



## Inner South Metropolitan Mayors' Forum

### Response to the Department of Environment, Land, Water & Planning's *Review of the Local Government Act 1989* Discussion Paper

18 December 2015

Ms Ros Spence MP  
Chair, Local Government Act Review  
C/o Local Government Victoria  
PO Box 500,  
Melbourne VIC 3002  
Via: [local.government@delwp.vic.gov.au](mailto:local.government@delwp.vic.gov.au)

Dear Ms Spence,

#### Local Government Act Review – Discussion Paper

#### Introduction

The Inner South Metropolitan Mayors' Forum (ISMMF) welcomes the opportunity to respond to the Discussion Paper of the Department of Environment, Land, Water & Planning's *Review of the Local Government Act 1989*.

The ISMMF incorporates mayors from the municipalities of Boroondara, Bayside, Glen Eira, Kingston, Port Phillip, Stonnington and Yarra representing nearly one million residents, a quarter of Melbourne's population.

The role of local government has changed substantially since the Local Government Act was originally enacted, and although there have been many amendments to it since, it has not kept pace with the growth of local government as a significant economic driver and service provider. Councils are dealing with commercial and service delivery challenges unheard of in 1989, and Inner South Metropolitan Mayors welcome this review as a recognition that the legislative framework governing the vital local government sector needs to evolve to match the changing environment.

The ISMMF acknowledges the extensive consultation process Local Government Victoria is undergoing with stakeholders in the local government sector in Victoria. ISMMF recognises the questions the Department has put forward for discussion reflect sector input and concerns, and this is a valuable first step in the consultation process.

The ISMMF has articulated our responses in the same order as the discussion paper below, and some of our member councils will respond to the terms of reference in the Department's Discussion Paper in greater depth by preparing their own submissions.

## Chapter 2: The role of councils

The ISMMF agrees that the Local Government Act's Charter (2003) defines the role of councils properly, balancing the articulation of specified council powers and providing general powers of competence. We note that the role of local government has evolved gradually and this gradual adaptation is in line with societal changes over the same period.

The general power of competence gives flexibility and autonomy to councils and should be supported by a good balance of normative, enabling and prescriptive provisions necessary to perform the roles and functions of council.

The ISMMF suggests that provisions in the Act should be, if possible, normative, and any penalties for non-compliance should be predicated on clearly stated, minimum standards for compliance.

## Chapter 3: How councils are elected

The ISMMF agrees that a fair and efficient local government sector is protected by elections conducted with integrity, maximising democratic participation with effective oversight.

We support changes to the essential elements of the Act ensuring the integrity of elections, and some member councils have suggested a range of possible reforms such as:

- improving the quality, accessibility and comparability of information on candidates, and codifying definitions of good practice during the caretaker period
- giving additional powers and resourcing to the Local Government Inspectorate, enabling timely and appropriate action in response to complaints
- application of a uniform state-wide compulsory Code of Conduct for Councillors.

All ISMMF member councils agree that the integrity of local government voting process, policy and enforcement is best protected by providing powers to the Victorian Electoral Commission (VEC) and transferring all necessary powers to the *Electoral Act*.

## Chapter 4: How councils operate

The ISMMF believes that the current requirements are adequate to allow councils latitude to tailor and conduct their affairs according to the needs and expectations of the community.

Our member councils have suggested that any sanctions for non-compliance with the Act should focus on rectification of non-compliance, rather than the punitive imposition of penalties.

The revised Act could include a formal requirement for public participation at council meetings, but this should be normative rather than prescriptive to allow flexibility and tailored local responses to community need and practice.

We also suggest that giving notice in public consultation through local newspapers has become less effective due to seriously declining readership in the digital era.

The ISMMF member Councils utilise a range of traditional, digital and innovative methods to engage their community facilitated by the enabling provisions with the Act. The benefits and quantified value of this practice in the sector rather than a focus on prescriptive provisions is encouraged.



## Chapter 5: Planning and reporting

The ISMMF strongly agrees that councils could be encouraged to undertake longer term planning, aided by funding allowance recognising the resource intensity of the exercise, and supported by streamlined and coherent reporting requirements, incorporating tangible measures of liveability.

Our councils oppose the imposition of requirements on councils' planning and reporting, strategy and budgets, as being arbitrary, inflexible and unnecessary where local government already sets the benchmark for consultation on such activity for the public sector.

The flexibility currently present allows for reporting models that reflect autonomous decision-making based on each municipality's unique needs. Whilst performance reporting is valuable in understanding efficiencies and service requirements, any further increase in reporting should be counterbalanced by the removal of reporting duplications within the Act.

ISMMF member councils believe that the creation of additional ratepayers' rights will not contribute to better council planning and reporting, and the current prescriptive standards of consultation already act in many cases as a barrier to development of more meaningful consultation methods.

Overall, we believe the current regime is adequate and in line with the ISMMF's general approach, where appropriate, we believe the Local Government Act should move away from prescriptive to normative provisions governing these activities.

## Chapter 6: Council rates and charges

Chapter 6 asks whether the processes for payment of rates and charges in the Act can be amended to remove unnecessary restrictions and red tape on councils and ratepayers. Although the issue is complex and will be covered in greater detail in individual submissions, ISMMF member councils have provided two examples of processes they think could be streamlined.

The process of Special Rates payments is lengthy, unnecessarily complex, often requiring complex legal advice, and could potentially be reviewed such that they better lend themselves to 'opt-in' arrangements when used to fund marketing and promotional activities in shopping strips, restoration of historic buildings, or environmental efficiency building improvements, to name a few examples.

The imposition of garbage charges among other service charges could also be reviewed to better describe the basis of the charge and the costs it covers.

The Local Government sector is resourced from rates, user charges, income from assets and government grants. It is important that a legislative framework actively supports the sector in broadening its revenue base.

## Chapter 7: Service delivery and financial decision making

The central question in this chapter surrounds whether the current Act reflects the contemporary needs and practices of councils to access finance, sell assets and undertake entrepreneurial activities.

The ISMMF believes that councils should have the right to set their own budget having regard to their own unique circumstances, founded in the principles of sound financial management and in a transparent manner. Restrictions and benchmarks across councils would add undue administrative



burden without benefitting planning or reporting and would impinge on the capacity to adapt to changing commercial conditions.

We note that currently under the Act 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), and this provision should be retained in the revised Act.

## Chapter 8: Councillor conduct, offences and enforcement

ISMMF councils have suggested a range of improvements surrounding a councillors' code of conduct with emphasis on education and induction programs to prevent later compliance issues and ensure the operation of effective and fair local government:

- pre-election candidate information on proposed induction program coupled with induction program focused on roles and relationships
- access to quality governance learning and development opportunities (e.g. AICD course)
- leadership development opportunities for mayors.

ISMMF councils agree that the standards of councillor conduct need to be improved, but that improvement will be delivered by more than just legislative change.

The ISMMF calls on the Victorian Government to 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.

The system of councillor conduct panels could also be improved to cut down the time taken to work through all the process steps.

## Chapter 9: Ministerial powers

To balance local government autonomy and state government oversight, the ISMMF believes the role of the Minister should be described in the Act, with reference to principles and clarification as to how the Minister's authority interacts with ministerial oversight bodies and other organisations.

Our member councils agree that in providing the Minister with powers over local government, an appropriate balance must be struck to ensure proper parliamentary scrutiny of any proposed future reforms to the sector, whilst allowing for the exercise of appropriate administrative functions by the minister through regulation or Ministerial direction.

The opportunity exists to take a strength-based approach to this review process, where the sound practice in the local government sector is exemplified and the policy gaps addressed to build an even stronger and credible third tier of government.

## Chapter 10: Harmonisation of the Local Government Act

The ISMMF agrees that there is a great deal of complexity and overlap between local government responsibility under the *Local Government Act* and other legislation, and therefore supports amendments to improve clarity and better harmonise roles and responsibilities for councils.

ISMMF councils have suggested that some areas need clarification about their interaction with the LGA:



- Stormwater and sewer control
- Delegated responsibility with the *Food Act* (Section 58A), *Domestic Animals Act* (Section 41A(4)), *Planning and Environment Act* (Section 188)
- *Freedom Of Information Act*
- *Water Act*

A particular area of concern is the complexity around delegated power from other acts to Council, and the confusion around who can make decisions and by what authority. Other concerns raised include potential conflict between disclosure duties and privacy in the FOI Act, and the maintenance of firefighting infrastructure under the *Water Act*.

The ISMMF argues that councillors face possible confusion around their obligations under the Local Government Act and the Planning and Environment Act when seeking to balance their role as an advocate for their community whilst dealing objectively with planning matters that may impact their area. Clarification of these overlapping and ambiguous roles would improve the local government sector and the everyday running of council.

ISMMF member councils agree that all items regarding council elections should be transferred to the VEC.

## Conclusion

Local Government has grown and evolved over the life of the Local Government Act, and this review is a timely recognition of the need to clarify the role of this vital third tier of government in Victoria and in the federal system of government in Australia.

The suggestions and changes presented in this response are designed as part of a principled approach that favours normative, adaptive provisions over prescriptive legislation to ensure that the legislative framework continues to evolve in keeping with the changing role of councils as service providers and economic drivers.

The Inner South Metropolitan Mayors Forum appreciates your consideration of our submission, and we would be happy to discuss our responses or provide any further information the Department and Local Government Victoria may require in its deliberations.

