

## Submission to Discussion Paper

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

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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:

1. The current LG Act provides good insight into the roles and functions of LG and provides broad enabling powers. An act of parliament should be broad and enabling, prescriptive requirements should sit in regulations and behavioral issues should be set out in codes a practice.
2. The Act should steer clear of penalties and sanctions, it sets the wrong tone for the sector and makes it too risk adverse.
3. Before the review progresses too far a more wide ranging look at LG functions in developed countries would add some interest to the discussion on the future of Vic LG and the legislative changes required to support it.
4. One of the most powerful roles of a Council is that of Responsible Planning Authority yet there is huge disparity in how Councils choose to perform this function. Whilst the review is restricted to the LG Act it should at least consider the Council function most likely to pack the Council Chamber.



**Review of the  
Local Government Act 1989**

## 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. Council CEO's need to be at arms length from electoral systems and processes to ensure the role is seen, and is, impartial. Dealing with electoral complaints does appear to be cumbersome and protracted so a more intensive use of local electoral resources to manage issues quickly might assist.
2. The current electoral system enhances the prospects of well organized "tickets" getting elected and potentially having the numbers on the Council. There's plenty of evidence that candidates with strong first preference vote results that have not run on a ticket find it difficult to get elected as preferences are distributed. Electoral arrangements should seek to neutralize the power of tickets which would in turn diminish the presence of electoral factions within a Council and allow all successful candidates to contribute to the workings of the Council on an equal footing.
3. Councils should be empowered to determine their own electoral structures and representation with some broad oversight by the VEC to ensure electoral fairness.



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## 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. Councils need to be seen as a legitimate tier of government well placed to manage their own affairs with minimal intrusion and prescription from the State.
2. The legislation shouldn't seek to impose on LG what the State is not prepared to impose on itself.
3. We should look beyond other States to review how Councils operate globally before we contemplate legislative change.
4. State Governments couldn't function under the clunkiness of LG formal decision making processes. A Council can make a decision of great magnitude only to have one elected member stall the decision through a notice of rescission. Parties affected by LG decisions should be able to rely on the certainty of what transpires in the Council Chamber not have it stalled by an individual that lost the vote under an outdated Local Law provision.
5. The expectations of Mayors are not matched by any real power particularly when it comes to managing the elected body individually and collectively. Mayors are placed in the very awkward situation of high constituent expectations of power and decision making but without any legislative backing to support it. Greater clarity

around the pivotal role of Mayor would be helpful to balance the clarity that exists around the CEO's role.

6. Current provisions around CEO complaints are ambiguous and lack procedural fairness by putting CEO's in a compromised position exposed to any manner of complaint from staff and community members simply for doing their job and at times being required to deliver the bad news.

## 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. The LG Act should prescribe the core elements of reporting to meet good governance principles particularly around finances. Beyond that best practice guidelines should provide a framework for relevant planning documents which individual Councils can respond to according to scale and affordability.



## 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. Current commentaries on Council rates have lost sight of the underlying principle that rates are not a service charge, they are a tax on land value and yet we are now expecting them to somehow connect with a broad range of service costs that are focused on people not land.
2. The gap between land values and capacity to pay is now so wide in some property markets that a fundamental look at how municipal rates are derived should form an important part of this review.



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## 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. The role of the ESC should be limited to those services that are truly essential like waste and roads, it should have no role in overseeing other aspects of a Councils service delivery costs or financial performance.
2. VAGO should continue to measure each Council against core financial indicators with the results widely available through LGV so that the electoral system can judge performance as it does with other levels of Government.
3. The LG Act needs to be overhauled to make shared service models simple between participating Councils. Library Corporation provisions are a good example of a straight forward service being over burdened with complex structural and governance provisions.



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## 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. The recent system is about as cumbersome as you could ever imagine, someone should write a book on Shepparton and Wangaratta's experience and permanently enshrine it in every Council Chamber in Victoria so that we never go there again.
2. You can't legislate for good conduct through self administration, it needs an umpire with leave the field powers.



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## 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. The Minister shouldn't need to deal with behavioral issues there should be sub Ministerial mechanisms in place.
2. The Ministers power to set a rate cap provides a very powerful tool to influence the conduct and governance of an individual Council.

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## 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. The review paper is very narrow in the options it canvasses and as per the current LG act is largely framed in the negative. It needs to look at legislation outside of Australia find a some creative options that go beyond a control and regulate approach.
2. More explanation of the commentary about how and why Councils need to be transparent and accountable to communities would be helpful. Every month Councillors and staff sit in an open meeting and take it on the chin in public question time, it's about as democratic as you'll get.



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