

Submission to Discussion Paper

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

Organisation/council name:	City of Whittlesea
Position/job title	Team Leader Procurement
Are you providing this submission on behalf of yourself or the organisation?	Myself / Organisation

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. Key roles and functions of council should include:

- Providing leadership to the community by:
 - Promoting local economic benefits and local employment opportunities through the application and demonstration of social procurement and sustainable procurement practices.
 - Leading by example in terms of demonstrating the effective application of the principals of Corporate Social Responsibility.
 - Obtaining best value for the community through all aspects of the procurement of the works, goods and services it delivers.

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.

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. It is noted there are no penalties imposed for non-compliance with section 186 and section 186A. Consideration should be given to detailing consequences of non-compliance and whether these will be linked to sanctions imposed on councils or executive leaders.

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:

1. It is unclear in section 186 of the Act as to whether the contract value for ongoing service agreements is limited to the anticipated expenditure:
 - in the financial year, or
 - in the initial contract term that was advertised, or
 - in the initial contract term plus all subsequent potential extension terms.

2. Section 186 of the Act is also unclear in the case of panel contracts (two or more providers appointed under the one tender or expression of interest process) as to whether the contract value is limited to:

- the anticipated expenditure to each panelist, or
- the anticipated aggregated expenditure of all panelists.

The lack of clarity makes it difficult to determine the appropriate planning requirements and reporting obligations.

3. Consideration should be given to lengthening the requirement under Section 186A for annual review of the Procurement Policy. It is proposed that the current requirement for annual review be changed to at least once in every two years.

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.

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.

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.

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. There is no clear process for dealing with situations where the contract value was anticipated to remain below the threshold values referred to in section 186 but it reached the limit prior to contract expiry.
2. Consideration should be given to formalising exemptions from section 186 for:
 - Insurance services
 - Internal audit services
 - Banking, loans and leasing services
 - Electoral services
 - Postal Services
 - Utilities (gas, water & electricity)
 - Renewal of licences and maintenance/support agreements where there is only one possible service provider due to IP ownership or warranty requirements (e.g. support of a corporate ERP system)
 - Service delivery by a project partner where the funding for the project was obtained based on a proposal developed in conjunction with the project partner (very common in community services projects for which proposals are often developed in conjunction with NGOs and NFP orgs)

In such cases as those listed above the mandatory tendering of contracts becomes a liability to the community rather than a benefit due to additional cost

and time burdens for no added value whatsoever. It can also lead to pointless and dishonest tender practices if a tender is advertised for a service that can only be provided by one sole provider.

The current process for applying for Ministerial exemption on a case by case basis is ineffective because:

- Councils are unsure of how long the process will take to get a decision,
- The process must be repeated for the same service each time it is tendered,
- No feedback has been provided to the sector on the types of matters for which exemptions were granted
- It is considered by some as unnecessary given that there are no penalties detailed in the Act for non-compliance with section 186.

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. The Local Government (Planning and Reporting) Regulations 2014 at section 14(2)(cb) requires reporting of “a list of contracts entered into by Council valued at \$100 000 (or such higher amount fixed in accordance with section 186(1) of the Act) or more if the Council did not engage in a competitive process before entering into the contract and it is not of a kind specified in section 186(5) or (5A) of the Act.”

This is ambiguous as ‘a competitive process’ is not defined. It is unclear if such a competitive process is required to have involved **public advertisement** of the related tender or expression of interest.

Technically, a Council could breach section 186 but may not consider it necessary to report the contract that was in breach if a competitive process was employed such as simply inviting two or more prospective tenderers to submit offers.

This technical loophole allows a Council to avoid the obligations which the spirit of the legislation (and associated regulations) implies.

It is suggested that the wording be changed to clarify that the competitive process must be publicly advertised.

Any other comments?

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

Response:

The thresholds for public tendering referred to in section 186 should be reviewed because:

- The current values have not been increased in many years (since 2008?)
- The value for services and goods contracts (\$150K) is different to the value for works contracts (\$200K) which causes confusion amongst Council officers.

It is proposed that:

- a universal value of at least \$300K be considered to be fixed by Order in Council, or
- each Council is authorized to determine its own limit(s) and state same in its Procurement Policy.

The financial delegations from the Council to the CEO vary dramatically across the sector. It would be very helpful to standardise this by stating that as a minimum the delegated amount should match the section 186 public advertisement threshold value(s).

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