

Our Ref: GK:DB:150013

15 December 2015

Local Government Act Review Secretariat  
Local Government Victoria  
PO Box 500  
**MELBOURNE VIC 3002**

**By Email:**  
local.government@delwp.vic.gov.au

Dear Sir/Madam,

## **REVIEW OF THE LOCAL GOVERNMENT ACT**

Meerkin & Apel represents the industrial interests of 77 Councils and most Library Corporations.

As such, we have been requested to make submissions on behalf of Councils in regard to the review of the Local Government Act (Act) – specifically in relation to matters dealing with Council staff. These matters are currently covered by Division 3 (“*Council staff*”) sections 94 to 102 of the Act.

We also would like to register our interest in making detailed submissions on the Directions Paper when it is developed in 2016.

We understand, and support, the Government’s intention to create an entirely new legislative structure, rather than further piecemeal refurbishment of the existing Act.

We also support the concept of a more contemporary, accessible, plain English Act that meets current and future needs of the community and local government sector.

We are particularly interested in Chapter 4 of the Discussion Paper which deals with the structure of Councils and the legal framework within which they operate. This includes the employment of the Chief Executive Officer and senior staff.

We propose to facilitate a Working Group of HR practitioners, and other interested officers, early in 2016. In accordance with our commitment to provide advocacy on sector wide workplace matters, and in line with our established practice, our Working Group will inform and guide us.

Our Employment Lawyers and Workplace Relations Advisors regularly provide advice, information and interpretation of the Act on all matters associated with Council staff, including but not limited to:

- CEO and Senior Officer contracts of employment;

### **MEERKIN & APEL LAWYERS**

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- CEO and Senior Officer contracts of employment;
- Requirements for appointing/re-appointing a Chief Executive Officer (CEO);
- “Rules” associated with the appointment of an acting CEO or Senior Officer;
- Appointment of council staff;
- Employment and conduct principles, and code of conduct for council staff;
- Appointment of Senior Officers;
- Transitional provisions relating to Senior Officers;
- Restrictions concerning the appointment of Senior Officers;
- The content and application of Senior Officer contracts;
- Renewal of Senior Officer contracts;
- Re-appointment of Senior Officers;
- Definition of “*Senior Officer*” and remuneration threshold; and
- Long service leave.

We are aware of many problems caused by difficulties in interpreting and applying various sections of the Act. Some of this is a result of ambiguous and inconsistent provisions, and a cumbersome structure. Some sections are overly prescriptive while others are vague and obscure, lacking critical detail. There are also some historic and redundant provisions which should be removed.

By way of illustration, the following are just a few examples of the issues that are raised with us by our local government clients include the following:

- Obscure and sometimes unworkable provisions relating to the employment of an acting Senior Officer – for example a 12 month internal appointment to cover a parental leave absence may become problematical if the incumbent applies to extend her leave for a further period beyond the initial 12 months; similarly for WorkCover absences;
- Issues with the two separate definitions of “*Senior Officer*” – for example when a banded employee (below the Senior Officer remuneration threshold) is a Senior Officer because of a direct reporting arrangement to the CEO. This creates a conflict or tension between the industrial instrument (enterprise agreement/award) that requires unlimited tenure, and the Act, which requires a maximum 5 year term contract;
- Issues with the transitional provisions which were originally inserted to cater for employees who became Senior Officers by way of introduction of a new definition in 2003 – for example, it is often unclear as to how this is applied in the event of organisational restructuring.
- Issues with both definitions of “*Senior Officer*” – for example, there is a lack of clarity as to what applies when a Senior Officer no longer becomes a Senior Officer because of a change in the remuneration threshold and/or change in the reporting arrangements.
- Issues with the identification of the Senior Officer remuneration threshold, particularly when it is unclear when the next annually reviewed threshold will be announced and what amount will be applied. This leaves Councils, who are in the process of advertising vacancies, not knowing whether the position will be a Senior Officer's position or not, depending on the remuneration level (and consequently what type of contract will apply);
- Uncertainty around whether a Senior Officer can move from one position to another during the term of the contract, or whether a Senior Officer (on the expiry of the Senior Officer's contract) may be invited to enter into a new Senior Officer contract in a different role; and

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- Uncertainty, in relation to organisational restructuring, around how Federal redeployment obligations interact with the requirements under the Act to externally advertise Senior Officer positions.
  - Frustration with an expensive and inconvenient advertising process for Senior Officer positions requiring mandatory advertising in "*a newspaper circulating generally throughout Victoria* - see section 94B.(1) of the Act.

Please contact me if you require any further detail or information at this stage of the process.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gary Katz', written over a rectangular box containing the name 'GARY KATZ'.

GARY KATZ

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