4	What rights should rate-payers have in relation to the exercise of council's powers in relation to levying rates and charges?	

5	<p>Should there be detailed legislative provisions regarding processes associated with levying rates and charges? If so, are the current processes for levying rates and charges in the Act appropriate? If not, what changes should be made?</p>	<p><u>Special Rate Schemes</u></p> <p>The provisions regarding special rates schemes are very prescriptive but not always as clear and unambiguous as they may seem. Similarly, they are not easily applied to the circumstances of every scheme.</p> <p><u>Special Rate Schemes</u></p> <p>Section 163(2) of the LGA for example, requires councils to state the total special rate and charges to be levied. The maximum cost of the council schemes is calculated according to a formula however the formula references CPI and future municipal valuations to impose the special rate and charge. Consequently, the precise amount of funds can only ever be an estimate.</p> <p>The current public notice requirements are also open to interpretation in terms of the level of information they are required to contain. As a consequence, Council adopts a particularly conservative approach and includes detailed descriptions of all aspects of the scheme and associated statutory process in its public notices and letters to those liable to pay the special rate and charge. This conservative approach may ensure statutory compliance however Council has had feedback from those liable to pay the special rate and charge suggesting the public notices and letters are overly bureaucratic and difficult to understand.</p> <p>The LGA may therefore benefit from more normative provisions regarding special rate schemes, complemented by regulations or guidelines. Such an approach would enshrine key principles within the LGA, supplemented by regulations and guidelines with less bureaucratic, process focused or legal language.</p> <p>Providing a greater level of procedural detail in regulations and guidelines would enable the legislative environment to dynamically respond to the needs of communities and local governments, for example:</p> <ul style="list-style-type: none"> • Providing detailed descriptions of the contents of public notices to ensure they are accessible, understandable and don't disengage the community affected by the
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		<p>scheme. This could include example letters and notices in plain English drafting.</p> <ul style="list-style-type: none"> • Describing in detail the type of evidence people liable to pay a special rate and charge should produce as part of any submission or objection. Current provisions are not sufficiently clear and guidelines could establish in plain English, the type of evidence that is acceptable to show a person's liability to pay the special rate and charge (i.e. for a lessee). • More extensively and clearly articulating the approach that should be taken when applying special rate and charge schemes to different property types, in particular vacant land.
6	What sanctions should be imposed on councils failing to comply with the requirements relating to levying rates and charges?	
Chapter 7	Provision: Service delivery and financial decision making	
Question 1	What powers do councils need to undertake their financial decision-making functions?	<p>Council believes that local government is a distinct and essential tier of government. Councils should therefore have the right to set their own budget having regard to their own unique circumstances on the principles of sound financial management in a transparent manner.</p>

<p>2</p>	<p>What obligations or restrictions should be imposed on councils in relation to their financial decision-making functions?</p>	<p>The 'Review of the Local Government Act 1989 Discussion Paper' canvasses the prospect of "Requiring publication of comparative service level data for all services delivered ... to enable communities to see standards achieved in neighbouring municipalities.....".</p> <p>As the discussion paper notes, council services must be responsive to the needs of the community, resulting in differences in service design and service levels, between local governments. This will necessarily result in differences between the cost of service delivery incurred and any fees and charges set by an individual council.</p> <p>In this context, obligations to benchmark services against "similar groups" when they very often offer different services, and / or operate in different regions; merely adds to Council's administrative costs without generating beneficial outcomes to communities.</p> <p>Council is further of the view that the LGA should impose no more onerous obligations upon Council with respect to the sale and purchase of land, as apply to the state government.</p> <p>With regard to public tendering, Council is of the view that a public tendering process is not required in every circumstance. Supporting the principles of local government autonomy, Council would be supportive of retaining the obligation upon local governments to develop their own procurement policies, and for those policies to include the capacity for each local government to individually set tendering limits for its municipality. Doing so would also remove the need for an arbitrary tendering threshold to be set by the state government.</p> <p>Council is of the view the LGA provisions pertaining to entrepreneurial activity are generally 'good' law in that they respond to important concerns about risk; but may ultimately be over-regulating councils and inhibiting beneficial entrepreneurial activities. Council considers there is a case for revisiting the entrepreneurial activities provisions in the LGA to ensure that they balance risks, without stifling innovation.</p>
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3	Should the Act contain detailed processes regarding council's financial decision-making? If so, what sanctions should apply for non-compliance with these requirements?	<p>The same sanctions as apply to state government for non compliance with requirements which apply to its decision making.</p> <p>With respect to protecting the community from financial profligacy, a council has a duty to do all things necessary to ensure efficiency and economy of operations and the avoidance of waste and extravagance (s 140). This provision should be retained in the LGA.</p>
Chapter 8	Provision: Councillor conduct, offences and enforcement	
Question 1	Do standards of councillor conduct need to be improved? If so, how can this be achieved?	Council acknowledges that the LGA sets out the minimum standard to be exercised by a councillor. Council believes that each code of conduct should incorporate the statutory requirements as part of a broader framework. Each code should be developed to suit the particular needs and circumstances of each council.
2	What powers do councils need to deal with instances of councillor misconduct?	

3	Does the system of councillor conduct panels need to be improved? If so, how?	
4	Is there a need for additional offences to be included in the Act? If so, what are they?	
5	Is there a need to improve investigation and enforcement of the Act in any way? If so, how?	Council suggests that the state government adequately resource both the Local Government Investigations and Compliance Inspectorate and Local Government Victoria to ensure they carry out investigations and enforcement activity in a timely manner.
Chapter 9	Provision: Ministerial powers	
Question 1	Should the role of the minister be described in the Act? And if so, how should this be described?	<p>Council appreciates that the Minister is responsible for protecting the state's interest in maintaining an effective and efficient local government sector. However, the Minister should also act as an advocate for local government to the Victorian community and within government.</p> <p>The role of the Minister should be described in the LGA in terms of principles.</p>

<p>2</p>	<p>What powers should be provided to the minister in the Act:</p> <p>a) in relation to the structure of the sector (i.e. circumstances in which new councils are established or existing councils amalgamated, numbers of councillors etc)?</p> <p>b) to ensure councils comply with the Act?</p> <p>c) to ensure the integrity of governance and standards of behaviour?</p>	<p>Council also acknowledges that there is a range of other bodies that have oversight of the operations of councils to ensure public sector accountability (e.g. IBAC, Ombudsman, Local Government Investigations and Compliance Inspectorate, VAGO, Freedom of Information Commissioner, Commissioner for Privacy and Data Protection and LGV). The roles and responsibilities of these bodies must be considered when determining what powers should be provided to the Minister in the LGA.</p> <p>The Minister's powers to appoint boards of inquiry, local government panels, commissioners or administrators, suspend or dismiss either a councillor or council should only be used in exceptional circumstances.</p> <p>While the Minister has responsibility for oversight of the sector, Council does not believe the Minister should use subordinate legislation (i.e. Regulations) to usurp provisions currently in the LGA. Regulations do not go before the Houses of Parliament for scrutiny and debate. The subordinate legislation should only be used to respond to change and new developments within society to ensure the LGA remains current and relevant.</p> <p>One of the most important decision councils make is the appointment of a Chief Executive Officer. The Minister should not have the power to intervene in the employment of the Chief Executive Officer.</p>
<p>3</p>	<p>What penalties should be included in the Act in relation to councils not complying with the exercise of the minister's powers?</p>	

Chapter 10	Provision: Harmonisation of the Local Government Act	
Question 1	What aspects of the Act should be amended to better harmonise with related legislation?	<p>Harmonisation of legislation is highly desirable to avoid inconsistency and confusion.</p> <p><u>Sewers and drains vested in the council</u></p> <p>Section 198 of the LGA vests the management and control of sewers and stormwater drains in councils. Councils are no longer water authorities and do not manage sewers. Council is of the view that the LGA should be updated to refer to "Public stormwater drains" and reflect the role of regional water authorities.</p>
2	How can council responsibilities in relation to other legislation be made clearer?	<p><u>Delegations</u></p> <p>Delegations enable the myriad decisions and functions of local government to be carried out on a day to day basis. Delegations also reduce the amount of meeting time spent on routine business enabling the business of council and committee meetings to focus on strategic or contentious issues.</p> <p>Section 98 of the LGA sets out the power of Council to delegate its powers, duties or functions under the LGA. Section 98 similarly sets out the power of Council's Chief Executive Officer (CEO) to delegate his or her powers, duties or functions, as well as sub-delegate those which have been delegated to the CEO by Council.</p> <p>There are however, a multitude of other acts that give powers, duties and functions to local government. Not all legislation sets out as clearly as the <i>Local Government Act 1989</i> the rules for delegations.</p> <p>As a consequence, local governments generally have a suite of delegations:</p> <ul style="list-style-type: none"> • From Council's to Special Committees

		<ul style="list-style-type: none"> • From Council's to CEOs • From Council's to individual staff; and • From CEOs to individual staff. <p>These instruments of delegation are critical to ensure the legitimacy of decisions and actions undertaken on behalf of Council by Special Committees or the administrative arm of local government.</p> <p>The instruments also answer for staff the crucial questions of who can make this decision and by what authority?</p> <p>In this context, it would be beneficial if all legislation bestowing powers, duties and functions on local governments, also consistently and explicitly addressed the issue of delegation by Council and sub-delegation by the CEO.</p> <p>Examples of the varying approaches to delegation can be found in:</p> <ul style="list-style-type: none"> • Section 58A of the Food Act 1984 • Section 188 of the Planning and Environment Act 1987 • Section 41A(4) of the Domestic Animals Act 1994
3	<p>Are there provisions in the Local Government Act 1989 that could be improved to clarify their interaction with other legislation? How could they be improved?</p>	<p><u>Freedom of Information</u></p> <p>The Act requires local governments to make available, for inspection, a wide variety of information and documents, see for example:</p> <ul style="list-style-type: none"> • Regulation 11 of the Local Government (General) Regulations 2015; • Section 119(2A) of the Act (Local Laws) • Section 125(3A) of the Act (Council Plan)

		<p>With respect to such prescribed documents, Section 222 of the LGA provides that a person may, subject to payment of any prescribed fee, make a copy of a prescribed document.</p> <p>Section 14 of the <i>Freedom of Information Act 1982</i> (FOIA) provides that a person is not entitled to obtain access under FOI to documents "open to public access, as part of a public register or otherwise, in accordance with another enactment, where that access is subject to a fee or other charge".</p> <p>If a council has not prescribed a fee under Section 222, documents available for public inspection may need to be considered as part of an FOI request and this can create anomalous outcomes.</p> <p>For example, a list of senior officers kept under Regulation 11 of the Local Government (General) Regulations 2015 contains the personal affairs information of those officers pursuant to the FOIA. While its disclosure may be reasonable under the FOIA, such disclosure would require affected individuals to be notified and afforded an opportunity to appeal council's decision.</p> <p>Council is of the view that consideration should be given to:</p> <ul style="list-style-type: none">• Amending the LGA such that prescribed information available for inspection on a council's website or at council offices is not subject to the FOIA; or• Amending the FOIA to provide that the FOIA does not apply to prescribed information available for free.
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4	<p>Is there other Victorian legislation that inappropriately impacts on provisions under the current Act that could be improved or clarified? How could they be improved?</p>	<p>Sections 165 and 171D of the <i>Water Act 1989</i> impose obligations upon local governments regarding the maintenance and renewal of fire plugs. With a few exceptions, local government does not own or operate water supply infrastructure and has no responsibility for firefighting infrastructure.</p> <p>Local government's intermediary role should be abolished and relevant legislation amended to requiring the CFA, MFB and regional water authorities to directly cooperate and fund the installation and maintenance of fire hydrants.</p>
5	<p>Does the Act contain any matters that should be transferred to other Victorian legislation? If so, why?</p>	