



Local Government Act Review

LGPro submission
December 2015

About LGPro

LGPro is the peak body and professional member association for officers working in Local Government in Victoria. Our submission on the Local Government Act Review is officer focused and as a result does not address all aspects of the Review covered by the Discussion Paper.

This submission is largely focused on Chapter 4 of the Discussion Paper and has been developed following broad consultation with our members from a diversity of levels, backgrounds and from right across Victoria.

Overview

LGPro welcomes the Government's commitment to review the Local Government Act in order to ensure that it remains relevant in the contemporary environment within which our members work.

We believe that changes in the Act should recognise that while Local Government is a creature of a State Act it is not an agent of the State and should maintain appropriate independence to act as it sees fit, in the interests of its community. The new Act should therefore be enabling rather than prescriptive, acknowledge the autonomous nature of Local Government, reflect the increasing role the sector plays as a facilitator of service provision and should promote the principles of good governance and articulate the roles and relationships between the elected representatives and the administration.

The new Act needs to focus on achieving greater clarity on the roles and responsibilities of the State, Councils, Mayors, Councillors and CEO's. Much of the tension in the current system can be attributed to role confusion or ambiguity.

Perhaps the largest area requiring review is the communication and consultation requirements which are out-dated and do not acknowledge changing communication technologies. Rather than identifying specific forms of communication as in the current Act, we believe that a general statement which identifies the need for communication, consultation and engagement should be included with Councils empowered to choose the most appropriate means at their disposal at any point in time.

There is currently limited ability for the sector to form regional collaborations, apart from Regional Libraries. If there is a genuine desire to support and encourage greater collaboration and shared services, including procurement, the new Act will require significant review and revision of Councils' Entrepreneurial powers.

We have organised this submission under a series of headings with current Act references where appropriate and our recommendations for the new Act are in bold and italics.

Role of Mayor

Further work is required to refine the role of Mayor, strengthen their role as the leader amongst the elected representatives and highlight their ability to influence good working relationships between the Council and the CEO. Granting executive powers to Mayors who rotate every year, and do not necessarily come to the role with any prior relevant skills or experience is problematic. Our system of government calls for a separation of power between the legislature and the executive. We believe this principle should be protected and the granting of executive powers to Mayors would be moving away from it.

The Mayor should have no executive power beyond what is required to support their role as the leader amongst the elected representatives.

Position of CEO

Currently the CEO is the only employee of Council appointed by the Council.

It is essential to the good governance and operation of Council that the CEO continue to be solely responsible for the management of staff and the operations of the Council.

The Act in S.94 provides for the employment of a CEO and describes the duties of the position but is largely silent on the process for appointment and performance review.

The appointment of a CEO should be managed independently (external consultant appointed by the council) and the CEO performance review should be managed similarly and controlled by legislation concerning timeliness and standards. The role of the external consultant should be to help ensure that selection is made on the basis of merit alone, and consistent with the requirements of equal opportunities legislation.

Furthermore we believe that removal of a CEO should be by vote of the Council at which it must be carried by an absolute majority of the elected council (not just a majority of those present when the vote is taken) and that the Mayor be unable to use a casting vote in the event of an equality of votes.

S.94 also requires that where a council intends to reappoint its CEO it must first give public notice of this proposal.

This attracts unnecessary bureaucracy and cost, is of dubious value and therefore should be removed.

The provision of advice to councillors is the responsibility of the CEO.

Consideration should be given to enshrining a duty that the CEO must give frank and fearless advice without fear or favour by including this in section 94A(1). It follows that some protection should be afforded the CEO in performing this duty. It is noted that this section has in the recent Act amendments given further responsibilities to the CEO.

The Act should make clear that it is the role of the CEO to manage the provision of legal advice.

Council Staff

Currently Senior Officer is defined as employees who report directly to the CEO or earn more than \$140K p.a.

This should be revised to cover only those employees who earn over a given amount without reference to whom they report. We believe that the current amount is too low and would welcome the opportunity to work with the Minister to establish a process and amount defining senior officer status.

The new Act should articulate the key principles for Council recruitment, but the Council should be able to determine its own recruitment processes.

The EEO provisions as provided in Schedule 6 of the Act are superfluous given the existence of other legislation and obligations in this area.

There should be no restrictions on staff numbers or salaries. Each council is unique and has its own aspirations and constraints. Resourcing the organisation should remain the responsibility of the CEO within the constraints set by the council.

Delegations

The current special committee provisions are onerous and restricting their capacity to act in the name of the council is a better fit for volunteer committees whose purpose of existence is managing a local facility so that it operates day to day.

There is a need to address the operation of committees of management which separates them from the provisions pertaining to special committees and be limited to an operational and advisory capacity under delegation.

Resolution of the Council

In the definitions section of the Act, the definition of a council resolution includes the meaning: "the exercise of a power, duty or function delegated to a member of council staff under S.98." There is a lack of clarity that every power exercised in this way has the same effect as if it had been resolved at a Council meeting. This is further added to by aspects of the current Act that call for a specific resolution of the council which raises the question as to whether such specific provision overrides a power delegated to a staff member.

The definitions section of the Act relating to council resolution needs to be clarified.

Disclosures

Provisions relating to disclosure by officers such as Register of Interests and Gift Register and reporting on salary and salary configuration are cumbersome and run the risk of producing perverse and unintended consequences. By way of example where an officer lives in the municipality that they work in, their private residence is listed in the Register of Interests which is available to anyone in the community. The same if not better monitoring of conflict of interest could be achieved by the Register of Interests being held by the Local Government Inspectorate.

Provisions relating to officer disclosures require revision and review to better balance the need for transparency and the right of the individual to reasonable privacy.

Furthermore we believe that Local Government officer disclosure should be brought into line with the requirements placed on their fellow State public servants.

Planning, Budgeting & Reporting

The current Act has been surpassed by the fact that many Councils have now developed community plans which are broader in nature, longer term (10 years) and often un-costed. As a result, there is little relationship between the various business planning activities that Councils undertake.

The new Act should seek to streamline the planning and budgeting requirements of Councils so they are more coherent and integrated, including the provision of financial planning that spans 10 years.

S.130 – Adoption of budget by 30 June each year does not align with the timing and process required for the budget, incorporating public consultation with the State Government’s objectives with the Rate Capping & Variation Process.

The timing and process for adoption of budget needs to be reviewed and in line with the SRP and Council Plan the budget cycle should be once each 4 years unless something warrants a significant change outside of normal review processes.

S.131-134 - Annual Report preparation involving auditors, Council, audit committee & sign-off by the Auditor-General’s office and submission to the Minister is convoluted and inefficient at present.

The process for Annual Report preparation needs to be streamlined.

Procurement

In s.186 – Procurement Policy the limit for Council contracts has not been subject to regular review or indexation. In 2008 the undefined expenditure categories of “goods and services” (limit \$150K) and “works” (limit of \$200K) were introduced.

The goods and services threshold should be increased to \$200K to be consistent with state thresholds with parity between state and council thresholds to be maintained.

The new Act should address procurement in a way that enables Councils to work more collaboratively.

Caretaker Provisions

The current caretaker provisions (s93A) are cumbersome and inefficient.

We believe the caretaker provisions need to be streamlined.

Council Appointed Authorised Officers

There is currently a lack of legislative protection against violence afforded to authorised officers within Victoria and with the increase of council appointed authorised officers being assaulted in carrying out their duties there is an opportunity to rectify this in the new LG Act.

The same protection offered to emergency workers should apply to council authorised officers. This could be achieved by introducing a specific offence provision(s) within the new Local Government Act that applies to causing serious injury or the death of a council appointed authorised officer mirroring the current offences to which section 10AA of the Sentencing Act applies using the definition of 'serious injury' within section 15 the Crimes Act.

In addition, upon conviction, Local Governments should have the capacity to recover all costs associated with the incident including additional work cover premiums from the defendant.