

## Submission to Discussion Paper

Name	Domenic Isola
Suburb	Broadmeadows
Age*	
Gender*	

Organisation/council name:	<b>Hume City Council</b>
Position/job title	<b>Chief Executive Officer</b>
Are you providing this submission on behalf of yourself or the organisation?	<p>Officer</p> <p>This submission is submitted by me, as Chief Executive Officer of Hume City Council, and is an officer based submission with responses to questions in chapters 4, 5, 6, 7, 9 and 10. Chapters 2 and 3 were considered to be more appropriate for comment by elected councillors.</p> <p>Council considered making a formal submission to the discussion paper and determined that the Council would not make a submission and that those councillors who chose to do so would make an individual submission.</p>

## Chapter 2 – The role of councils

1. What should the key roles and functions of council be?
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?
3. What powers are required by councils to perform these roles and functions? Should there be any limitations to council powers?
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?
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?
6. Do you have any other questions/comments about the content in this chapter?

Response:

No Response provided.

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

Response:

No Response provided.

## 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)?
2. What penalties or sanctions should be imposed on councils who do not comply with the requirements relating to their operations?
3. Do you have any other questions/comments about the content in this chapter?

### Response:

1. No response
2. Please see comment provided on the last page of this submission under – any other comments.

3. **Chief Executive Officer (CEO) Reappointment**

It is recommended that there should not be a requirement to advertise where there is an incumbent CEO whose services the Council wishes to retain. In the private sector (e.g. a large corporation) if the board is satisfied with the performance and direction then they would not incur costs/time/uncertainty in going through a reappointment process. It is recommended to keep the existing provisions as they are.

#### **Other Staffing Arrangements**

There is a gap in current legislation in that a CEO can appoint 'Senior Officers' to a contract but there are no limitations placed on remuneration.

Consideration could be given to a change that allows Council to approve a 'Remuneration Framework' in which it can place limitations on what gets paid in a package to Senior Officers.

For example:

- CEO – salary package as determined by Council
- Directors – salary package not exceeding 70% of CEO
- Managers – salary package not exceeding 80% of Directors

#### **Chief Executive Officer Review**

Within the CEO's contract, consideration could be given to outlining the process for the CEO review, the key resources, the timing and the reporting (i.e. set up the governance framework over how/when CEO reviews are

undertaken).

The key points for reviewing the CEO's performance over the period should be:

1. *Operation of the Organisation*

- a) Occupational Health and Safety/Budget/Council Plan/Staff Engagement;
- b) Council process – governance;
- c) The standards set for the organization by the CEO;
- d) Relationships with Council; and
- e) Responsiveness to Council and community.

2. *Key Projects*

- a) Outline key deliverables (strategic projects/probity/advocacy items);
- b) Determine timing and delivery.

Ensure that a half yearly review is in place to outline circumstances/status of these key projects and/or organisational matters.

**Community Consultation**

It is recommended that the requirements for undertaking effective community consultation should be strengthened, while not being prescriptive of any particular method or approach. Consideration should be given to introducing a set of guiding principles for engagement, similar to those recently developed by the Essential Services Commission as part of the rate capping work and VAGO's *Public Participation in Government Decision-making* guidelines.

**Special Committees**

It is recommended that the Act separately recognise a category of committee that has as its purpose a non-statutory operational role. For example, a committee that manages a hall, a community centre or a sporting pavilion. Whilst this new category of committee would not perform a role as significant as a committee under Section 86, it is recommended that those provisions relating to conflicts of interests of committee members (conflicts being identified, declared and managed) would be applicable as would financial oversight obligations.

The current requirement for a Council Audit Committee to be an advisory committee with obligations similar to that of a section 86 committee seems a duplication of prescription. It is recommended that Council Audit Committees be Section 86 Committees.

**Local Laws**

It is preferable that where consistency in regulation is required across local

councils that this should be achieved by State legislation.

Clarification should be given as to how external documents should be recognised in a local law; how a separate document such as a code or policy can be amended; and the requirements for a separate document's public availability.

It is recommended that the Penalty Units for infringements issued under a local law should be aligned to the Sentencing Act and thus adjusted annually in accordance with Consumer Price Index (CPI) movements.

## 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?
2. Can council planning and reporting processes be streamlined? If so, how?
3. What rights should be granted to ratepayers to better contribute to council planning and reporting processes?
4. What sanctions should be imposed on councils not complying with planning and reporting requirements?
5. Do you have any other questions/comments about the content in this chapter?

### Response:

*The following comments apply to questions 1, 2, 3 and 5.*

Currently councils have a myriad of overlapping and sometimes duplicate requirements for council planning and reporting processes, many of which could be streamlined into a more integrated approach. These reporting requirements are often placed on local government, not only within the Local Government Act and Regulations, but also other legislation such as the Public Health and Wellbeing Act, Domestic Animals Act and the Disability Act.

It is recommended that an integrated planning framework be introduced in conjunction with the removal of planning and reporting requirements from other acts which may “compete” with planning requirements within the Local Government Act. This would include development of the following:

- Community plan (10+ years) – updated/refreshed following each Council election.
- Long term financial plan, including Capital Works Program (10+ years) – linked to the community plan and Asset Management Plans.
- Asset Management Plans (10 years) – linked to the community plan and Service Plans.
- Council Plan (4 years – term of Council) – incorporating planning requirements currently outlined in the Public Health and Wellbeing Act and Disability Act and other acts – and driven by the Community Plan, Long Term Financial Planning and Asset Management Plans.
- Strategic Resource Plan – linked to the Council Plan, Long Term Financial Plan, Asset Management Plans and Service Plans. (Please also see comments on

Annual Budgets in Chapter 7).

- Service Plans (4+ years) – outcome and customer focused. Services should be defined by customer expectations and aspirations rather than organizational structure. Service plans should clearly define service level agreements and clarify Council’s role in service delivery, and consider future workforce planning requirements.

Underpinning any integrated planning framework should be an extensive community and stakeholder engagement process to ensure councils are continuing to meet and service local community needs and aspirations, and informed by overarching state government planning priorities as prescribed by the Minister Local Government (e.g. Victorian Public Health and Wellbeing Plan, Climate Change etc.)

Each planning requirement would be clearly aligned to avoid overlapping or competing priorities and clearly outlining council’s roles and responsibilities for service delivery.

Submitting Council Plans to the Minister seems to be a redundant requirement within the Act, with current legislation requiring councils to provide this information on their websites. Clearer requirements could be defined on when councils are required to publish their Council Plan (and other key documents) online (e.g. within seven days of council adoption).

The response to question 4 is:

Please see comment provided on the last page of this submission under – any other comments.



## Chapter 6 – Council rates and charges

1. Is the current method of declaring rates and charges based on “land” still appropriate?
2. What powers do councils require in relation to levying rates and charges?
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 councils powers in relation to levying rates and charges?
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?
6. What sanctions should be imposed on councils failing to comply with the requirements relating to levying rates and charges?
7. Do you have any other questions/comments about the content in this chapter?

### Response:

1. As the main base for revenue raising for local government the valuation of land as provided for in the current Act is appropriate. The number of exempt properties is of concern and a much broader application of rateable status and consistent application across the state is required. The introduction of the Fire Services Levy saw a number of properties being assessed for the Fire Services Levy that are not rated by councils.

It is recommended that as a minimum those properties rated for the Fire Services Levy should be also rateable by councils.

It is recommended that in assessing properties that are non-rateable the determination of a non-rateable use should be consistent or similar with the definitions of a charity contained in the Federal Charities Act 2013. Greater clarity or ease of determination of non-rateable status is desirable so that consistency can be achieved across the state. There does not seem to be a great consistency across Victorian municipalities on what properties are non-rateable.

2. It is recommended that the option of lump-sum payment of rates be

removed from the Act to bring local government into line with all other service entities / utilities.

Further it is recommended that the intent and provision of Section 181 be retained and strengthened to enable councils to recover rates after two years of non-payment.

3. It is recommended that the existing obligations in relation to deferred payment or waivers remain.
4. Ratepayers should have the right to challenge both the property valuation and the use of Differential Rating as contained within the current legislation.
5. No response
6. Please see comment provided on the last page of this submission under – any other comments.
7. It is recommended that fees incurred by councils in debt collection (e.g. field calls and skip traces) that occur prior to commencement of legal recovery of outstanding rates in the Magistrates Court are able to be added as a charge to the property and included as outstanding rates and charges, as is currently the case with interest. This would be consistent with NSW legislation.

## Chapter 7 – Service delivery and financial decision-making

1. What powers do councils need to undertake their financial decision-making functions?
2. What obligations or restrictions should be imposed on councils in relation to their financial decision-making functions?
3. Should the Act contain detailed processes regarding councils financial decision-making? If so, what sanctions should apply for non-compliance with these requirements?
4. Do you have any other questions/comments about the content in this chapter?

### Response:

#### **1. Policy**

Overall, Council recommends that a non-prescriptive approach be adopted as a Principle within the new Act. The level of prescription would be limited to ensuring Councils have relevant Policies of Financial Management that are reviewed through the Audit Committee.

Such Policies should include:

- Rating
- Procurement
- Investment
- Borrowings
- Commercial Operations
- Asset Management
- Risk Management
- Fraud Control

To ensure oversight it is recommended that the requirement for these policies should all be included as measures, where not already, within the Governance and Management Checklist section of the Local Governance Performance Reporting Framework.

To achieve a balance the between prescription and autonomy, Councils should be able to determine the content of each policy as opposed to Sections 143, 144, 186 and 193 of the existing Act.

In seeking less prescription and greater autonomy, it is recommended that an increased level of transparency of decision making and accountability of decisions be required of councils. For example, Section 186 is prescriptive and should be removed save for the need for a Procurement Policy with the additional need to

explain the decision making process and contracts entered into through procurement. Such transparency and accountability could be achieved through the quarterly publication of a contracts register on Council's website.

### **Budgets**

With the introduction of the Fair Go Rating System it is recommended that greater emphasis be placed on the development of the Strategic Resource Plan in the first year of a Council term. In the subsequent three years, if the intent and direction outlined within the Council Plan and Strategic Resource Plan does not materially alter, then it is recommended that the new Act not require a Council to undertake an Annual Budget. However, should a council seek and be approved a variation to the Rate Cap, then this would trigger a material change and require an Annual Budget process to be completed.

Should such a change be viewed as too dramatic a change from the current practice, an alternative approach would be to undertake an Annual Budget without the existing Section 223 engagement process. Again, if the Annual Budget is not materially different to the Strategic Resource Plan and a variation is not sought, then no Section 223 process would be required, however if a variation is sought then a process similar to the existing Section 223 process would be required.

2. Should the new Act be less prescriptive and therefore less restrictive, a balance of an increase in obligations should occur. In particular, councils could be required to publish its reasons for its financial decision making. For example, the decision making would be required to align to the Financial Management Policies of Council, such as an Investment Policy, which could include an obligation for council to provide a quarterly register of all investments on its website and the investment criteria and weightings used in making an investment decision.

3. Please see comment provided on the last page of this submission under – any other comments.

## Chapter 8 – Councillor conduct, offences and enforcement

1. Do standards of councillor conduct need to be improved? If so, how can this be achieved?
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?
6. Do you have any other questions/comments about the content in this chapter?

### Response:

1. No response
2. No response
3. No response
4. No response
5. No response
6. No response

## Chapter 9 – Ministerial powers

1. Should the role of the minister be described in the Act? And if so, how should this be described?
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)?
  - b) to ensure councils comply with the Act?
  - c) to ensure the integrity of governance and standards of behaviour?
  - d) What penalties should be included in the Act in relation to councils not complying with the exercise of the minister's powers?
3. Do you have any other questions/comments about the content in this chapter?

### Response:

1. No response
2. (a) When considering amalgamating or de-amalgamating Councils, or changing the municipal boundaries of a Council, it is recommended to include criteria or thresholds in the Act that must be met before the Minister can consider any of these changes. Examples of this could be establishing that there is no financial disadvantage to the local community because of the proposed change, and/or ensuring that there is an enhancement of communities of interest, and by extension no break-up of communities of interest.  
  
(b) No response  
  
(c) No response  
  
(d) Please see comment provided on the last page of this submission under – any other comments.
3. There are currently a range of ministerial guidelines and other orders-in-Council that must be read in conjunction with the Local Government Act. These should be centrally located, easy to find and up-to-date so that the Act and these documents that directly relate to the Act can be more easily located.

## Chapter 10 – Harmonisation of the Local Government Act

1. What aspects of the Act should be amended to better harmonise with related legislation?
2. How can council responsibilities in relation to other legislation be made clearer?
3. Are there provisions in the Act that could be improved to clarify their interaction with other legislation? How could they be improved?
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?
5. Does the Act contain any matters that should be transferred to other Victorian legislation? If so, why?
6. Do you have any other questions/comments about the content in this chapter?

### Response:

1. As discussed in Chapter 5, consideration should be given to harmonizing council planning requirements placed on councils by various Acts to ensure they're appropriately aligned and integrated throughout the council's corporate, financial and service planning activities.
2. Councils are often given responsibilities under other Acts which are imposed on them by the Victorian government. Examples of this include the Domestic Animals Act, the Tobacco Act, and collecting the Fire Services Levy. Councils are often implementers of state government policy through this process. Consideration could be given to including thresholds in the Local Government Act, such as the three items listed below, that must be met when Councils are given responsibilities under other Acts.

#### *Sample Thresholds*

When it is proposed to give local government responsibilities under other Acts, the Local Government sector should be:

- engaged when designing the framework for implementing new programs or policy outcomes;
- resourced when appropriate;
- given mechanisms to effect change in what has been implemented (if it is not working).

3. Responsibilities for nature strips and footpaths should be clarified especially

in conjunction with the operation of the Road Safety Rules, in particular the illegality of parking on nature strips.

4. The Cultural and Recreational Lands Act 1963 should be incorporated into the Local Government Act because it is an Act that's primary purpose is for the administration of rates that are payable to Council's in respect of recreational Lands. There is no apparent reason why this Act should continue to exist in isolation.
5. The Local Government Act should not be made prescriptive to the point where local government loses its status as the third autonomous tier of government, as this would restrict Council's ability to provide those services and infrastructure specific to its local community's needs. Councils interact with residents and ratepayers at a very direct, one-to-one level, and they should retain sufficient legislative powers to deliver services that reflect the priorities and address the issues for their communities.



Any other comments?

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

Response:

Sanctions:

An appropriate sanction would be a requirement that Council publically reports instances of non-compliance with the requirements relating to their operations either in its annual report, on its own website, or via the [www.knowyourcouncil.vic.gov.au](http://www.knowyourcouncil.vic.gov.au) website. This sanction would cause embarrassment and have consequences for a Council's reputation. Sanctions in the form of fines or the voiding of Council decisions are not supported.

Any sanction should be regarded as a measure of the competency of a Council. As such and in combination all sanctions that a Council could receive, would provide the Minister with an objective opinion of the overall competency and functioning of council and the opportunity to invoke alternative Governance arrangements, should such a power exist within the new Act.