A Proud Community Growing Together

Cr Kathy Majdlik

MBA/MEI/GAICD

Mayor

17th December 2015

Local Government Act Review Secretariat
PO Box 500
MELBOURNE VIC 3002

Dear Sir/Madam,

Review of the Local Government Act 1989
Submission by Melton City Council

Melton City Council ("Melton") thanks the Government for the opportunity to contribute to the first phase of the review of the *Local Government Act* 1989 ("the Act"), the first comprehensive review in over 25 years.

Melton's comments in relation to this phase of the Review are largely in relation to the specific topics set out in the Discussion Paper ("DP") however it also makes some comments more broadly. In particular, Melton's submission focuses on the 'Role of the Councils' (Chapter 2) and 'How Council's Operate' (Chapter 4).

Melton looks forward to contributing to the next phase of the review and any exposure draft that may be released.

It is certainly an exciting time to be in Local Government.

Yours sincerely,

Kathy Majdlik
MAYOR

Enc.

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Subject (including DP reference)	Comments
The role of councils (Chapter 2)	**General Comments** Melton believes that the current provisions (including the Charter) in the Act and in the Victorian Constitution are sufficient and functional and rightly recognise Local Government as a distinct and essential tier of Government. At the same time, Council continues to support an amendment to the Australian Constitution to include such recognition and would welcome advocacy from the State in this regard. In terms of the structure or form of the current Act, Melton takes the view that the current mix of normative, enabling and prescriptive provisions works reasonably well. The absence of penalty provisions is noted however Melton is not convinced that penalty provisions would necessarily improve compliance across the sector. Indeed, anecdotally there would appear to be a high level of compliance in what is a highly regulated sector. Clear and unambiguous language is imperative e.g. 'must' v 'may'. In a new Act Melton would propose a prescriptive but not overly onerous approach to governance and a flexible approach to all other provisions. This will allow Council to focus on maximizing its service provision rather than use resources to draft internal governance rules and policy which can be better drafted by parliamentary drafters and for which it is appropriate to be consistent across the sector. This provides the transparency and accountability that modern day governments should display but also provides local government with the ability to be responsive, flexible and innovative in terms of service delivery and tailor that service delivery to its municipality.

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	It follows that if the new Act is to allow maximum flexibility (whether that be confined to service delivery or otherwise) then such flexibility must be allowed and recognized as being legitimate. This means that a local policy response itself (as distinct from the process): 1. should not be open to be criticized by bodies such as the Ombudsman; and 2. may, but *need not*, follow any guidelines (assuming these are not binding). **Administrative Decisions** In making decisions, Councils are, and ought properly be classified as, a distinct and essential tier of Government. Melton notes that there are four formal means by which a person may directly test a decision of a government agency, viz, judicial review, merits review, administrative investigation and internal review. Judicial review is really confined to the lawfulness of the decision. In Melton's view a right of a merits review in relation to *every* administrative decision, as suggested at page 24 of the DP, would unnecessarily bog Council and the VCAT down in numerous proceedings – some of them in relation to very minor administrative decisions. In a merits review, with VCAT standing in the shoes of the original decision maker (Council), even if Council adopted the '*Hardiman* approach'[1], it would still be required to file the required

[1] *R v Australian Broadcasting Tribunal; Ex parte Hardiman* (1980) 144 CLR 13 (*Hardiman*). Broadly, the original decision maker abides the Court's decision and assists the Court rather than act as full contradictor to avoid damage to its impartiality in subsequent dealings with the applicant.

Subject (including DP reference)	Comments
	material beforehand and appear at the hearing to assist the Tribunal. This would be a substantial burden upon Councils. Preference is for a mandatory internal review by an officer who is more senior than the one making the decision. Such a process has been successfully adopted by Melton pursuant to its customer service charter. Alternatively, a merits review should be available for only *some* decisions. Consideration could be given to the right to request a statement of reasons ("SOR") for some decisions however this would also create a substantial administrative burden. Further consideration as to rights of review flowing from SORs would need to be considered.
How councils are elected (Chapter 3)	1. Melton submits that the VEC should retain discretion in recommending Councillor numbers however guidance around triggers for numbers should be provided e.g. – less than 20,000 voters = x number of Councillors, 20,000-50,000 = y number of Councillors etc, moderated having regard to the dispersion of population and extent of geographic area. 2. Broadly, Council believes that voting methods should be consistent with State and Federal as much as possible. 3. Compulsory voting should be retained and all elections should be by post for consistency across the sector. 4. Insofar as qualifications to be a Councillor are concerned, Melton believes that all persons on the electoral role should be eligible. This would of course mean that non-residents

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	would be eligible and Melton believes that this aspect would require further consideration. 5. VEC should have responsibility for all non-voting enforcement procedure and Councils themselves should not be involved in this aspect. 6. The definition of 'electoral matter' should be clarified.
How councils operate (Chapter 4)	
The Mayor	1. The role of the Mayor, in metropolitan areas (e.g. category 3 Councils) at least, should be full time and should be remunerated accordingly. 2. The Act should allow flexibility in relation to the term however terms should be for a minimum of 1 year. 3. Election by fellow Councillors should continue rather than direct election. Reasons for this include: a. Popular election may result in inequity. It will mean that those with more funds will be able to run better campaigns for election; b. Popular election will presumably mean a 4 year term and will therefore limit the field of applicants to those that can commit to this (both financially in personally/professionally) 4. The Council should be able to delegate specific functions to the office of the Mayor (acting

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	alone).
Councillor allowances and expenses	1. The Act (and/or by way of binding regulations) should contain greater prescription, even if only by way of binding minimum standards. 2. Allowable expenses should be akin to parliamentary expense rules in State and Federal Parliament. 3. One prescriptive and binding set of provisions/rules would allow consistency. 4. Informal jurisprudence could be developed (in relation to this and indeed any other provision of the Act) at one central repository website arising from each Council's interpretation/commentary and drawn upon by regulators in reviews of the provisions/rules).
The chief executive officer	1. Notice in the newspaper is no longer relevant. Councils should have flexibility in relation to their public notices generally. 2. There is insufficient guidance for the CEO (or insufficient mechanism) to deal with the situation where the Council makes a resolution that is contrary to law. For example, Council resolves to make public certain information that would breach the *Privacy and Data Protection Act* 2014 and the right to privacy contained in the *Charter and Human Rights and Responsibilities* 2006 (either knowingly or without turning its mind to these). 3. A requirement of the CEO to provide the Council with legal advice does not necessarily overcome this if the decision is made by the Council either without notice or in

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	misinterpreting or disregarding the law. 4. To avoid conflict of interest and make for a true and fair process, the CEO's recruitment and/or if being reappointed, contract negotiation should be conducted by an independent third party advising the Councillors. 5. Where the current CEO's contract is in a state of flux, 'care taker' type provisions should apply to the appointment of senior officers.
Council staff	1. The employment requirements (employment decisions based on merit, equal opportunity etc) should be removed. Council can and should rely on the relevant IR and anti discrimination laws. 2. The requirement to advertise senior officer positions in a newspaper should be removed and replaced with a requirement to advertise on line with either Seek or MyCareer or use a central portal such as the Scottish example on page 48 of the DP. 3. If a maximum term of 5 years for Senior Officers is to be retained then a maximum probationary period of 3 months should be stipulated to allow for more certainty/security of employment, especially where Councils are using contracts of less than 5 years but with a 6 month probation period. 4. The sector may benefit from specific reporting requirements in relation to numbers of women in management roles (and salary ranges) to be publicly available (in the annual report or otherwise).

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Delegated decision making	1. A limit should be placed on the number of Councillors that can be appointed to a special committee and an advisory committee. Either of these committees which acts with a number of Councillors is arguably either a nonsense (ie effectively the Council advising the Council) or is potentially making a decision which ought properly be made by the full Council. 2. Local Government Victoria should be responsible for advising on a list of all Acts and sections where a delegation is necessary and/or possible and producing a written form of delegation that can be used. Presently a large number of Councils subscribe to the 'Maddocks delegation service' which is an inefficient use of resources (except of course if you are Maddocks!). Such a form should have provision for the person in the role to understand and formally *accept* the delegation (and to undertake to communicate and explain the delegation to anyone acting in that role in the future). This acceptance of delegation and acknowledgement of understanding is similar to the law in relation to those acting under power of attorney. It should also be clear that a delegation does not preclude the Council from also making the relevant decision. 3. In light of the new Land Victoria requirements to formally verify identity, the Act should stipulate two people (2 Councillors or or 1 Councillor and the CEO) to sign all Land Victoria documents and undergo formal identification requirements.
Council proceedings	1. Allowing Councils to establish their own meeting procedure local law has some merit and allows the meeting to be tailored to the municipality. 2. Equally there is merit in a prescribed meeting procedure or a set of regulations to which a

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	Council could alter (provided not inconsistent with prescribed). 3. The frequency and type of meeting should be able to be determined at a local level but with a set minimum of one meeting per month. 4. Meetings should remain ordinarily open to the public. 5. The in-camera provisions should be made clearer and/or guidance material provided. 6. The chairperson must have the ability to eject any person disturbing the meeting and/or threatening the safety of those in the chamber. 7. Further, in circumstances of significant disturbance or significant threat to public safety in the public gallery, the chairperson must have the ability to close the public gallery and continue with the meeting. Practically, this would be achieved by either the public leaving the chamber and the meeting continuing or, if this was not possible, the Council leaving the chamber and the meeting continuing. In the case of a disturbance in the public gallery of Parliament, the public would be asked to leave and the meeting would continue. The same should apply to Local Government.
Consultation and engagement	The current arrangements which recognise that Councils are, 'best placed to determine the extent of consultation' are appropriate.
Complaint handling	1. There would be merit in a consistent approach to the definition of 'complaint' and 'complaint handling' (and even more effective if coupled with an effective administrative review

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	regime). 2. There should also be a consistent approach and definitions around 'unreasonable' and 'vexatious' complainants and provisions to effectively deal with same.
Local laws	1. One uniform local law should apply to all of Local Government. There are two main reasons for this. a. Councils are not sufficiently equipped to properly draft such a document to the standard required, that is, taking into account State legislation which may be inconsistent, the Charter of Human Rights and case law. b. One local law which applied throughout Victoria would ensure a consistent and fairer application of the law (including penalties) across the state, particularly when municipal boundaries are not always obvious or evident to the reasonable person. 2. Instead Councils could act as conduits to the Minister in relation to tri-annual reviews of the one Local Law, engaging with the Community on the issues beforehand. This would be a good opportunity for a 'community consultation panel', as mentioned at p 53 of the DP. 3. One uniform local law would allow informal (non-binding but yet persuasive and thus useful) jurisprudence to be developed. The benefits of jurisprudence include fairness, predictability and more improved & efficient decision making together with law development/reform which could also feed into tri-annual reviews. 4. One uniform local law would enhance the legitimacy of these laws in the eyes of the

Subject (including DP reference)	Comments
	community and could be more readily and easily publicized and therefore improve compliance.
Indemnities and insurance cover	1. There is an implication by the use of the words, 'actions or claims' that the indemnity provision only relates to the defence of civil matters however this could be made clear. 2. The words 'function or power' in the current provisions, in relation to a Councillor, are somewhat problematic because there may be instances where a Councillor is required to do something that is not, strictly speaking, in the exercise of a function or power. These would seem to include: a. Councillor the subject of a Councillor Conduct Panel; b. Councillor's response to an investigation by the Ombudsman. 3. Taking this view, the current provision would also not cover a Council staff member involved in a car accident while on Council business. 4. There needs to be clarity around the issue of whether a decision to reimburse expenses is ultra vires the Act.
Planning and reporting (Chapter 5)	There should be a requirement for a community plan between 10 and 25 years. In all other respects the current planning and reporting framework, whilst rigorous, is appropriate.

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Council rates and charges (Chapter 6)	1. The ability to apply 'differential' rates (beyond the 3 set classes of farm, urban and residential) should remain. 2. There should be only one method of calculation of rates. Given that Melton supports the ability to apply 'differential' rates, Melton would say that that method should be the capital improved value (CIV). 3. Municipal charge should be retained and the allowable percentage of the total rate should be increased. 4. There should be further restrictions on the ability of Council to sell land (or take other action) for failure to pay rates – action should be relative to amount owing. Melton would submit that the sale of a person's home is not appropriate and is contrary to the Charter of Human Rights. The sale of a rental property may be another matter. This aspect needs further consideration. 5. The ability for a Council to waive rates should be clarified (both in substance and intent) to assist Councillors in exercising their discretion.
Service delivery and financial decision making (Chapter 7)	1. Melton believes that the current provisions work well generally. 2. Melton does however believe that the tender threshold amounts (currently $150k and $200k) should be revised.
Councillor conduct, offences	1. Melton does not support the codification of the role of a Councillor. It notes here that the

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and enforcement (Chapter 8)	role of State and Federal Members of Parliament are also not codified. 2. Melton submits that the conflict of interest provisions are both too complicated and too restrictive. 3. Furthermore, the non-binding advice issued from the Local Government Investigations and Compliance Inspectorate reflects a narrow reading of the provisions. Revised conflict of interest provisions must be clear and unambiguous. 4. As with other monetary thresholds in the Act which have not been updated with sufficient frequency, the gift allowance is too low.
Ministerial powers (Chapter 9)	
Role of the Minister for Local Government	
Power to provide exemptions from requirements under the Act	
Power to make appointments	

Subject (including DP reference)	Comments
Power to issue guidance	
Power to restructure	
Power to make statutory rules	
Power to direct councils	
Power to suspend council	
- Dismissing a council	
Power to revoke local laws	
Chapter 10: Harmonisation of the Local Government Act	1. Clarify contradictions between *Privacy and Data Protection Act* 2014 / *Freedom of Information Act* 1982 / *Local Government Act* 1989 (e.g. Public registers, 223 submissions and public hearings). 2. Clarify inconsistencies / confusion between the *Local Government Act* 1989 and the Road Management Act 2004 3. Substantial 'Clean up' powers and associated costs need to be in or linked to the Act and become a charge on the land. Current provisions under the *Planning and Environment Act* 1989 mean that a Magistrate does not have a clear power to order 'clean-up' such as is

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	provided in the *Environment Protection Act* 1970. This means that after a prosecution is complete, a Council must then apply to VCAT for a 'clean up' order. VCAT is not a Court of record. If the VCAT order is not complied with, one must then seek certification by the Supreme Court – which is costly and unnecessary. 4. Clarify inconsistencies between the *Health Records Act* 2001 and the *Local Government Act* 1989 insofar as it refers to and provides for Internal Audits by Internal Audit Committees, which on their face, would breach the Health Records Act if health information is provided in full (not de-identified), without consent, for the sole purpose of an audit of the Council process. 5. The 'dangerous dog' provisions in the Domestic Animals Act do not appear to be working well in that standards are difficult, if not impossible to apply, and have then become the subject of lengthy and costly Court proceedings. This issue needs to be looked at further.