

18 December 2015

Local Government Act Review Secretariat  
C/- Local Government Victoria  
PO Box 500  
MELBOURNE VIC 3002

Dear Sir / Madam

### **SUBMISSION TO THE REVIEW OF THE LOCAL GOVERNMENT ACT 1989**

Melbourne Water appreciates the opportunity to provide input into the first stage of the review of the *Local Government Act 1989* (LGA) and to respond to key questions and issues raised in the discussion paper.

Melbourne Water has a long history of working with local government to deliver water-related functions and services to enhance liveability in the Port Phillip and Westernport region. We work with councils on drainage, flood, stormwater, waterway, and integrated water management (IWM) services. Council assistance is essential for Melbourne Water's planning and delivery of its works program.

This submission outlines Melbourne Water's response to key questions raised in the discussion paper with a particular focus on the role of local government, integrated planning and reporting, council rates and charges, and harmonisation of the Act with other legislation.

Key points in the submission include:

- The LGA review can establish an agreed set of local government objectives, roles and functions that reflect modern governance principles, concepts and management approaches
- Local government's water-related roles, functions and services can be clarified and/or enhanced to achieve better outcomes for the community
- Asset management should be identified as a core local government function and further integrated with long term strategic and financial planning and reporting
- The process for declaring a 'special' rate or charge requires review as the existing objection process and majority approval threshold can create significant barriers to the use of these valuable and efficient funding mechanisms
- The LGA review provides an opportunity to reinforce the role of local government in integrated water management and ensure appropriate connections with the *Water Act 1989* along with provision for stormwater licencing by local councils

Melbourne Water is committed to strengthening its relationship with local government in our region and is working closely with the Municipal Association of Victoria (MAV) and councils to develop a *Local Government Charter*. The aim of the Charter is to provide clarity about how Melbourne Water will work with local government and to outline our service and delivery standards. We would be pleased to provide a copy of the Charter when it is released.

Should you have any queries in relation to this submission, please contact Lee Quach, Local Government Account Manager, on [local.government@melbournewater.com.au](mailto:local.government@melbournewater.com.au) or (03) 9679 6728.

Yours sincerely



BEN FURMAGE  
General Manager, Customer and Strategy



## Introduction and background

Melbourne Water is a statutory corporation, fully owned by the Victorian Government. Melbourne Water has three main areas of responsibility under the *Water Act 1989*:

1. Provision of wholesale water and recycled water services to retail water businesses
2. Provision of wholesale sewerage services to retail water businesses, and
3. Provision of waterways and drainage services in the Port Phillip and Westernport region which includes the greater Melbourne community.

Melbourne Water's vision is enhancing life and liveability. We achieve this by improving the quality of life and prosperity of the region by providing safe, secure and reliable water services. Melbourne Water is committed to working with our partners to maintain Melbourne as the world's most liveable city, supported by healthy waterways and bays.

Melbourne Water works collaboratively and in partnership with, and provides a range of services to, councils in the Port Phillip and Westernport region including:

- Provision of water and sewerage services to council properties, parks, sportsgrounds and facilities (through metropolitan retail water companies)
- Management of waterways and major drainage systems as the regional drainage authority including responding to around 3,000 applications to subdivide land each year
- Provision of flood modelling and mapping, flood management and flood warnings as the regional floodplain management authority
- Provision of information, such as on water storages and waterway health
- Administration of urban development standards and responding to around 11,000 planning permit application referrals each year for buildings and works in areas covered by flood overlays
- Administration of diversion licences including for stormwater harvesting
- Provision of technical guidance, such as on drainage design, water sensitive urban design (WSUD) and flood modelling, and
- Establishment of partnerships and provision of incentives and grants, such as for waterway, stormwater and litter management.

The following sections contain Melbourne Water's response to questions raised in four of the chapters of the discussion paper covering:

- The role of councils – Chapter 2
- Planning and reporting – Chapter 5
- Council rates and charges – Chapter 6, and
- Harmonisation of the Local Government Act (with other legislation) – Chapter 10.

## Comments on Chapter 2 – The role of councils

### ***Local government objectives, roles and functions***

The *Local Government Act 1989* defines the purpose, functions and duties of local government and provides the legislative framework for the establishment and administration of councils.

Melbourne Water considers that it will be especially important for the review of the *Local Government Act 1989* to establish an agreed set of objectives, roles and functions for local government that reflect modern governance principles, concepts and management approaches.

At present, the *Local Government Act 1989* does not appropriately recognise the role and functions of local government in asset management, open space management, integrated water management and climate change adaptation.

It also does not recognise key concepts, such as environmental sustainability, community wellbeing and resilience. The lack of a clearly expressed function or role can limit or restrict some councils in responding to these important areas if there is an uncertain mandate.

Local government has an important role in helping to create, maintain and enhance liveability. This role and focus on liveability could be recognised and clarified in a future Act and would strongly link to other local government roles and functions relating to open space, environmental sustainability, resilience and community wellbeing.

### ***Water-related roles and functions***

A critical issue for Melbourne Water and councils revolves around the lack of clarity and definition of local government water-related roles and functions. These roles and functions are not outlined in either the *Local Government Act 1989* or the *Water Act 1989*. This lack of role clarity can create service delivery gaps (or potential duplication). In addition, extensive and ongoing engagement can be required to achieve agreement about roles and functions across catchment boundaries and how the roles and functions will be implemented. There can also be confusion about related issues of waterways ownership as compared to waterways management.

Consultation with local government as part of the development of Melbourne Water's *Flood Management Strategy for Port Phillip and Westernport* and our *Local Government Charter*, has highlighted that a key issue for local government is clarifying roles and responsibilities in relation to the current 60ha catchment boundary in the Port Phillip and Westernport region. Melbourne Water supports resolution of this issue and will work with the Department of Environment, Land, Water and Planning as the lead in addressing this issue in conjunction with councils and other relevant stakeholders.

Various councils have developed comprehensive integrated water management (IWM) strategies or plans that take a holistic approach to water management, supported by Melbourne Water, to achieve water sensitive city outcomes. However, the lack of clarity in the *Local Government Act 1989* or *Water Act 1989* may result in councils not allocating sufficient funding to implement these strategies or plans. Inconsistencies can arise across the region with variable approaches in terms of councils supporting, funding and undertaking various water management roles.

Across Victoria, local government roles and functions relating to local drainage, waterways and flood management could be explicitly outlined in the *Local Government Act 1989* or the *Water Act 1989*. Local government's roles in terms of stormwater management could also be clearly and expressly outlined in legislation. This would help bring clarity as to local government's local water-related roles and functions similar to Melbourne Water's regional drainage, waterways and floodplain management authority functions that are outlined in sections 189, 199(1A) and 202(2) in the *Water Act 1989*.

## Comments on Chapter 5 – Planning and reporting

### ***Integrated strategic planning***

Melbourne Water supports the focus on integrated strategic planning and reporting as outlined in Chapter 5 of the discussion paper. There would be considerable merit in lengthening local government strategic planning timeframes to ten years and requiring more integrated long term financial planning supported by ten year asset management and workforce planning (as briefly outlined on p.64 of the discussion paper).

A consistent approach to long term strategic planning over ten years by all councils would support a more strategic and cost-effective response to the delivery of community services, the provision of infrastructure and management of the environment. This could also include improved reporting and accountability for delivery of long term strategic plans with better performance metrics in support of the existing Local Government Performance Reporting Framework.

### ***Asset management planning***

Melbourne Water proposes that the current review of the *Local Government Act 1989* provides an important opportunity to assess and strengthen legislative requirements to support best practice asset management by local government.

Other jurisdictions, such as South Australia and New South Wales have already moved to require local government to undertake asset management as part of long term strategic planning and these approaches may provide lessons for Victoria.<sup>1</sup>

---

<sup>1</sup> For example, see the asset management provision in s.122 of the South Australian Local Government Act and s.403 of the New South Wales Local Government Act.

Identifying asset management as a core local government function in Victoria and further integrating asset management with long term strategic and financial planning and reporting will bring many benefits. It will especially help ensure that local government can efficiently and sustainably deliver on its strategic objectives through the cost-effective lifecycle management of its different assets.

The LGA review may also provide an opportunity to consider how to standardise how councils manage their assets including a more consistent approach to determine key inputs, such as replacement values and asset lives. Potentially, a statewide approach could be informed by the Essential Services Commission (ESC) to ensure a consistent approach across state and local government. The ESC could also ensure sustainable and efficient funding for asset management.

## Comments on Chapter 6 – Council rates and charges

### ***Processes for setting 'special' rates or charges***

Chapter 6 of the discussion paper outlines how a council may declare a 'special' rate or charge or a combination of both on rateable land. Before a council levies a special rate or charge to recover more than two thirds of the total cost of a service or works it must allow affected ratepayers to object and may not proceed if a majority of those ratepayers object.<sup>2</sup>

The Essential Services Commission in its review of rate capping recommended to the Victorian Government that a rate cap not apply to special rates and charges because there were adequate checks and balances already in place in the current legislation for these rates and charges.<sup>3</sup> The Victorian Government accepted this recommendation but would legislate to provide the Minister for Local Government with the authority to expand the cap to include other categories of rates and charges at a later date, if necessary to ensure the integrity of the system.<sup>4</sup>

Melbourne Water proposes that the process for declaring a 'special' rate or charge as outlined in the discussion paper can create significant barriers to the use of such rates or charges because of the existing objection process and majority approval threshold. The use of a 'special' rate or charge where a "polluter or beneficiary pays" for a distinct service is a valuable and efficient funding mechanism. A 'special' rate or charge could be used, for example, for implementing an annual stormwater management services charge for specific local urban areas, such as used by local government in New South Wales<sup>5</sup>.

---

<sup>2</sup> Department of Environment, Land, Water & Planning 2015, *Review of the Local Government Act 1989 Discussion Paper*, p.72.

<sup>3</sup> Essential Services Commission 2015, *A Blueprint for Change, Local Government Rate Capping and Variation Framework Review, Final Report*, p.9.

<sup>4</sup> Victorian Government 2015, *Victorian Government Response to Essential Services Commission Final Report*, p.3.

<sup>5</sup> For further information, see: <https://www.olg.nsw.gov.au/content/frequently-asked-questions-about-stormwater-management>

Potentially, a new process for setting a 'special' rate or charge in Victoria could mirror that for setting the general rate with similar levels of consultation, assessment and justification but without the added complexity and uncertainty of the current process for setting a 'special' rate or charge.

## Comments on Chapter 10 – Harmonisation of the Local Government Act

The final chapter in the discussion paper explores harmonisation of the *Local Government Act 1989* with other legislation.

### ***Open space management***

As identified earlier in this submission, a new Act should clarify that a key local government function is to manage open space for a range of community, recreation and liveability purposes. There is an opportunity to include additional open space provisions in a new Act requiring local government to establish a hierarchy of open space in terms of the public land that it owns and manages. Other jurisdictions have moved to a similar approach and would be worthwhile exploring, such as in New South Wales<sup>6</sup>. Linkages with the Victorian *Planning and Environment Act 1987* and the *Victorian Planning Provisions* would also need to be considered.

### ***Stormwater ownership and licencing***

Stormwater harvesting at the local and precinct scale is a key part of integrated water management by councils. Stormwater harvesting can help by reducing the volume and speed of flow of water in the drainage system and by reducing the amount of pollution reaching local waterways. Stormwater can then be used instead of valuable drinking water for uses including watering parks and golf courses.

At present, neither the *Local Government Act 1989* or the *Water Act 1989* recognises a local council in terms of having the right to take and use water that is in its local stormwater system. This is in contrast to Melbourne Water being able to consider applications for a 'Stormwater Harvesting Licence' under sections 51 and 67 of the *Water Act 1989* for harvesting any quantity of stormwater from a waterway controlled by Melbourne Water or any Melbourne Water asset<sup>7</sup>.

The LGA review provides an opportunity to reinforce the role of local government in integrated water management and ensure appropriate connections with the *Water Act 1989* with provision for stormwater licencing by local councils. In developing a stormwater entitlement regime, it will also be important to consider how to promote investment in stormwater harvesting and provide more certainty to parties that want to access stormwater.

---

<sup>6</sup> See Part 2 of Chapter 6 of the *Local Government Act 1993* (NSW).

<sup>7</sup> See: <http://www.melbournewater.com.au/planning-and-building/stormwater-management/stormwater-harvesting/pages/stormwater-harvesting-licence.aspx>