

Submission to Discussion Paper

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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:

A substantial problem has developed in balancing the needs of democracy and governance for Councilors. Councils roles include three different tasks:

- Democratic representation of their constituency
- Governance of the corporation of the municipality and associated entities
- Quasi-judicial decision making on planning

These roles conflict at times. The direction of amendments over the course of decades, repeated recommendations from the Ombudsman and Auditor General, and the direction of the questions above all lead to the same compromise: sacrificing democracy in the name of governance. This repeating process has changed local government substantially: a person wishing to pursue a strong agenda for their community is so limited by the rules of governance that exist so as to be put off from the role. One way to consider the point is that: if councils were appointed, rather than elected (in the model of water or hospital boards) would the outcomes be different? If the answer is no, then local government is failing to be democratic.



Review of the Local Government Act 1989



The review should consider the restoration and strengthening of democracy at the local government level as one of its priorities. This requires untangling the cage of bureaucratic requirements that successive amendments and reviews have created. In many ways, these reviews have established Councilors as a servant of that bureaucracy, rather than its master.

Consideration should be given to those decisions where Councilors must make a predetermined decision. In many circumstances, decisions are made in a legislative environment where “if X and Y, Council must do Z.” These are functions of administrators, not elected representatives. They should be operationally separated. In performing that review, consideration should also be given to the desirability of handing those functions to administrators. Should communities have a choice on more matters than they do now? Most likely.

Either way, the governance and quasi-judicial functions should be better separated from the democratic functions. One method would be the UK model, in which councilors elect a Council Cabinet who perform the governance functions, and local planning committees... leaving the primary role of most councilors democratic representation. The increased number of councilors across the Victoria would be a difficult reform, but the principle of these separations is highly desirable. A situation should not continue to exist where councilors are legally prevented from implementing platforms on which they were elected.

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. The use of ratepayer roles in Victoria is an anachronism and should be abolished.
2. Election of Mayors and allocation of portfolios should be done on those individual Councilors ability to work with, and lead the team of Councilors. Councilors are the best placed to evaluate the skills of those people, and the distribution of roles, responsibilities and titles should, as far as possible, be left to that collegiate system.

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.

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.

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.

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.

Any other comments?

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

Response:

1.

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