

December 2015

Victorian Chamber of Commerce and Industry

Submission to the Victorian Government's
Review of the *Local Government Act 1989*

About Us

The Victorian Chamber of Commerce and Industry (“the Victorian Chamber”) is Victoria’s leading and most influential employer group, servicing over 15,000 Victorian businesses, including employers within the local government industry sector. As an independent, non-government body, we are involved in every facet of industry and commerce across the State. As a representative of the interests of employers at a State level as well as nationally, we act as a sounding board for government decision-making and as an instrument of strong advocacy.

The Victorian Chamber has a long history representing and supporting local government in Victoria. As such, we welcome the opportunity to contribute to the review of the *Local Government Act 1989* (“the Act”). As a key representative body of the local government sector, we will concentrate our attention on matters within our field of influence and expertise, specifically matters relating to workplace relations and employment law. As such, we have elected a discrete number of chapters from the Discussion Paper to provide initial comment. We welcome the opportunity to consult with the advisory committee and to make a detailed submission, drawing on our members’ experience, in response to the Directions Paper in 2016.

The importance of an efficient local government sector

The *Constitution Act 1975* (Vic) (“Constitution”) recognises local government as a “*distinct and essential tier of government.*” As the third tier of government positioned closest to the Victorian community, the Constitution provides that there be a legislative framework that allows councils “*to be accountable to their local communities in the performance of functions and the exercise of powers and the use of resources.*”¹ Councils are critical to the provision of community services. Employing over 50,000 people in Victoria, councils spend an estimated \$9 billion annually on service delivery and infrastructure, as well managing over \$70 billion of public assets.

Since its inception in 1989, the Act has been subject to more than three amending Acts on average each year. The result of 25 years of amendments, is an Act which fails to clearly articulate the role, functions and powers council’s exercise. It is neither enabling nor prescriptive and it fails to respond to the evolving nature of the sector nor consistently regulate local government.

It is vital that laws surrounding the operation of local governments enable them to be as efficient, productive and effective as possible.

Response to ‘Chapter 4: How councils operate’

Inefficient recruitment and employment practices

The Act places a number of unnecessary restrictions on the recruitment and employment of the Chief Executive Officer (“CEO”) and senior officers. The restrictions can hinder the recruitment process and impose additional costs on councils who are already operating on a limited budget.

¹ Hansard Victorian Legislative Assembly second reading speech, Local Government Bill (No. 2), 29 October 1987.

At present, the Act requires council "*must appoint a natural person to be its Chief Executive Officer.*" Should the position of CEO or senior officers become vacant, council must advertise the position in a "*newspaper circulating generally throughout Victoria.*" While the CEO's contract can be no longer than five years, there is no restriction on how many times a CEO may be reappointed. Council may not however, re-contract an incumbent CEO earlier than six months before the expiration of their contract, and they may not enter in to or make any decisions with regard to employment of the CEO during the caretaker period. Furthermore, the Minister has the power to forbid a council from entering in to an employment contract with a CEO.

Requiring councils to recruit in such a prescriptive manner limits their ability to undertake a recruitment process in a timely, autonomous or contemporary manner. It also potentially limits the candidate pool due to the fixed nature of the role and will not always be in the best interests of their Council and accordingly their constituents.

The Act places unnecessary financial pressure on councils which compounds with each additional recruitment campaign. And there is limited evidence this process benefits the council, and therefore their constituents. Candidates no longer identify positions in newspapers, preferring rather to search online or access the support of recruitment agencies.

The Victorian Chamber recommends the process of recruiting CEOs and senior officers should be specifically reviewed to better reflect contemporary recruitment practices.

Chief Executive Officer

Relationship with Council Staff

At present, the Act requires the CEO assume sole responsibility for appointing, directing, managing and dismissing council staff, excluding councillors from the employment relationship. This arrangement in part reflects councillors' historical misunderstanding of their roles and responsibilities. However, as highlighted in the Discussion Paper and based on member feedback, conflict does continue to arise. We welcome the opportunity to identify opportunities to further protect the integrity of the employer/employee relationship and the management of conflicts arising between councillors and council staff. This may include the inclusion of binding policies, protocols, training and/or dispute resolution mechanisms.

Senior Officers

Senior officers are defined in the Act as a member of council staff with management responsibilities reporting directly to the CEO, or any other member of council staff "*whose total remuneration exceeds \$124,000.*" Should a senior officer position become vacant and the CEO wish to recruit to the role, the Council must advertise the position in the manner described above. The Act places further restrictions by requiring council offer an employment contract which must not exceed five years. Finally, details of senior officer numbers and remuneration must be publically disclosed in the Council's annual report.

Definition of senior officer

Amended in 2003, s 94AB '*Transitional provision relating to senior officers*' was inserted in to the Act to respond to council staff unknowingly crossing the income threshold of senior officer. The amendment permitted councils to disregard the restrictions placed on recruiting senior officers, where a member of council staff increased their total

annual remuneration as a result of an entitlement (such as a quantum salary increase contained in an applicable enterprise agreement). This amendment allows for an alternative outcome; however fails to adequately address the core issue. We welcome the opportunity to identify whether such a definition of senior officer is required, and if so, recommend an appropriate salary or approach for definitional purposes, which limits, or avoids the circumstance discussed above.

Council Staff

Local government employs over 50,000 people across Victoria. As such, we acknowledge the aspiration to recognise council staff in the Act. However, we note the inconsistency between core requirements in the Act such as Code of Conducts which may vary significantly from council to council and the frequent duplication of existing employment law.

Appointment of council staff

At present the Act mandates the CEO is responsible for employing all council staff, with the exception of contractors and volunteers. This legislative arrangement restricts the employer/employee relationship to the CEO and council staff. Consequently, there is no employment relationship between council staff and councillors as discussed above.

Development of code of conduct

The Act designates the CEO is responsible for developing and implementing a code of conduct for all council staff. All council staff are subject to conduct principles requiring them to provide a responsible service, to act impartially and with integrity and to avoid conflicts of interest. The content of this code has largely been left to the individual CEO's, who are arguably best placed to reflect the values and expectations of their council. Nevertheless, we welcome the opportunity to consider the potential value of a more consistent and prescriptive code of conduct for the local government industry.

Merit based recruitment process

The Act requires council establish a merit based recruitment process to ensure employees are treated fairly and reasonably, while providing an avenue for redress against unfair/unreasonable treatment. At present, council is subject to both state and federal legislation, including the *Equal Opportunity Act 2010* (Vic) ("EO Act"), the *Charter of Human Rights and Responsibilities Act 2005* (Vic) ("Charter of Human Rights") and the *Fair Work Act 2009* (Cth) ("FW Act") among others, which provides similar protections for council staff. We welcome the opportunity to consider whether the duplication of existing employment law is required and of any benefit to council.

Equal employment opportunity program

The Act prescribes council is required to develop and implement an equal employment opportunity program for staff. As discussed above, employment matters, including equal opportunity, are enshrined in both state and federal legislation which at present apply to council staff. Principally, the FW Act, the EO Act and the Charter of Human Rights operate within Victoria to protect employee rights and prescribe employer responsibilities in relation to equal employment opportunity.

The Victorian Chamber will work with our members to further consider the recognition of council staff in the Act and the requirement for such prescriptive legislation concerning recruitment, the existence and content of the code of conduct as well as the development of an equal employment opportunity program.

Response to '*Chapter 8: Councillor conduct, offences and enforcement*'

Councillor Conduct

We have previously discussed the issues of conflict arising between councillors and council staff. When these situations occur, councillors, CEO and management have limited opportunity for redress. At present, there is a conduct framework which is aimed at setting behavioural standards. However, greater clarity is required about the types of behaviours which breach the code. Further, the distinction between misconduct, serious misconduct and gross misconduct does not appropriately reflect community norms and standards and therefore in our view falls short of what would generally be required of a code of conduct.

Ineffective enforcement of the conduct framework

Enforcement of councillor conduct is the key weakness of the current framework and remains a vexed issue for local government and the broader community. With limited mechanisms for the enforcement of the code, there is in effect no way of compelling councillors to participate in the existing complaint's handling process. We welcome the opportunity to work with our members to explore any opportunities for enforcement, which may include appropriate training, binding codes, mechanisms for enforcement and any opportunity for mandatory dispute resolution or an independent arbiter among other things.

Conclusion

Given the important role local government plays as an employer, a community service provider and in procuring goods and services, it is vital that the legislative framework they operate within enables them to operate as efficiently, effectively and productively as possible. The Victorian Chamber understands the current legislation and operating framework is imposing unnecessary costs on Councils in terms of time and resources.

The Victorian Chamber encourages the Government continue to develop and implement amendments that will benefit local governments and their constituents. We will continue to support the Government to create an Act which reflects the best of modern drafting principles and we welcome the opportunity to provide additional comments, recommendations and insights to the Directions Paper in 2016.