

## Submission to Discussion Paper

Name	Robyn Taft
Suburb	Caulfield
Age*	
Gender*	Female

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Organisation/council name:	Glen Eira City Council
Position/job title	Corporate Counsel
Are you providing this submission on behalf of yourself or the organisation?	Organisation

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:

3E (the functions of Council). We feel this is relevant to keep in the Act - to provide guidance for councillors and residents.

Advocacy is listed as clause (a). We feel this is not the most important role of a council and so probably should be further down the list as an indication of the priorities.

We feel that the legislation should as a general principle provide consequences for noncompliance. But in this case, where it's a matter of more general principles, there needs to be a reliance on common sense elements – much as it currently is.

## 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:

On the proposed option to fix council numbers, we disagree. We feel that this may well result in councils having numbers of councillors that don't fit wards in an even way. The numbers should be left with enough discretion to fit in with the ward structure.

What about no wards? We feel this would not work - how would candidates differentiate? Might lean towards traditional party structure. The ward structure helps to break up the workload, both in election campaigns and in representing residents.

On the suggestion that it's unfair having wards with different numbers of candidates - there's another provision in the Act that controls representation variances. This is the requirement in 219D that variances be no more than 10%. Any changes should take both sections into consideration.

Are multi-member wards better? We think yes. The representation is better managed if a ward has an ineffective or absent councillor, there is less chance of preference stacks pushing out good candidates and more chance of broader representation. Wards are better than one ward council, for workload and representation.

Partial preferential is the best system. There would be fewer informal votes and fewer dummy candidates. There does need to be a ruling that voters should number as many boxes as there are vacant positions.



## Review of the Local Government Act 1989



Who should be allowed to vote? We believe there should be automatic voting entitlements for residents and non-resident owners. This makes it consistent, as currently non-resident non-citizen owners need to apply to vote, but non-citizen residents don't.

We believe that the same compulsion to vote should apply as for state and federal elections. No need to have this mapped to postal voting - there will always be the option to apply for a postal vote, and state and federal elections which do have compulsory vote for all ages are actually attendance.

Also makes sense that people can examine the electoral roll whenever they want to rather than have a requirement for a specifically compiled exhibition roll.

Candidacy – agree with suggestions one and two. Suggestion three, that anyone disqualified from being a company director be disqualified from being a candidate, is not completely relevant to being a councillor - more to being a CEO, as councillors have very few compliance obligations.

Anyone who can vote should be able to run - any ratepayers should be able to run, why just Australian residents? Company nominees should, however, not be able to run or vote, as they can have no actual connection to the municipality.

Councillors shouldn't have to live in a ward / municipality. MPs don't have to.

On the "sound mind" test - If other Acts can contain this provision, cross-reference or reference provisions in the other Acts to determine what the test should be.

Self-nomination on no exception basis could potentially be too harsh. A candidate should be entitled to have someone else nominate them if they can prove they have a genuine reason for not being able to attend in person, such as being out of Melbourne or having a medical emergency.

Should candidates demonstrate endorsement? - if this is to deter dummy candidates it won't work. What stops the dummy candidates is the deposit.

Financial penalty for inaccurately filling out such forms. ASIC check not required if disqualification from being a company director is not a ground for disqualification as a councillor. Police check is a reasonable requirement as long as it can be done reasonably promptly, as we don't want to delay new councillors taking their positions for weeks.

We believe there needs to be clearer authority for returning officers to reject candidates not on the electoral roll.



## Review of the Local Government Act 1989



We don't agree with the suggestion that all candidates should answer standard questions, this should be left to the discretion of each candidate. If they don't adequately communicate with voters they will not be successful.

Preferences shouldn't be included in the distributed material to discourage the running of dummy candidates.

Changes to this system need to note that this would most likely cause the Informal vote to rise - so therefore this should be done in conjunction with the adoption of the optional preferential system.

We don't agree that donations should be banned, nor that certain categories of donors should be banned. Banning categories of donors could unduly favour certain types of candidates over others. Conflict of interest provisions, which would prevent councillors from voting on anything that benefits major donors, should be sufficient to cover this.

Choosing postal or attendance voting methods should be left up to each council. There are good arguments for each system - councils can make their mind up for each occasion.

Postal voting is arguably more open to fraudulent behaviour in the form of ballot paper theft, or simply family members completing other members' ballots.

Local Government should be treated the same as every other level of government when it comes to how councils are elected.

Attendance voting has the added benefit of allowing for fundraising events in the community.

We feel that section 55A is too narrow (on misleading and deceptive conduct). The way this has been interpreted is to only render illegal misleading voters in the actual casting of their vote, for example, by telling them that they need only number one box. It should extend to outlawing demonstrably untrue statements about the candidate or opposition candidates, such as a false claim of residence within the ward, or about Council policies. This should operate on a complaints system.

We disagree that the VEC should be in charge of investigation and prosecution – feel this should stay with the inspectorate which is better qualified.

## 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:

Clarifying the role of the Mayor is a good idea but we don't agree that this should mirror either the NSW or QLD model.

We don't favour directly elected Mayors – success in this system relies on money or fame. Fellow councillors are often better placed to assess the ability of a colleague to do the job. Good candidates who run for Mayor and are unsuccessful are then not eligible to be a councillor and this could well be to the detriment of the community. The directly elected mayor may be in a political minority and therefore decision-making is fraught from the outset.

Direct election also moves us closer to the "ticket" model where a popular Mayor can bring others along with him/her such as is the case in The City of Melbourne.

The Deputy Mayor is elected under a provision in the local law in Glen Eira. We think all councils should have the option of the deputy but that the Act should set out aspects of the role such as stepping in for the Mayor.

We don't believe councillors should be full time. This would dilute the pool of those able to stand. Tiering for payments is unfair. Everyone should get the same pay – it's the same amount of work regardless of the population of the Council.

The Act shouldn't legislate for entitlements or civic support. This should be left up to each Council. A Mayoral car is not necessary.

Section 94 LGA and employment law are inconsistent in their approach to reappointment, so this should be clarified in the Act, or could be misleading to councillors. LGA says reappointment may not be made sooner than six months before the end of a contract and, if this is done, the contract is void.



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Many councils take no notice of this or misunderstand it. Rather than voiding unlawfully completed contracts, it should be a function of the inspectorate to vet CEO reappointment processes.

Need to advertise? If it is compulsory for Councils to advertise it allows them to test the market without losing their current CEO.

The CEO should continue to be solely responsible for the management of staff and the operation of the Council, subject of course to the requirement to implement lawful decisions of the Council.

The appointment of reappointment of the CEO should be managed by an independent external consultant appointed by the Council. The role of the external consultant should include to help ensure that selection is made on the basis of merit, and consistent with the requirements of equal opportunity legislation.

Consideration should be given to enshrining a duty that the CEO must give frank and fearless advice without fear or favour, and it follows that some protection should be afforded the CEO in performing this duty, again subject to the requirement to implement lawful decisions of the Council.

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

The language in relation to a councillor misusing their position by directing or influencing staff needs to be strengthened and completely unambiguous.

Definition of upper management positions as a method of determining whether a contract is required should be based on responsibility not on salary. Banding could perhaps be used.

We believe councillors should be required to be present at Council meetings. It would otherwise be hard to police conflict matters or to determine who was moving motions. Councils should set their own frequency for meetings. The way Councils operate is not uniform across the state as, for example, what some municipalities conduct through Council meetings, other do through committees.

The Mayor should have a casting vote to resolve deadlocks. It should be up to Councils to determine the extent of public participation in decision-making, not legislated, beyond what is currently contained in s223.

Complaints - there should be a definition of a complaint, not easily done but worthwhile for standard reporting and checking.



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Local laws including meeting procedure should be left to each council to determine. Indexing fines is a good idea.

The indemnity should be limited to acting within the law in the course of councillor duties. Speeding etc would thus be excluded, as it is not within the law.

## 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:

Council plan should be for 4 years - beyond this might seek to bind future councils. The deadline should be later. Unrealistic to expect that timeline of potentially new councillors. The SRP should be for at least 10 years, to promote responsible management of assets.

A rate cap fixed in advance for four years would allow greater budget certainty, and a suitable lead time for applications for variations, bearing in mind the need to future plan for asset renewal.

## 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:

The exemptions on rateable land should be left as they are.

In applying for differential rates the wealth of the owner is not a component. Most differential rates are for policy reasons, so they should be allowed regardless of the methods Councils use to set their rates, not limited to CIV.

Municipal charges - owner protections argument doesn't make sense. Rates are either paid by the land owners or the renters through their rent. Property owners pass the charge on to renters and claim the tax credits.

Allowing council to declare service rates is appropriate because user pays.

Current method of declaring rates on land is still appropriate.

## 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:

We oppose the suggestion to require the publication of comparative data for all services – this would be a large impost on resources that should be directed to delivering services.

Procurement. The level of delegation allowed for contracts should be statutory. If council sets its level low it has more items considered in camera and looks less transparent, when in fact there is better governance.

We don't support a contract being invalidated in the case of non-compliance with a procurement policy, unless the contractor was party to the non-compliance. Otherwise, an innocent contractor and its employees could be penalised, especially if they had foregone other work to accept the contract. The Act should instead impose a consequence for those responsible for the non-compliance.

## 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:

We support the new role of the Monitor. This was outlined in the Ombudsman's report on related matters in Glen Eira.

There are three different sections of the LGA to consult before you can understand if you are disqualified for improperly directing and releasing confidential information which are defined as misuse as position. This cumbersome approach has been somewhat dealt with by making these offences in their own right under new legislation, but should be clear within each section.

Sec 29 – disqualification if convicted of an offence ... etc - the sanctions should be in each of those sections. All the disqualifications should carry the sanctions of the sections for which they apply.

Misuse of position sections, as they relate to misuse of information or breach of confidentiality, should be extended to council staff.

General principles should still be in code of conduct, each council can fill out the specifics as to how they apply. Codes should have basic mandatory provisions.



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Councillor conduct panels - Councillors could threaten budgetary action as a deterrent for conduct panels through appealing to VCAT and making Council pay. This should not be the case.

Conflicting personal interest – the need to make an application should be taken out. You can abstain and you can just walk out of the room. The right should be retained, but the requirement to apply should be removed.

Shouldn't have the exemption from conflict of interest on a disciplinary process. This is such a strange provision that, in the Belinda Clarke case, the Municipal Inspector actually charged her with breaching conflict of interest provisions for participating in a motion about disciplinary action against her, and it was only the Magistrate who held she was entitled to do so.

Conflict through close association should be made simpler. It shouldn't be so prescriptive. Alternatively, it could simply list the relatives that are applicable. It is currently too complex.

Where councillors have a conflict, they should be entitled to be present for the debate, but not to vote. Often, as in the case of conflicting duties, the councillor excluded may have valuable insight into the subject at hand.

Breach for disclosing confidential information should be made an offence on its own and should be extended to officers. The Act should allow for them to only use the information to the extent necessary to be able to give effect to council decisions.

## 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:

No response

## 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:

It is hard for councillors to be across all the Acts that are relevant to our duties. Rather than minimising the Act, as much as possible should be in the LGA - for ease of reference. It should also take precedence where there are inconsistencies.

Any other comments?

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

Response:

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