

Submission to Discussion Paper

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If you work in an organisation/council, please provide the following information:

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|--|---------------------------|
| Organisation/council name: | Colac Otway Shire Council |
| Position/job title | Councillor |
| Are you providing this submission on behalf of yourself or the organisation? | Myself - my submission |

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?
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:

1. Similar to current arrangements,
2. Yes- retain key roles/ functions in the Act,
3. There should be limitations especially in relation to creating 'burdens' on the population. Eg Reasonable limitations on the power to make laws & levy fines, to borrow & to impose rates,
4. Provisions related to finances should be prescriptive in terms of limits within which Council may operate. Eg Limits on rate increases, limits on debt levels etc
5. The problem with penalties on the Council is that they indirectly impose a cost on innocent ratepayers. Suggest a system of warnings which may ultimately result in the entire Council being sacked for serious breaches,
6. Nothing more.



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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:

1. Independent handling of elections is very important. Such as by the VEC rather than the Council itself. This has been in place for some years & should continue.

2. a) Not aware of any need to increase the Minister's powers for elections,
b) The VEC should have the power to refuse nominations where a person nominates but the VEC has a reasonable basis for forming the view that the person is ineligible to nominate. I understand that such a provision has been recently introduced,
c) CEO's should have responsibility to ensure that Council resources are Not used to support any candidate. This should include a prohibition of the display of a poster or similar material promoting a candidate on a Council building or at a Council reserve. Even if the Council building is leased out to a third party, it should still be an offence to display electoral material for a candidate. Ratepayers fund the operation of Council & its facilities so they shouldn't be used to promote individual candidates.

3. If a municipality is sub-divided then the wards should be designed to ensure that each ward has the same number of Councillors with similar voter population. Where that is not possible, the ward with the highest number of Councillors should have a maximum of one more Councillors than the ward with the least Councillors. This is ensure that the "hurdle" to be elected is as close as possible in each ward. (So a 7 Councillor municipality could have 1 X 3 Crs & 2 X 2 Crs or 1 X 3 Crs & 1 X 4 Crs or be unsubdivided.)

The voting method and process to fill casual vacancies should be the same for all wards in a municipality to ensure the "hurdle" to be elected is the same for all candidates. That would mean either all wards are single member or all wards are multi member but not a mixture. Multi member wards use proportional representation and "countback" to fill casual vacancies, both of which I support, but single member wards don't. (Continued)



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Chapter 3

Question 3 (Continued)

The “countback” needs to be modified so that all votes for candidates who are not Councillors are taken into account. Currently, only the votes for the retiring Councillor, who caused the vacancy, are taken into account. This means the votes for unelected candidates are completely disregarded in the process.

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. The current Act generally covers this well. Meetings should be advertised and open to the public, except for explicit limited reasons.
2. If Councils don't comply there should be a process of warnings and, ultimately, the sacking of Councillors. The problem with penalizing the Council is that the expense is, indirectly, borne by the community.
3. None.



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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:

No comment.

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:

I support rate capping but think the cap should be one percentage above CPI to give limited flexibility for each municipality to have marginally higher rate increases.

3. The Municipal Charge needs to be limited to a maximum of 10% of the overall rate take as it is a flat charge which falls disproportionately on low valued properties.



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. No need to expand Councils' powers.
2. There should be more strict regulation of borrowing by Councils. Currently, Councils may sign up to a future contract without funding being in place. This means the so called consultation on whether to borrow is token consultation as the contract for which the borrowings are needed is already signed. Where Council needs to borrow to fund a project it should be illegal and the contract void if the funding for the project isn't approved and the relevant budgetary processes satisfied.
3. The sanctions should be a process of formal warnings followed by the sacking of Councillors for repeat offences. Where Councillors are sacked in such circumstances the CEO should also be sacked.
4. No further comment.



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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. Yes. The code of conduct needs to be better enforced. The current process of panel hearings is ineffective due to both the time it takes for enforcement and the fact that mediation can be used to stall the process or for the Panel to avoid having to make a decision. There needs to be an Authority, such as the Inspectorate, which has the power to investigate complaints and make binding orders. For example, this may involve the Inspectorate requiring a Councillor to show cause why he/she shouldn't be suspended for inappropriate conduct. Where Councillors fail to respond or fail to co-operate with an investigation, that should be sufficient basis to suspend a Councillor. After a certain number of suspensions, perhaps three, the Councillor should be sacked.
2. Councils need to be able to refer complaints and to be confident that investigations will be processed within a reasonable period.
3. The Councillor Conduct Panels take so long to deal with a matter and are so preoccupied with mediation, rather than just investigating a matter and making a ruling, that they are ineffective.
4. Introduce "on the spot fines" for less serious offences.
5. It can take over two and a half years from when an alleged offence is committed, an investigation is conducted, charges are laid, cases are delayed with adjournments and a Court hands down a decision. This effectively means that a Councillor may commit an offence after 18 months into their term knowing that any prosecution will not be complete before the next election so they will be able to serve their full term. This is not good enough!



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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. Yes.
2. The Minister should have the power to sack Councillors in certain circumstances. By that I mean, individual Councillors where appropriate, rather than just the entire Council.
3. None.



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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. No comment.

Any other comments?

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

Response:

1. Having the comment period expire on 18th of December is unreasonable as the lead up to Christmas is a busy period. Given that officials will not be dealing with these submissions during the Christmas / New Year holiday period, a closing date of Monday 4 January 2016 would have been more convenient for the public without any inconvenience to officials.

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- Screen Name
- Email Address

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