Review of the Local Government Act 1989

Submission to Discussion Paper

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On the following pages are questions on each chapter of the discussion paper to assist you in the preparation of your submission. In addition, there is space at the end of the document to add your own views/comments on any matters relating to the Local Government Act review.

Discussion paper questions

Chapter 2 – The role of councils

1. What should the key roles and functions of council be?

Local government in Victorian fulfills a wide spectrum of roles – from provision of services and infrastructure to acting as an advocate in the best interests of their local community.

However there are certain duties that Councils have traditionally been expected to provide – the proverbial 'roads, rates and rubbish.' One can add to that further services and duties that have attached themselves to local government over the years – library services, home care services, school crossing supervision, planning regulation and enforcement, environmental health regulation and enforcement along with the making and enforcing of local laws for the good government of the municipal district.

The ASU believes that spelling out the core duties of local government has it's benefits, namely specifying exactly what roles a Council must fulfill, though may bring unintended consequences. For instance it could see some Councils reduce their activities to only those prescribed in legislation. Further it is difficult to anticipate the demand for new types of services in future that local government presently does not offer. This could engender problems in future where state government may be required to amend legislation to expressly specify roles for councils.

We believe the present formula of entrusting local Councils with the 'peace, order and good government' of the municipal district is sufficient in view of the impractical character of stating exactly what role Council should play. The 'peace, order and good government' formula also leaves ample scope for democratically elected Councillors to respond to the demands of their community without having to satisfy an exhaustive list of roles set out for them.

However it may be worth consideration that the requirement for 'peace, order and good government' be broadened to include specific roles that only a local Council is best placed to deliver. Advocacy for local issue may be one. The provision of core services – services that are otherwise not available to the community had the Council not been there to provide them – may be another.

On balance we believe the present arrangement is effective, offering Councils the latitude to respond to community demand as it arises. Council are free to adopt as

expansive, or as narrow, a role as they deem appropriate and are held to account for these decisions by their community. The ASU sees no cogent reason to disturb this arrangement.

2. Does describing the key objectives, roles and functions of councils in the *Local Government Act 1989* ('the Act') 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?

We believe that if the Act were to contain any description of the objectives, roles and functions of councils it must be left as broad as possible, thus offering any individual council the latitude to be as expansive or narrow in its role as its local community deems necessary.

It ought then to fall upon Councillors and Council staff to express in more specific terms what they interpret their role in serving their community is within the broad parameters contained in the Act. In the event the community is dissatisfied with the Council's conception of the meaning of maintaining 'order, peace and good government' democratic mechanisms exist where the community is able to seek redress – i.e., the election process; public consultation process and so on.

Under this conceptualization of the objectives, role and functions of Councils, we believe that it is incumbent on the decision making bodies of the Council (i.e., Councillors and senior staff) to clarify the details of their role as they interpret it within the broad framework enshrined in the Act. There are various avenues by which to accomplish this objective: strategic plans; annual reports; community plans and so on. However the ASU believes it is critical for Councils' to arrive at these end points after complete consultation with their communities, including after meaningful consultation with their own workforce quite distinct from senior managers. It is, after all, staff who provide the day to day interaction with members of the community, the recipients of Council services. Thus, in determining the specifics of how a Council perceives its role within its own community, the ASU believes the two most significant constituencies requiring consultation are the deliverers and recipients of Council services – staff and community.

3. What powers are required by councils to perform these roles and functions? Should there be any limitations to council powers?

The ASU believes the current arrangements provide Councils with sufficient powers to fulfil these roles and functions. However in recent years we have seen a gradual encroachment on policy areas traditionally regarded as local government responsibilities, in particular in relation to planning powers. While the discussion paper raises the UK experience of setting out certain matters a Council cannot do (i.e., act contrary to legislation of a superior jurisdiction or act in policy areas Councils cant or should not), we believe the recent experience of local government in Victoria has seen the opposite to be true – Councils are often undermined by other levels of government

(mainly state government) in areas that are commonly regarded as local government responsibilities.

This form of involvement has taken either direct intervention, typically in planning decisions or in obliging councils to adopt certain service delivery models (i.e., CCT), or through the use of funding mechanisms intended to deliver an outcome more congenial to the state government rather than the Council.

On the issue raised in the discussion paper of the UK example, where legislation has spelled out which areas Councils are prohibited from acting in and has reserved powers for the relevant minister to curtail the powers of Councils, it seems these safeguards are unnecessary. For example, what practical effect can a Council attempting to levy an income tax rate on its residents have? Any attempt to do something like this will be swiftly struck down in a court of law, presuming it even gets that far.

This is not to say that some Councilors, and certainly uninformed members of ratepayers groups, have unrealistic expectations on the extent of Council and Councillor power. This, though, is not a question of powers, rather is a matter of raising awareness of the role of councilors/Councils among not only ratepayers groups and some councillors, but the broader public.

Thus in sum, we believe the inverse to the premise of the question is true – we believe Councils in general have the right powers to perform their roles and functions, but sometimes face undue interference from other tiers of government. Perhaps legislation ought to be considered preventing state government's interfering in Council business?

4. 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?

In responding to this question it is near impossible to list all areas that may fall within the ambit of each of the categories. To legislate a detailed list of normative, general/enabling or prescriptive tasks would lead to a cumbersome Act and possibly see a range of activities fall within a grey area.

However as a general rule, where an enabling or prescriptive power has been granted to Councils, it ought to be enforceable, thus there needs to be a greater nexus between enabling powers and prescriptive provisions.

We believe there needs to be a fine balance between enabling and prescriptive powers. Perhaps only ensuring powers essential to the operation, day to day functioning, good government and accountability of the Council be prescriptive, thus allowing Councils the autonomy to conduct their own affairs as they see fit via enabling powers may be preferable.

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?

Yes, if legislation requires a Council or a Councillor to do something then there needs to be some form of mechanism in place to ensure it happens. That certain parts of the current Local Government Act require a Council to do certain things yet do not specify a penalty or some other recourse to redress seems anomalous. Indeed there isn't even a general penalty within the present Act that may serve as a default penalty for non-compliance.

The form penalties or sanctions should take ought to take into consideration the severity of the transgression and ought to be targeted at the person or group responsible. We agree with the presumption in the discussion paper that issuing a fine to a Council for the transgressions of an individual Councillor approximates to a penalty on the ratepayer. The basic principle of 'the punishment fitting the crime' and the penalty going to the one responsible for whatever that crime was, is sound. However if the breach of the Act is from the Council itself, then the Council must either rectify its mistake or be penalized, with Councillors having to account for the penalty to their community.

6. Do you have any other questions/comments about the content in this chapter?

Response:

1.

Chapter 3 – How councils are elected

1. What are the key elements of a system aimed at ensuring the integrity of council elections that should be included in the Act?

Democratic processes are at the heart of local government. In fewer areas is this true than in the election of Councils.

Overall the current system has it right. The system enshrines principles such as 'one vote one value,' the periodic review by the VEC of ward boundaries ensures the elimination of overrepresentation of some wards with fewer residents against other wards with larger populations, proportional representation in multi-member wards so as to engender a diversity of opinion, transparency in electoral processes (including the right to vote, how councilors are elected and campaign donation disclosure rules), the maintenance and enforcement of the compulsory vote and so on are a fulcrum of the Council election process. The ASU believes that these elements must be retained, and where appropriate strengthened, under any new Local Government Act.

Be that as it may improvement to the system can also be made. In relation to compulsory voting, the ASU firmly believes it must be continued. While there may be merit in broadening compulsory voting to over 70 year olds, we acknowledge that residents of a certain age find it difficult to attend a polling booth. It may be worth the review considering placing all voters over the age of 70 on a postal voter's register by default, thus offering these voters the ability to participate in the election without having to make the arduous trip to a polling booth.

The ASU believes a key principle in considering whether a person has an entitlement to vote must be whether they live within the municipal district, and as a consequence of that fact, are directly impacted by the decision made on their behalf by the Council. In line with this principle we do not believe non-resident/absentee voters should be compelled to vote since many do not reside within the municipal district where they will be required to vote (indeed some do not even live in Australia), and so their choice in candidates will have no impact personally on their amenity or quality of life, but will for those individuals who are residents of the municipal district.

Equally we do not believe the local government electoral franchise should be narrowed to include only those enrolled to vote at state elections. This would disenfranchise a range of people who are materially affected by the decisions made by Councils. An obvious example are owner-occupier non-Australian citizens. This category of voter does not participate in state elections, but owns property and lives within a municipal district, is part of the community and so must be given the opportunity to participate in

the community by voting at Council elections. Furthermore we do not see the logic in excluding these people from being permitted to stand for election – we believe it is only fair that a resident, paying their rates and active in their community though not a citizen of Australia must be afforded the right to stand for election to Council.

Thus the ASU believes that only those individuals who are residents of the municipal district should be permitted to stand as candidate for election. This represents a change from the current practice where anyone enrolled on the council's voter's roll is able to stand for election. But we do not support the notion that candidates must only be permitted to stand in the ward which is their place of residence since all Councilors, once elected, are required to make decisions in the best interests of the municipal district as a whole and not part thereof.

While we are supportive of the notion that non-resident property owners have a vote at an election, we do not see the sense in permitting non-residents property owners the right to stand as candidates. In some cases such individuals may have only a causal relationship to the municipal district, are not aware of the issues confronting the community and will not have to live with the legacy of the decisions they make as Councillors. Granted non-resident property owners have legitimate interests in the community via their ownership of property, but their interest is principally one concerned with the financial performance of an investment (i.e., investment property) and not necessarily the 'peace, order and good government' of the municipal district, nor are they members of the community, residing outside it. Conversely residents of the municipal district – whether they own property or not – are directly impacted by decisions made by the Council, must live with the legacies of their decisions as Councilors, and most significantly are members of the local community. Aside from this change we are in general agreement with the current list of circumstances that disqualify a person from standing or serving as a councilor.

We are supportive of the suggestion that candidates distribute more information about themselves. But how this occurs is tricky since if left to their own devices, only the best resourced candidates will have the capacity to do this. In addition the distribution of information to all voters is made efficient where postal ballot packs are sent to voters, but in municipalities where attendance voting is in place this practice does not occur, throwing up the question of how candidate information can be fairly and equally distributed to all voters.

We believe the most effective means of doing this is for the VEC to distribute a questionnaire to all candidates, seek their responses to a standard set of questions, allow a brief candidate statement and then have this information collated and distributed to all voters. The VEC should develop said questionnaire after determining the sort of information likely to be found useful by voters – in this endeavor the VEC should consult the local community on the sort of information it wants to know about candidates – in addition to any information that may be a mandatory requirement specified under local government electoral procedures (e.g. we note the suggestion

made in the discussion paper that candidates disclose whether they live in the municipality).

2. To ensure integrity of the electoral system should additional powers be provided to:
   a) the Minister?

   b) the Victorian Electoral Commission?

   c) council CEOs?

If any of the above agencies is to be invested with greater powers with the purpose of maintaining the integrity of the electoral system, the ASU believes that agency must be the VEC.

3. Do you have any other questions/comments about the content in this chapter?

Response:

1.

Chapter 4 – How councils operate

1. What are the critical elements of a council's operations that should be governed by the Act (e.g. requirements for mayoral elections, notice of, and requirements for open meetings)?

The ASU believes that the current requirements for matters that should be government by the Act is about right. We believe all the matters currently enshrined in the Act, especially as they pertain to staffing, such as giving staff the opportunity to apply for vacant full-time positions that arise, EEO policies, indemnifying members of staff among other features contained in the Act, must be retained.

However we believe there needs to be greater control over how a Council determines the employment conditions of its CEO and that this must be enshrined in the Act.

The ASU has long been alarmed that some CEOs (and executives) are in receipt of exorbitant salaries. Excessive executive remuneration is a major problem in local government and in the view of the ASU, a total waste of ratepayer's money. Recent community revulsion at some of the obscene salaries some Council CEOs have awarded themselves is entirely justified and must be addressed.

The current arrangement formally permits a Council to decide for itself the terms and conditions, including KPIs, it applies to the employment of its CEO. In practice, the ASU finds the CEO effectively controls their own employment terms and conditions through the appointment of friendly 'external consultants' who actually undertake the annual review, has a decisive influence over KPIs and how the CEO's performance is measured against these, and via the ability to control his/her own annual performance review, the CEO is able to grant him/herself a large (and largely) unjustified salary increase.

The ASU believes that CEO pay and annual reviews should be conducted by an external (preferably state government appointed) agency, not dissimilar to the process for heads of VPS departments. Once the external agency has completed the CEO's annual performance review, it can recommend adjustments thought necessary to sufficiently remunerate the CEO, with the decision left to the Council on whether to accept the report recommendations in full or in part, though in no way exceed any proposed recommended pay increase. This way the report to Council sets an 'upper' threshold for what a CEO may expect to be paid, leaving it to the discretion of individual Councils to accept the recommendation or pay the CEO less than the recommendation. The alternative approach is to formally invest an external agency with the powers to not only review the CEO's performance and set pay and conditions accordingly, but to also decide the CEO's remuneration package. CEO's may be categorized according to the

size of their council, its service levels or some other set of indicators, and an assessment can be undertaken to determine the performance of all CEOs at 'like' (not unlike the way Councillor allowances are determined according to a bracket of councils, e.g., small-metro, large-rural etc) Councils. The salary for all CEOs in each bracket can then be adjusted accordingly.

In relation to the CEO's responsibility as employer of council staff, the ASU believes that this part of the Act needs to be strengthened so that Councillors cannot inhibit the CEO from making necessary appointments to the Council's organization by cutting available funds via the budget. As a means for addressing this concern the ASU believes it should be a prohibition of the Act for Councillors to amend in any way the staff budget as presented to them by the CEO. This type of practice is not unprecedented – after all the Victorian upper-house cannot block supply bills as presented by the government. Separating the staff budget from Councillor interference is the local government equivalent of preventing the Victorian upper-house from blocking supply.

Another area we believe should be included in the Act is to explicitly state that Councillors (including the Mayor) do not have any role in the appointment, direction, or dismissal of staff. Additionally, and in line with this principle, and reinforcing it, there should be an express prohibition on Council itself (not just – though also including – the individual Councillors) getting involved in industrial matters, such as negotiation of enterprise agreements, OHS dispute, resolution of workplace grievances and so on. Any attempt by a formally constituted Council to adopt a resolution seeking to have the effect of interfering in these areas should be considered *ultra vires* and therefore null and void. The ASU finds that some Councillors are confused about their role in relation to this aspect of Council business. We are also not unfamiliar with Councillors bullying the CEO to take action that he/she felt imprudent and would not have done if not for the intervention of the Councillor in question – this type of behavior is also unacceptable and should continue to be prohibited.

2. What penalties or sanctions should be imposed on councils who do not comply with the requirements relating to their operations?

In relation to the matter raised in the discussion paper on the CEO holding unlimited decision making power over staffing and there being no redress if such decisions are unreasonable, the ASU believes that some of the principles already in place in the Act are good, though need a mechanism to guarantee enforcement. While it is true that most of the matters canvassed in this section of the discussion paper are areas for employment law, and are covered in enterprise agreements, we believe it is prudent to maintain these things (i.e., the requirement that CEOs make merit based appointments; employees are treated fairly; have avenue for redress and so on) in the Act as a type of prescriptive behavior demanded of Council CEOs, as well as serving as a sign the Victorian government believes that Councils are model employers and that legislated hurdles are in place in the Act to force them to act as such. The one element lacking in the Act is an enforcement mechanism, which a heavy fine or some form of disciplinary procedure directed at the CEO may help to address.

3. Do you have any other questions/comments about the content in this chapter?

Response:

1. Regarding the matter of whether Mayors and Councillors ought to be full-time or part-time: the ASU believes that all Mayors must be full-time, and ideally so should Councillors. However we acknowledge that in smaller municipalities, the need for full-time councilors would not be warranted due to the smaller populations and, therefore, demands for time. Nor do we believe that Councillors at smaller municipalities (or any municipality), after being made full-time, ought to somehow assume greater workloads that are normally carried by full-time, qualified and experienced staff. The ASU believes it is critical that the distinction between the operational side of council business remain separated from it's political leadership. If councilors are to be made full-time, the justification for doing so should be on the grounds that it better enables councilors to meet with, consult, and ultimately represent, the interests of their community – it should not be so that councilors attempt to assume greater involvement in council operational business. Finally, one other point the ASU believes supports the conversion of Councillors onto a full-time footing is that it removes them from their day to day occupation, which in some cases, may present conflicts of interest, thus removing one potential area of conflict for a Councillor.
2. In response to the question posed in the discussion paper on whether Councillors should be physically present at council meetings, the ASU believes that this is essential for transparency and allows the community to express its view to Councillors, particularly on contentious issues, and should continue. To allow Councillors to participate via video link, for example, would merely permit Councillors to evade scrutiny and avoid gaining a sense of the depth of feeling the community may hold on a issue.
3. While the ASU supports the proposal giving Councils sufficient latitude to set their own meeting procedures, we believe that the Act must contain certain minimum level requirements that guarantees Councils and Councillors remain accountable to their communities – this should include a legislated right for the community to ask questions of Councillors and senior officers; that Councils meet on at least a monthly basis and that these meetings are open to the public and at an accessible time.
4. On the issue of complaint handling, the ASU believes that all activities undertaken by a Council, whether directly by Council staff or on Council's behalf by contractors, the Council itself must be held accountable and must be responsible for remedying that complaint. In the example cited in the discussion paper, the ASU believes the Council should be held responsible for the failure of its contractor to collect garbage bins, since it is the Council that holds the responsibility for that service and it was the Council that chose to engage that contractor to begin with. If a council is dissatisfied with the performance of its contractor it should terminate the contract and restore

the service to the Council's direct control.

Chapter 5 – Planning and reporting

1. What requirements should be imposed in the Act on councils in relation to planning and reporting on their strategy, budget and operations?

The current arrangements in terms of planning and reporting imposed on local government seem cumbersome, yet not without sound logic. Planning and reporting on strategic issues, budgetary matters and operational issues is an area where most Councils generally do well, though some reports may at times be difficult to locate as not all reports are placed on a Council's website.

We note also the future requirement on Councils to prepare reports to the ESC 'justifying' any rate increase above the a state government's mandated rate cap – we believe this process will add a further layer of reporting and complexity. Time will tell whether Councils make these type of documents public.

Bearing in mind the above, the ASU believes there to be great merit in requiring every Council to prepare a workforce plan and set out how it intends to address any projected skills shortages. Ideally the plan will project needs for a period between 5 to 10 years, or more. Moreover it is essential that consultation for this type of document include all stakeholders with a direct interest in the process, particularly the Council's own workforce and their union. We believe this type of plan is crucial to the sustainability of any Council since it requires Councils to anticipate workforce related issues – which if left unaddressed can lead to service cuts for lack of skilled staff, or the use of precarious employment (e.g., 457 visa workers, labour hire) as a shot-term stop-gap, or in the worst case scenario a permanent workforce based solely on labour hire staff – in a timely fashion. And as many Councils are major employers within their own municipal districts, a workforce plan would hold interest to the local community since it will offer an opportunity to explore greater development of local employment prospects.

It also offers the public a window into Council's future service delivery intentions as Council will be publicly explaining how it will garner the workforce to provide a service into the future. In doing this Council will be signaling whether it intends to provide its services with its own employees, or opt for contracting out, which in turn will allow the community the opportunity to gauge the detrimental impact to the local economy (via the loss of local jobs) of any decision to outsource or cease a service.

Further having a workforce plan as a mandatory requirement allows Councils to articulate if they will hire any apprentices or trainees in anticipation of the opening up

of skilled roles in future, which in areas with lower employment prospects can serve as an attractive career pathway for young locals.

2. Can council planning and reporting processes be streamlined? If so, how?

Local government is the most overscrutinised level of government – its level of reporting to government is often cited as being very burdensome. The imposition upon it of layers upon layers of reporting for no clear purpose, and to produce reports that very few in the community either read or take note of, can distract Councils from other, more pressing work.

We believe that a more streamlined reporting process needs to be instituted. Local government's reporting obligations to the state government are, in our view, the most obvious point for examination. Over the years, the role of state government has grown from 'oversight' of local government, to, at times, near micro-management. Indeed it appears at times that some members of the state government are more intent on acting as omnipotent and highly interventionist Councillors than as members of the government whose task is to provide guidance and oversight.

The ASU does not believe the current practice of many councils in producing council plans, budgets, community plans and other reports of local interest is wasteful. We believe councils should continue to produce these documents for the benefit of members of their community who take an interest in such matters.

3. What rights should be granted to ratepayers to better contribute to council planning and reporting processes?

Ratepayers already have a right under section 223 of the Act to make a submission on a matter before council. Perhaps ensuring Council opens consultation with its community at an earlier stage of policy development, and consulting with the community regularly on the type of information it would like to see disclosed and the format in which it is produced, may be an idea worth pursing as either best practice or enshrining in law.

4. What sanctions should be imposed on councils not complying with planning and reporting requirements?

The ASU does not believe a sledgehammer approach be taken to Councils that have not complied with these type of requirements. Rather we believe a more nuanced approach is required. Doubtless a penalty for non-compliance serves as an essential deterrent to non-compliance and one must exist, however the punishment must be proportionate to the transgression.

We believe it appropriate that, prior to any sanctions being imposed on councils not

meeting their planning or reporting requirements, a council be given the opportunity to correct itself and remedy whatever transgression it has committed. It may turn out that Council had a perfectly legitimate reason for failing to meet its requirements and so it ought to be given a chance to rectify it.

Be that as it may in the event of deliberate or persistent lapses, a Council must account for its failure to meet its requirements. In these circumstances an inquiry into the governance of the council may be warranted since the documents under review in this chapter are in effect governance documents. An inquiry into this matter will aim to determine the cause of the Council's continuous failure and offer systemic remedies, which the Council must then implement.

In terms of whether a council should be fined or otherwise punished – such as suspending or sacking the council – for failing to produce reports of a planning and reporting nature, we believe the foregoing requirement will serve as a more effective means of ensuring Councils live up to the expectations of them. A fine will merely punish the ratepayer and sacking a council deprives it of democratic representation.

5. Do you have any other questions/comments about the content in this chapter?

Response:

1.

Chapter 6 – Council rates and charges

1. Is the current method of declaring rates and charges based on "land" still appropriate?

Yes. Absent declaring rates and charges based on 'land' Councils will be denied any stable, own-source revenue.

We agree with the opinion put in the discussion paper that the underpinnings behind the current method of declaring rates and charges based on 'land' is that most councils utilize revenue raised via rates to service properties via the provision of roads, footpaths, streetlights, drains etc. Indeed this role includes things like building inspections, planning, environmental health etc., all of which are spatially defined services.

Where councils offer human services a user fee is typically involved. Councils are required by competitive neutrality policy to charge cost reflective pricing on their services that are also deemed to be business activities (largely leisure services and childcare) unless Council undertakes a public interest test that justifies it not adopting a cost reflective pricing system, thus allowing some level of cross-subsidization from Council's other revenue streams. However even in these circumstances some sort of user fee is normally charged. This being the case we do not accept the contention that property owners are disproportionately shouldering the burden of financing services they do not necessarily use.

This issue is compounded in complexity by the desire on the part of government to intervene via a rate capping policy and prevent a council from freely levying a rate it judges is required to achieve the service levels or infrastructure necessary to meet the expectations of the community. Flowing from this point is the state failing to identify alternate sources of revenue councils would be able to access to mitigate 'excessive' rate increases. The issue of local government financing arrangements, due to the government's rate cap policy, has become the largest issue facing the long-term sustainability of the sector and one that requires some serious thinking on the part of the sector and policy makers – for if councils are not permitted to raise rates as needed, then where else is the money supposed to come from? To this question there is no clear answer.

Therefore, in the absence of any clear and viable alternative, we believe the current system of Councils imposing rates on 'land', and where appropriate adjusting the rate in

the dollar to reflect the purposes for which the land is put, whether in pursuit of a policy objective, fairness or some other reason, is sufficient.

2. What powers do councils require in relation to levying rates and charges?

Prior to the recent enactment of the state government's rate cap policy, councils held sufficient power to levy rates and charges. Since the passage of the rate cap legislation, it is unclear how the ESC will act when it is faced with an application from a council for an above cap rate increase, or how it will treat such an application in light of other fees/charges/levies a council chooses to impose.

The ASU believes that Councils must be free to charge whatever rate is necessary for it to meet the expectations of its community. We do not believe the Act should be amended to remove the ability of a council to charge a special rate or charge, or a municipal charge, or any other charge it is currently permitted to charge, if it deems such charge necessary.

Ultimately, the best check on abuse of the freedom to charge rates is the democratic character of local government and the accountability of Councillors to their communities if they mismanage municipal finances or otherwise 'excessively' raise rates, not dissimilar to the check an election places on state and federal government from excessively raising taxes.

3. What obligations or restrictions should be imposed on councils in relation to thesepowers?

See response to question 2.

4. What rights should rate-payers have in relation to the exercise of councils powers in relation to levying rates and charges?

The most effective role ratepayers play on the levying of rates and charges by councils is acting as a brake on Councils excessively raising rates by expressing a verdict at the ballot box.

Nevertheless the ASU believes ratepayers must play an essential role on the development of council budgets and the consequent setting of rates. Ratepayers must be afforded the opportunity to, at an early stage, assist in setting the Councils budget priorities, with a clear understanding that if the community desires the Council to provide certain things, then a cost is involved which the community will likely have to pay through higher rates.

Hence consultation, information and input in council's budgeting processes at an early stage must be a right afforded ratepayers.

On the issue of payment of rates and charges, the ASU strongly believes that ratepayers must be given the option of paying their annual rate in smaller installments, but at a more frequent rate. In this way the shock of receiving a large bill in the mail may be mitigated somewhat. For example, it may be more palatable for members of the community to pay their rates once per month, or even once per fortnight, than to be required to pay it off on a quarterly basis. This type of flexibility should be available to ratepayers and must be facilitated by Council at the instigation of the ratepayer.

5. 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?

Absent the recent changes that introduced a rate cap, we believe the current processes for levying rates and charges are appropriate

6. What sanctions should be imposed on councils failing to comply with the requirements relating to levying rates and charges?

In the event a council fails to comply with requirements imposed on it by the Act it must be given an opportunity to rectify the problem. If it fails to do this then the judicial process or the minister must compel the council to do so.

7. Do you have any other questions/comments about the content in this chapter?

Response:

1.

Chapter 7 – Service delivery and financial decision-making

1. What powers do councils need to undertake their financial decision-making functions?

We believe the current arrangements regarding a Council's ability to invest and borrow are appropriate. We do not believe that Councils should be spending ratepayers money on investment decisions, especially where demand for services, infrastructure and new capital works is growing and where Councils will be forced to make savings due to the introduction of rate capping and cuts to federal assistance grants.

2. What obligations or restrictions should be imposed on councils in relation to their financial decision-making functions?

See response to question 1 above.

3. Should the Act contain detailed processes regarding councils financial decision-making? If so, what sanctions should apply for non-compliance with these requirements?

See response to question 1 above.

4. Do you have any other questions/comments about the content in this chapter?

Response:

1. In relation to Best Value: The ASU recognizes Best Value as a significant part of the arrangements around Council's service delivery systems. The idea of benchmarking services and ensuring they meet minimum requirements is sound and should continue.
   However we believe the Best Value principles need to be expanded to consider more factors than those presently specified in the Act, specifically on how changes to the council's status quo service delivery model will effect the workforce if any changes are made. One example the government ought to consider is requiring any council conducting a Best Value assessment to consider the impact on gender pay gaps in the event council opts to contract out (or cease offering) a service.
   In the ASU's experience with Best Value, some CEOs use it as a stage in a process which leads either to the contracting-out of a service, or its complete cessation. We believe when a Council undertakes Best Value, the default

position of council must be in favour of the retention of the service in-house – Council should be required to justify why it believes out-sourcing services, and thus sending the workers to lower paying employment with worse conditions and into insecure forms of work, is in the best interests of the community and how this change will improve the quality of the service. Indeed in our experience, Councils embarking on Best Value assessments place far too much emphasis on 'cost' and too little on quality – we believe this emphasis must be corrected with council recognizing that quality (and thus community satisfaction) is the target they must be striving towards and not as is too often the case crude crusades aimed to deliver cost cutting. Hence in summary, Councils should justify a decision to outsource, on a wide range of grounds beyond cost-savings, and be forced to consider the impact of outsourcing on the quality of a service and the impact outsourcing has on the workers providing the service.

The ASU sees merit in there coming into existence two 'streams' of Best Value – one that applies to outsourced services, the other to in-house services.

In the Best Value process for out-sourced services, firstly the council should be required to conduct a Best Value analysis at the conclusion of the contract and not simply re-tender or extend the contract as often happens at present. A Best Value analysis for a service that is outsourced, a council should be required to consider matters in addition to those specified in the Act, such as the employment practices at the contractor. We note the Victorian government has been critical of precarious and insecure work, even initiating an inquiry into this practice. The ASU works on a daily basis with local government contractors and is greatly aware of the poor employment practices – in addition to the inherently insecure employment experienced by their employees – that pervade the great majority of them. The ASU believes the government can clearly demonstrate its commitment to more secure forms of employment by requiring Councils to factor into their Best Value assessments the detrimental impact insecure employment has on workers, as well as the worse pay and condition on offer at those contractors compared to employees engaged direct by Councils. In addition, we believe that a Best Value process must be mandatory prior to Council undertaking any competitive tendering process and that this requirement be enforceable, both with recourse to the courts and penalty for failure to comply.

Likewise if a council subjects its in-house services to Best Value analysis, greater weighting in any assessment should be given to employment models that promote secure and permanent employment and those employers offering greater levels of pay.

In terms of benchmarking under Best Value, the term is highly subjective and lends itself to whatever meaning the beholder seeks for it. One can easily ask the question 'benchmarking against what? Cost? Quality? Satisfaction? Local employment?' and be left perplexed. The ASU finds that some councils are manipulating 'benchmarking,' choosing to compare their services against false comparators. For instance, we are not unfamiliar with large

metropolitan councils benchmarking against small rural councils. We believe this aspect of Best Value needs to be clarified with the aim of ensuring that the benchmark is clearly set at the highest level and not the lowest common denominator. So whenever Council 'benchmarks' itself it should be aiming high.

The ASU regards this particular aspect of the Act of critical importance to the wellbeing of our members and would be available to meet with representatives from the LG Act inquiry to discuss the matter further.

2. In relation to tendering requirements under the Act: The ASU believes the threshold for tendering requirements must not be raised. It is essential for the sake of transparency that when council seeks to purchase goods or services that it does so after an open process has been undertaken in which interested suppliers have been given a fair opportunity to participate. We also note the practice identified by the Victorian Auditor-General (report tabled 24 February 2010) for some Councils to 'cumulatively contract' as a means of evading their obligations to undertake a competitive tendering process. This practice involves Councils breaking down the overall scope of a project so as to reduce its cost to several contracts totaling less than the specified amount (ie, $150,000 or $200,000) rather than undertaking a competitive tendering process for the entirety of the project and letting a single contract. The practice of 'cumulatively contracting' harbors serious probity issues if strong external oversight is not enforced.
3. Regarding shared services: The ASU cautions that some unintended consequences may arise from a shared service process. In particular we are concerned that shared services can act as a smokescreen to cut services by way of cutting the jobs of those who provide the service. We believe that if there must be some requirement within the Act regarding shared services, the service must be improved for all its users and that cuts to employment are not its true motivation and that these two objectives need to be substantiated. To this end we believe that some form of Best Value assessment (whether this be Best Value as contained in the Act or a new set of principles specific to shared services though drawing their inspiration from the Best Value Principles), prior to the initiation of any process leading towards shared services, may be beneficial in determining these matters if and when councils choose to tread down this path.

Chapter 8 – Councillor conduct, offences and enforcement

1. Do standards of councillor conduct need to be improved? If so, how can this be achieved?

The fundamental problem with this subject is that it seeks to legislate to deliver certain forms of behavior. As the legislative history of this policy area shows, continuous amendments to the Act will be required to stamp out new or different forms of misconduct not anticipated previously. This fact makes it inherently difficult to legislate a list of prohibited forms of conduct. To put it in a colloquial sense, you cannot legislate to prevent stupidity.

Councillors are ultimately responsible for their own behavior. The community has a right to expect the highest standards of behavior from their democratically elected representatives. However all the legislation in the world cannot force individuals to live up to standards reasonably expected of them.

Similarly education programs and disciplinary processes can only accomplish so much and are unlikely to be effective with individuals who are unwilling to raise the standards of their own behavior. This problem is not isolated to local government – recent history has revealed numerous examples of the same issue at both state and federal parliamentary levels.

In terms of current arrangements, many problem areas are already covered – conflict of interest; misuse of position; bullying among a plethora of others. Yet at the same time councillor conduct from some individuals continues to be beneath the standards one rightly expects from elected representatives.

There is no simple solution to this issue since the ideal system will prevent poor conduct from occurring in the first place. Be that as it may the only reasonable or practical course of action open to legislators in responding to this issue is to identify types of behavior that are unacceptable, set out penalties and institute a process for how to deal with transgressions when they occur.

2. What powers do councils need to deal with instances of councillor misconduct?

Councils must have enforceable dispute settlement and resolution procedures in place to deal with councillor misconduct. These should be staged in their process, for example: mediation should be a first step; arbitration of dispute a second step; recourse to an external body like a Councillor Conduct Panel or VCAT should be a last

resort and only after all other viable methods of addressing misconduct/disputes have been exhausted.

Councils may benefit from having the power to apply for the suspension of a councillor engaged in misconduct and to do so swiftly, especially where the health and safety of others is involved. However there must to be suitable checks in place to prevent a 'majority faction' on a council from abusing such powers by suspending political rivals. In light of this possibility it may be prudent to leave the matter of formally suspending or disciplining a councillor to an external agency, on the recommendation of a council.

Councillor conduct principles need to be clear and enforceable. Conduct principles must reflect best practice and the expectations members of the community hold for councillors. We agree with the suggestion in the discussion paper that there appears to be little logic in holding two distinct types of conduct principles. Further, and following from our response to question 1, we are skeptical about the efficacy of conduct principles in delivering better conduct from councillors. We believe that if individuals choose to behave poorly nothing will stop them – it then becomes a matter of how to deal with the problem, in which case swift remedy with suitable penalty is preferred.

3. Does the system of councillor conduct panels need to be improved? If so, how?

Yes. Councillor conduct panels are cumbersome and lengthy processes. A quicker and more readily accessible process needs to be in place. We note the changes flagged in Appendix 2 of the discussion paper and welcome those changes.

4. Is there a need for additional offences to be included in the Act? If so, what are they?

We note the already exhaustive list of offences contained in the Act as spelled out in the discussion paper and don't believe adding to this list will achieve anything that isn't already captured in the Act.

5. Is there a need to improve investigation and enforcement of the Act in any way? If so, how?

The ASU believes that enforcement of the Act is crucial to its integrity and effectiveness.

In our experience we have found that some cases of alleged misconduct from Council staff (these are staff in service provision roles, not individuals in management positions) have been investigated by the Inspectorate, even where these allegations are at the 'lower end' and are better dealt with via Council's staff disciplinary processes which already cover misconduct. We believe it may be necessary to clarify the level of misconduct the Inspectorate is entrusted with investigating in order to prevent it's interference in what is usually an infraction better dealt with at the Council itself.

Further we have also experienced cases where staff members have been subject to allegations made vexatiously and sometimes anonymously, and generally without evidence, as part of a personality clash between staff members, and have seen the Inspectorate get involved. The issues in question generally do not concern serious misconduct, rather, at most, petty theft. Again we believe the role of the Inspectorate should not be to get itself involved in these type of disputes which are already dealt with under HR and/or industrial processes.

6. Do you have any other questions/comments about the content in this chapter?

Response:

1. The ASU supports the strict delineation of responsibilities between the CEO and Councillors and believes that greater effort is required to ensure Councillors (and indeed members of the community) understand this division of responsibility.

Chapter 9 – Ministerial powers

1. Should the role of the minister be described in the Act? And if so, how should this be described?

No. In our conception of the role of the minister, we see his/her role being to serve as a reserve power, acting only as a last resort. We believe the role of the minister should be to oversee the sector as a whole and to act decisively in the event of governance failures at individual councils and only after a process of remedy has run its course. The minister should not be interfering frequently in the affairs of Councils, indeed the ASU's preference is that resort to ministerial interference occurs as infrequently as possible.

2. What powers should be provided to the minister in the Act in relation to:
   a) the structure of the sector (i.e. circumstances in which new councils are established or existing councils amalgamated, numbers of councillors etc)?

   We note and support the recent report and recommendations of the Sunbury out of Hume Auditors regarding the establishment (or adjustment) of new municipalities. These recommendations set out certain criteria – such as financial sustainability, service quality and community support – that must first be met prior to the establishment of new municipalities.

   In terms of the minister's role in council amalgamations/boundary changes, we believe any decision on the establishment of a new municipality, or the adjustment to existing boundaries, must be approved by the parliament. It makes sense that the minister be responsible for this process but we do not believe it is in the interests of the Victorian community to leave final decisions regarding municipal structures to the government alone, thus sidelining the parliament.

   The recent experience of the Sunbury out of Hume de-amalgamation is proof that some governments make ill-conceived judgments, not based on the best interests of the communities involved, regarding new municipalities. In the Sunbury example the government concerned seemed more intent on extracting political windfalls than in delivering the best outcome for the community. To this end a flawed process was set in train whose outcome had been pre-determined long before. Hence a check needs to be put in place to prevent this abuse of process from being repeated in future.

   b) to ensure councils comply with the Act?

   The minister's role in ensuring councils comply with the Act should be a reserve power, with most of the detailed work done by other bodies, be it the Inspectorate, LGV or some other body. The minister's direct intervention should only be a last resort after all else has failed.

c) to ensure the integrity of governance and standards of behaviour?

The minister's role in ensuring the integrity of governance and standards of behaviour should be a reserve power. Most of the work done in this area should be undertaken by other bodies established by the minister or the Act, be they Councillor Conduct Panels, the Inspectorate or some other agency. The minister's direct intervention should only be a last resort after all else has failed.

d) What penalties should be included in the Act in relation to councils not complying with the exercise of the minister's powers?

These issues are best dealt with on a case by case basis and should be governed by the nuances of the situation. Certainly a one-size-fits-all approach can be cumbersome and have unintended consequences.

As a general rule we believe that prior to any penalties being imposed on councils, they should be given the opportunity to comply with any requirement imposed on them by the Act or the minister under powers granted him/her under the Act, accompanied with a warning that failure to comply could lead to more punitive measures. Continued failure to adhere should see, where possible, the minister directing the CEO to the obey the requirement placed on the Council irrespective of a council decision.

If the minister's power is being exercised expressly at an individual, then the possibility of fines for failure to comply seems appropriate.

Only in extreme situations should a council be suspended or sacked for failing to comply with the exercise of a minister's power.

3. Do you have any other questions/comments about the content in this chapter?

Response:

1. Regarding ministerial exemption from public tendering: We believe councils should be required to meet their statutory obligations regarding tendering and would prefer to see the minister's involvement removed.
2. Regarding the power of a minister to suspend a council: the great shortcoming with this power is the lack of any steps specified in the Act that explicitly spell out what process the minister must take in order to be satisfied that there has been a serious failure to provide good government by the council. Nor is there any 'check' to prevent ministers misusing (or misapplying) their power to suspend a Council. We believe that before a minister is able to proceed along this path they must have undertaken a rigorous and transparent process of their own that clearly makes the case for a failure by a council to provide good government, failure by that council to rectify its problems after being given ample opportunity to do so, and the absence of any other alternative for the minister leaving him/her no choice but to suspend the council. Furthermore aggrieved

communities should have some recourse to appeal and, have over-turned if appeal is successful, the minister's decision.

Additionally we do not see the case for an expansion of the grounds for the suspension of a Council beyond the current definition of 'failing to provide good government.' Councils are elected to serve a full four year term – in the event Councillors lose the support of their community mid-term, the most appropriate time to correct this problem is during the general election, no different to established democratic process for state and federal government.

The four year term affords a level of security of tenure for councillors, thus providing them a level of freedom to make unpopular though necessary decisions. If councils are to be sacked on the grounds of unpopularity, or if recall elections are permitted, councillors may shirk tough decisions for fear of triggering the dismissal of council or a recall election.

Chapter 10 – Harmonisation of the Local Government Act

1. What aspects of the Act should be amended to better harmonise with related legislation?

From a readability perspective the aspects of the Act that should be harmonised with related legislation are those that impose responsibility on local government. Some of these are mentioned in the discussion paper. Doing this will make the Act easier to read and understand, and remove the need to search for related legislation when required.

2. How can council responsibilities in relation to other legislation be made clearer?

It may be worth including a new section within the Act that lists related legislation and the responsibilities conferred on council's via that piece of legislation. This type of list would fit neatly in the part empowering councils with the 'peace, order and good government' of the municipal district.

3. Are there provisions in the Act that could be improved to clarify their interaction with other legislation? How could they be improved?

See response to question 2.

4. 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?

We are not aware of any examples to highlight here.

5. Does the Act contain any matters that should be transferred to other Victorian legislation? If so, why?

We are not aware of any examples to highlight here.

6. Do you have any other questions/comments about the content in this chapter?

Response:

1.

Any other comments?

Do you have any other questions/comments not raised in the above chapters?

Response:

1. Regarding the Long Service Leave provisions in the Local Government Act: section 101 of the Act requires councils to implement long service leave arrangements for council staff in accordance with the regulations. This section of the Act governs the long service leave entitlements of all employees in local government.
   In 2012 the then government removed a significant safeguard that was contained within s101. In brief, this safeguard ensured that any new regulations made under s101 could not provide for entitlements less than those in operation at the inception of the Act in 1989. Many of the key features of LSL in local government have been in place since the operation of the 1958 Act.
   The ASU is concerned that the removal of this significant safeguard allows a future government, via regulation, to erode essential features of the long service leave arrangements for local government workers, in particular the full portability of LSL entitlements between councils, the basic entitlement of 3 months leave after 10 years service, pro rata access of 2 months after 7 years service, and a range of more technical though highly significant elements.
   The ASU strongly believes that a new safeguard must be included under s101,

one that guarantees that any LSL regulations made pursuant to it contain LSL portability, provide for 3 months leave after 10 years of service, contain a pro rata entitlement to 2 months leave after 7 years of service, allow flexibility provisions (i.e., half-time at double pay and vice-versa) and maintain a consistent set of definitions regarding 'meaning of ordinary pay' and so on.
We wish to emphasise that all of the foregoing conditions are already in the LSL regulations and have been a part of local government LSL for decades – however the ASU would like to see these conditions protected via a plain English safetynet, offering local government workers a degree of protection from the hostile intentions of any future government.
Like with the review of the Act more generally, the ASU would like to discuss this matter in greater detail with members of the review committee at their pleasure.

2. The ASU would like to raise some suggestions in relation to legislative protections to employees employed at councils undergoing municipal restructuring: We wish to point the inquiry to certain provisions contained in the NSW Local Government Act around this issue. Specifically these provisions are found in part 6 of chapter 11 of that Act, specifically sections 354C-I. The intention of these provisions is to ensure employees employed at Councils undergoing municipal restructuring are not subject to forced redundancies for 3 years; no forced transfers; and no loss of conditions for staff in affected councils; among other conditions. These protections only exist for non-senior staff.
   The ASU believes that these provisions are significant and worthy of consideration for inclusion in any new Local Government Act. In our recent experience with the Sunbury out of Hume process, we found that once the detail of the proposed split was revealed, serious repercussions were in store for the Council's non-senior workforce – these workers are front-line service providers, generally low-skilled and likely to find it exceedingly difficult to obtain new employment if their Council job was lost – repercussions that were not broached at an earlier stage in the process. When these details were revealed the Hume workforce was tremendously shaken, with uncertainty clouding the lives of all workers likely to be adversely affected by the deamalgamation. Further, when members of the Hume community were made familiar with some of the repercussion on the workforce of the split, a great outpouring of support and sympathy for the Hume Council workers was forthcoming. Yet if provisions such as the one found in the NSW Act were included in the Victorian Act, some of this uncertainty would have been obviated. To be sure the flaws of the Sunbury out of Hume process were far wider than this incident, it is also true that had the Hume workforce enjoyed a level of legislative protection as their NSW colleagues do a great deal of anxiety would have been avoided. Again as with the review of the LG Act in general the ASU is happy to discuss this issue with members of the review team.

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