

Review of the *Local Government Act 1989*

Individual Submission – Brimbank City Council Chair of Panel of Administrators, John Watson

December 2015

Review of *the Act*

Through the review, a new, innovative model of Local Government legislation for Victoria should be pursued: A model of simplified and enabling legislation supported by a system of well-developed and maintained Practice Notes and Guidelines.

Learnings From Previous Acts

Prior to the passage of the *1989 Act*, there was the *1958 Act*. That *Act* was amongst the largest on the Statute book and like the *1989 Act* is today, it was arguably the most amended *Act*.

The *1989 Act* was intended as a simpler and more enabling *Act* - that we are again hoping for from the current review.

What went wrong with the *1989 Act*?

I suggest it is mostly the result of three forces:

1. The actions of councils, councillors and even some council officers to push and test legislative bounds, and in too many instances, to just behave badly.
2. The regular findings of bodies - including the Ombudsman and the Auditor-General – that call for ever tighter controls on Local Government.
3. The natural tendency of Governments to be reactive.

The result - as was the case for the *1958 Act* and, more recently, for the *1989 Act* - is a constant stream of amendments and increasing prescription and regulation. The majority of the amendments in the current *Act* can be attributed to actions at an individual council level.

We need to look no further than Brimbank City Council, where I currently sit as the Chair of Administrators. Brimbank is probably responsible for more amendments than any other council – however there is a very long list of councils that have contributed to *the Act* we have today.

The Challenge

The aspiration of again returning to a simpler and more enabling *Act* that will be capable of standing the test of time presents a number of challenges.

A challenge to the sector to somehow demonstrate it can be trusted with a simpler and more enabling *Act*.

A challenge for State Government is to have the confidence in the sector to give it a simpler and more enabling *Act*.

To highlight the challenge, we need only consider what is happening currently. At the same time as we are having the conversation to review *the Act*, we have just seen the Parliament pass both an *Improved Governance Bill* - adding even more process and prescription; and a Bill to introduce rate capping (and a whole process to go with it).

I suggest that State Government and the sector have to find another way forward. Otherwise, even if we get a new, simpler and more enabling *Act* it will only be the start of another cycle of amendments and re-introduction of prescription over time.

The Way Forward

In the Discussion Paper, under 'Compliance with Prescriptive Provisions' (page 22), there is a paragraph:

'Other mechanisms for ensuring general compliance with *the Act* could be considered, possibly in lieu of the broader ones that currently exist under *the Act*. For example, a continued breach of *the Act* could be grounds for the Minister to require remedial action by the council in a manner similar to section 218(4) of *the Act*. And failure to comply with a ministerial direction could be evidence in relation to suspension under s219.'

Along these lines, could we consider a regime of best practice guidelines, with a loss a points for failure to comply (for individual Councillors/Councils), and if failure reaches a certain level, then the power of the Minister to intervene?