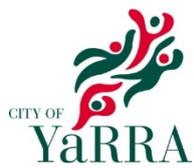


Review of the Local Government Act 1989



Response to the Discussion Paper

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Yarra City Council, December 2015

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“a distinct and essential tier of government”

The Victorian Constitution recognises local government as “a distinct and essential tier of government consisting of democratically elected Councils having the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district.”¹

Fundamental to the delivery of good government is the transparency and accountability that goes hand in hand with the representative democratic system that underpins Australian governments at all levels. Consistent with fostering this democratic system is the principle of self-determination. This enables local communities to make decisions about the services they receive, the taxes they pay and the degree of involvement they have in decision-making.

The review of the Local Government Act 1989 is overdue, and is welcomed by the City of Yarra, but only to the extent that it supports the basic principle of enabling local communities and their elected representatives to make decisions about those matters of importance to them. If the outcome of the review is to establish a framework where communities have less scope to influence decisions, where Councils are increasingly seen as limited to service delivery agencies of the state or where the autonomy of local government is compromised, then it will be an important opportunity missed, and consequently would not be supported by local communities and the Councils that represent them.

This submission represents the City of Yarra’s early view about the directions outlined in the Review of the Local Government Act 1989 Discussion Paper and a response to many of the specific questions raised. The City of Yarra looks forward to participating in the review in the months ahead.



Cr Roberto Colanzi
Mayor

Constitution Act 1975 (Vic) s 74A(1)

The role of councils

Principles

The role of local government should be defined as much as possible, by the communities they represent rather than in an inflexible legislative instrument like an Act of Parliament. The fundamental role of local government is already defined in the Constitution Act 1975 in two words: “good government”.

In its *Good Governance Guide*, the Victorian Local Governance Association says good governance is accountable, transparent, responsive, equitable and inclusive, effective and efficient, participatory and that it follows the rule of law.

These principles should underpin the role of local government and should be supported by a normative rather than prescriptive Local Government Act.

Questions

1. What should the key roles and functions of council be?

Yarra City Council is of the view that the role of Councils is well understood and accepted by the community at large. The gradual evolution of local government has happened slowly as a response to the demands of local communities, and this is as it should be. The Local Government Act should not seek to limit the role of local government in a way that constrains the opportunity of local communities to determine what programs and services they want from their local Council.

Councils need to retain the flexibility to implement and adapt to what is in the best interests of their community as a whole. Being too prescriptive may compromise the capacity of Councils to have the flexibility to respond to community representations and changing circumstances.

2. Does describing the key objectives, roles and functions of councils in the Local Government Act 1989 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?

The existing definitions of the roles of local Councillors and Chief Executive Officer (including the most recent additions) provide a solid framework for defining these roles in any future Act.

Further work could be invested in explaining to Councillors (and potential future Councillors) what the role demands (and perhaps more importantly, what it does not involve) although this does not need to be reflected in the Act itself. Councils have operated well for over a century without these roles being so detailed.

**3. What powers are required by councils to perform these roles and functions?
Should there be any limitations to council powers?**

The powers of Council should not be limited unnecessarily, as local communities should be empowered to generally operate within their own policy and financial constraints which would reflect the diversity of local governments across Victoria.

Save for a demonstrable failure in good governance, Councils should be free to deliver services, undertake community advocacy and identify and pursue alternative revenue streams as they see fit.

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?

The Act should have an emphasis on normative principles. Wherever possible, prescriptive and inflexible provisions should be avoided. Above all, the Act should not prescribe behaviour that should be governed by common sense.

5. Should the legislation provide consequences such as penalties or sanctions, for any noncompliance with either the general and prescriptive provisions? If so, what form should these take?

Any provisions with a penalty attached should be carefully constructed so that they do not effectively penalise local communities for the actions of their Council or individual Councillors or staff. In addition, penalty provisions should be constructed to ensure that where penalties are imposed, the standard of proof applied should explicitly be that of beyond reasonable doubt and not the balance of probabilities.

How councils are elected

Principles

Yarra City Council is of the view that these issues have been well canvassed in the recent Georgiou review and there are a number of outstanding recommendations of that review.

1. **What are the key elements of a system aimed at ensuring integrity of council elections that should be included in the Act?**

The City of Yarra is on the record as a supporter of attendance based elections and does not support the imposition of postal voting on local communities who do not want it.

Reference is sometimes made to a lower turnout of voters in attendance elections such as in Yarra, to support postal elections.

There are reasons unrelated to the electoral system for a lower turnout. Firstly some 45% of properties in Yarra are rented with occupiers on annual leases, with a major turnover of residents every four years. Landlords are not required to vote and many live in other suburbs, interstate or overseas and are far less likely to or unlikely to cast a vote in the City of Yarra municipal elections. It is these reasons (together with the fact that Yarra, Port Phillip and Moreland have traditionally had attendance elections) that have created the mistaken belief that attendance elections result in a lower turnout. Comparing like with like shows that the turnout at Knox (attendance) has typically been not materially different to neighbouring Whitehorse (postal), Greater Dandenong (attendance) has mirrored turnout rates in Frankston (postal) and Banyule (attendance) has consistently outperformed neighbouring Darebin (postal).

There are good reasons to retain attendance voting, which works well for municipalities such as Yarra of under 20 sq kms, with a high density of its 86,000 population well able to attend a polling booth to vote. Postal votes can be cast while the option of pre-poll voting also exists where voters are unable to vote on election day. Attendance elections should not be discarded for the sake of convenience or uniformity when there are considerable advantages of attendance voting. This enables a higher level of engagement with the election, offering schools and community organisations the opportunity to run sausage sizzles or other fundraising activities to take advantage of the large numbers of visitors at polling booths on election day. This helps promote community engagement and local democracy.

Yarra City Council however, raises some aspects of the electoral system to be changed:

1. Candidate statements which are prepared for postal elections should also be applied to attendance elections. Persons on the electoral roll who do not live in the municipality find it difficult to obtain candidate information without access to a candidate statement, local papers, or election leaflets distributed to properties.

2. Candidate statements could require limited prescribed information on candidates such as full name, contact details, party membership (if any), background, and residency in the Council.
 3. A business proprietor operating from premises in the Council area, once registered on the Council roll, should not be required to re-enrol for successive elections. A business owner should have a vote without having to re-register, subject to that business continuing to operate within the Council area.
 4. Pre poll voting should be limited to one week rather than operate for four weeks. Confusion arose in the last Council elections when pre poll voting opened the morning after the registration of candidates closed, and ballot papers were not able to be prepared in time for opening of pre-polling. There should be a gap between closing of candidate registration and opening of pre-polling which would be addressed by having no more than one week of pre-polling in Council elections. It is illogical for one day of elections to have pre-polling for four weeks prior. If attendance voting is not possible on election day, voters can lodge a postal vote with pre-polling available in the last week when receipt of a postal vote in time before voting closes, may be compromised. This offers a logical sequence for voting.
2. **To ensure integrity of the electoral system should additional powers be provided to:**
- a) **the Minister for Local Government**
 - b) **the Victorian Electoral Commission**
 - c) **council CEOs?**

Any additional powers provided in relation to electoral matters should be reserved to powers required to ensure the integrity and transparency of the electoral process, as well maintaining public confidence in the apolitical position of Council administration. Any such powers will require processes to support rapid resolution of matters, underpinned by the principles of procedural fairness.

How councils operate

Principles

The internal operations of Councils across Victoria typically reflect the nature of those communities they serve. While the inclusion in the Local Government Act of prescriptive arrangements regarding meeting procedures, consultation obligations, contents of websites and other matters may seem to establish a minimum standard upon which local Councils can build, in reality, they often serve the reverse purpose.

Example

The Local Government Act 1989 prescribes (at section 223) that Councils place a proposed budget on public exhibition for a period of 28 days and then hear submissions on that budget. Councils who make a meaningful effort at community engagement in relation to the development of their budget find this process inhibits the conduct of participatory budgeting, as it effectively removes six weeks from what is an already constrained budget development timetable and imposes a rigid consultation process at the most basic end of the IAP2's Public Participation Spectrum.

The Local Government Act should not be prescriptive in relation to operational matters of Councils.

Questions

1. **What are the critical elements of a council's operations that should be governed by the Local Government Act 1989 (e.g. requirements for mayoral elections, notice of, and requirements for open meetings)?**

Many of the simple mechanics regarding meeting procedures, mayoral elections, declarations of conflicts of interest and other internal processes are best addressed by Councils themselves, either in Local Laws, governance policies or internal operating procedures. The review of the Local Government Act should seek to identify only those areas where there is significant benefit in consistency between Councils.

There should be an endeavour to reduce the complexity of the provisions of the Act, particularly regarding conflict of interest. No other level of government has such detailed prescriptions, notwithstanding equal if not far more significant impacts at these other levels.

2. **What penalties or sanctions should be imposed on councils which do not comply with the requirements relating to their operations?**

As explained earlier, any penalty provisions in the Act should be designed in a way that they do not penalise local communities. Such provisions should be designed to ensure compliance (or rectification of a previous non-compliance).

Planning and reporting

Principles

The development of strategic business plans and supporting annual plans and budgets is an internal operational matter that should be removed from the Local Government Act.

Questions

1. What requirements should be imposed in the Act on councils in relation to planning and reporting on their strategy, budget and operations?

The Victorian Government is not required to produce a Strategic Plan or an Annual Plan, yet manages to operate effectively. It is not clear what benefit the sector gains from an obligation to produce a standard, prescriptive Council Plan, Strategic Resource Plan and Annual Report. That is not to say that the sector should operate in the absence of thorough strategic planning. However, the sector is capable of developing plans that respond to the needs of local communities in the absence of a prescriptive template in the Local Government Act, and has done so for over a century.

If the inclusion of such a requirement is considered necessary, there should be sufficient flexibility to enable Councils to produce a Council Plan that provides communities with a transparent and consistent view of all Councils' strategic objectives and activities over at least a four year period. Such a plan could provide some structure without being overly prescriptive.

2. Can council planning and reporting processes be streamlined? If so, how?

If the local government sector is given the freedom to develop these processes in a way that reflects their local conditions, they will be able to streamline the process in a way that adds value to their planning, consultation and decision-making processes.

3. What rights should be granted to ratepayers to better contribute to council planning and reporting processes?

The current minimum standards for public exhibition and submissions to Council Planning and budgeting processes act as a barrier to the development of more meaningful consultation methodologies. By effectively reducing the time available for other forms of consultation and participatory decision-making, the exhibition process is an inhibitor rather than facilitator of community engagement.

4. What sanctions should be imposed on councils not complying with planning and reporting requirements?

If The Local Government Act seeks to impose sanctions on local Councils, these sanctions should be designed to ensure compliance (or rectification of a previous non-compliance) rather than the imposition of penalties which would only serve to harm local communities.

Council rates and charges

Principles

With a fundamental overhaul of the taxation system in Australia out of scope for this review, the new Local Government Act should seek to reduce the regulatory burden on the operation of an efficient property rating system. Councils should continue to have options in terms of the system used for levying property rates, as well as the application of differential rating, municipal charges, special rates and other mechanisms to suit local conditions.

Questions

1. Is the current method of declaring rates and charges based on “land” still appropriate?

The current provisions provide sufficient structure to enable Councils to determine a rating structure and methodology that suits the needs of their local community. The limited available rating methodologies together with the application of the Ministerial Guidelines on Differential Rating provide sufficient structure for the sector to ensure consistency between municipalities, balanced with the need for responsiveness to local conditions.

The Yarra City Council uses the Net Annual Value (NAV) to calculate the rates applicable to each property, and supports the retention of this option in the review of the Act. Having undertaken a comprehensive assessment of applying differential rating, the Yarra City Council has determined that its community is better served by the NAV system.

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?

The current legislative framework provides sufficient structure for the levying of ordinary rates, municipal rates and charges and most Special Rate schemes. That said, the restrictions applicable to a number of these tools no longer reflect the contemporary role of local government.

The Special Rate provisions have been structured largely on the assumption that they are to be used for the construction of infrastructure like roads and drainage, and have been problematic in their more recent application to marketing and promotional activities in shopping strips. The restrictions applying to these schemes have limited their application for use as an innovative funding mechanism to achieve community objectives.

In particular, special rates do not lend themselves well to ‘opt-in’ arrangements, where ratepayers are able to choose whether to participate or not.

Some areas where 'opt in' special rates could be used if they were more flexible include:

- environmental efficiency improvements to buildings
- restoration and preservation of heritage buildings
- promotional and marketing activities for retail businesses, tourism operators or industry associations.

Example

The Darebin Solar Savers program undertook to enable the installation of photovoltaic panels on the households of low income residents in Darebin, with a loan effectively provided by the Council and repaid by residents as part of a special rate scheme. The prescriptive process set out in the Act required a public declaration, public submissions, receipt of formal objections and multiple Council resolutions – despite the fact that the scheme was applicable to property owners only on an opt-in basis. It is Council's view that the mechanism for opt-in programs of this type should be simplified to remove the need to undertake the more complex processes applicable to a scheme which can apply to a ratepayer against their wishes.

The service rate and service charge mechanisms in the current Act are limited in application only to waste disposal, water supply and sewage. A more flexible criteria would enable Councils to consider the levying of a service charge or service rate for a broader range of services. This is particularly beneficial where the delivery cost of a service can be easily quantified and applied to individual properties on the basis of transparent criteria. It is also advantageous in that it can be applied to otherwise unrateable land.

Service delivery and financial decision making

Principles

The fundamental principle of transparency is critical to ensuring constituents can be satisfied that their elected Council is managing the municipal finances in the long term interests of the community. The Local Government Act should serve to ensure this transparency is maintained and enhanced.

Questions

1. What powers do councils need to undertake their financial decision-making functions?

Councils need autonomy in relation to financial decision-making, including the ability to undertake commercial and entrepreneurial activities with minimal limitation. Councils and their management team are capable of undertaking meaningful risk assessments and determining the advisability or otherwise of any proposal. The current provisions prescribed to limit entrepreneurial activity by Councils do little to support innovative activities or the pursuit of alternate revenue streams. They also potentially serve to restrict the development of shared services between municipalities.

The review of the Local Government Act provides an opportunity to put in place a legislative framework that supports Councils to pursue alternate revenue sources – enabling a move away from a reliance on property rates where appropriate. If the recently introduced rate capping framework is to be retained following this review, Councils will need the flexibility to explore alternate revenue streams.

Some of these alternate revenue opportunities are listed below, and the intention is to establish a legislative framework that provides Councils with a range of alternate revenue streams that could be implemented where they determine that they are applicable to local circumstances.

- Developer contributions and levies (particularly suited to the establishment of new infrastructure and facilities).
- Infrastructure contributions payable upon the redevelopment of 'brownfield' or 'greyfield' sites in established urban areas to acknowledge the often substantial uplift in value of these sites and offset the impact on local infrastructure, facilities and services (in a similar manner to the application of the current Growth Areas Infrastructure Contribution).
- Special rates and differential rates (where specific costs can be attributed to one group or class of ratepayer).
- Optimising the use of facilities and machinery and making use of downtime for revenue raising or alternate use (ie 'asset sweating').
- Sponsorship, advertising, corporate partnerships and joint ventures.
- Cost reflective pricing for statutory fees and charges (where the existing charges do not reflect the true cost of service provision, resulting in Council effectively subsidising a service).

- Special purpose vehicle company structures to facilitate the delivery of shared services.

While the Local Government Act 1989 currently permits Councils to pursue some of these alternate revenue streams, increased flexibility is desired, consistent with the Yarra City Council's stated desire for financial autonomy.

2. What obligations or restrictions should be imposed on councils in relation to their financial decision-making functions?

The obligations on Council should demonstrate high standards of financial governance and prudence. Transparency and accountability to local communities should be at the core of any such framework.

The sector should not be subject to direction from the State Government in this regard.

3. Should the Act contain detailed processes regarding councils' financial decision-making? If so, what sanctions should apply for non-compliance with these requirements?

The Act should not seek to provide detailed and prescriptive processes for Councils to make financial decisions. Local Councils require the flexibility and freedom to be innovative and responsive to community needs. The ability for Councils to undertake entrepreneurial ventures on their own terms will enable Councils to respond to areas of unmet community need, develop alternate revenue streams, enter into collaborative partnerships with other Councils or the private sector and seek to stimulate local economic activity and growth.

Prescriptive legislative requirements are anathema to municipal self-determination.

Councillor conduct, offences and enforcement

Principles

Councillor conduct in Victoria is, for the most part, of a very high standard. A detailed focus in the review of the Act on the small number of incidents where poor behaviour of a councillor has caused problems for the rest of the sector would be to exaggerate their impact on the sector.

It is important however that sufficient powers be established to enable those rare examples of poor councillor behaviour to be addressed quickly, but these powers should be vested in councils themselves in the first instance, rather than in the state government, Minister or other agencies. Councillors have a right to natural justice in these matters, but any appeal mechanism should be designed to bring about a quick and low cost resolution of the matter.

Questions

- 1. Do standards of councillor conduct need to be improved? If so, how can this be achieved?**

Standards of Councillor conduct can always be improved, but legislative language is unlikely to make a difference. The role of the Municipal Association of Victoria and the Victorian Local Governance Association is important in improving the standards of Councillor behaviour via education and training, and they should be supported by the Victorian government in these efforts.

- 2. What powers do councils need to deal with instances of councillor misconduct?**

Councils need to be empowered to take meaningful action in the event of poor conduct by one of their Councillors, balanced against the need to protect Councillors who express a dissenting view. One suggested improvement is that Councils be required to have an internal dispute resolution process in place (as is now the case) and that sanctions be in place for Councillors who do not participate in this process in good faith.

Each step in this internal process should be exhausted before proceeding to another stage. This is in line with dispute resolution best practice.

- 3. Does the system of councillor conduct panels need to be improved? If so, how?**

The greatest problem with the system of Councillor Conduct Panels is the amount of time taken to work through all steps of the process. The current process contributes to a public perception of inappropriate behaviour of some Councillors and Councils. It remains to be seen what the impact of recent changes to the Councillor Conduct Panel processes will be.

As to the conduct of the panels themselves, it should be made clear that given the consequences, the standard of proof of beyond reasonable doubt should be applied, with the onus being on the Conduct Panel to establish malfeasance. This standard should also be applied to the Ombudsman and other inquiries with need for corroboration of allegations and innuendo and a satisfactory onus and standard of proof applied with conduct related to malfeasance and not just being less than best practice or what is desirable.

4. Is there a need for additional offences to be included in the Act? If so, what are they?

The Act currently contains a number of offences for poor Councillor behaviour, yet very few successful prosecutions have been undertaken. This reflects the rarity of breaches of these provisions, the limited nature and impact of breaches, and the unwillingness of the various integrity bodies and the courts to entertain prosecutions given the circumstances of breaches. It is considered that the introduction of additional offences in the Act will be of little benefit.

5. Is there a need to improve investigation and enforcement of the Act in any way? If so, how?

Enforcement of the Act needs to be much more timely, seeking to correct poor performance before it becomes unnecessarily destructive. The recent changes to the Act will go some way to achieving this objective in that they will be able to enable Councillor Conduct Panels to operate more effectively by expanding their jurisdiction and creating a clearer hierarchy of dealing with misconduct allegations against councillors.

That said, as far as possible, investigation and enforcement of provisions should commence at the earliest opportunity at the internal Council level rather than escalating to external review.

Ministerial powers

Principles

The role of the Minister for Local Government is primarily as the sector's chief advocate – ensuring that impacts on local government are part of Cabinet and Government decision-making. The introduction of a requirement to include local government impact statement in all Cabinet submissions is welcomed by the Yarra City Council.

Questions

1. **Should the role of the minister be described in the Act? And if so, how should this be described?**

A description of the minister's role the Act should ensure that the minister is responsible for supporting the role of local government as set out in both the Constitution Act and the Local Government Act.

Most importantly, the Act should describe the role of the Minister as an advocate for the local government sector with responsibility for promulgating the State Local Government Agreement and application and compliance by State agencies of the terms of the State Local Government Agreement in relation to consulting and engaging with local government.

2. **What powers should be provided to the minister in the Act:**
 - a) **in relation to 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?**

The Minister should have powers to intervene only in the most extreme of circumstances, correcting malfeasance of an individual Councillor, issuing directions to a Council in relation to failings in governance and otherwise taking action to ensure compliance with the Act. The Minister should only intervene where conduct amounts to a major transgression or malfeasance and the matter cannot be resolved internally.

The Minister's powers should be codified to ensure that the Minister cannot intervene on matters of policy and that the Minister must meaningfully consult with the affected Council before imposing any Ministerial direction. Above all, the independence of local government as a self-governing entity, accountable to its community, should be observed as set out in the Constitution Act.

3. **What penalties should be included in the Act in relation to councils not complying with the exercise of the minister's powers?**

Assuming the Minister's powers are used rarely and only in the most extreme circumstances, the Minister should have the power to ensure compliance. A discussion on imposing penalties is taking the wrong approach – the Minister should be able to ensure that a Council complies - by direct intervention if necessary.

Harmonisation of the Local Government Act

Principles

Simplification and harmonisation of the Local Government Act should be sought where possible, as the Act is unnecessarily complex in many cases seeking to regulate matters which should be left to protocols and common sense. Where there are inter-relations between multiple Acts so as to raise conflicts of law, clear statements should be made as to which Act will prevail.

Questions

1. What aspects of the Act should be amended to better harmonise with related legislation?

There are a range of areas of the Act that can be harmonized, beginning with those areas which are better included in other Acts. One large area is the section on Local Government Elections – arguably this could be removed in its entirety and covered by provisions in the Electoral Act.

2. How can council responsibilities in relation to other legislation be made clearer?

Council responsibilities in relation to other legislation (some 150 separate statutes) are complex and always changing. It is unlikely that these responsibilities would be able to be meaningfully codified in the Local Government Act.

3. Are there provisions in the Local Government Act 1989 that could be improved to clarify their interaction with other legislation? How could they be improved?

One area for clarification is Council's role as a Responsible Authority (RA) under the Planning and Environment Act. While Councils (when operating as the RA) have an obligation to consider the impacts on planning according to the statutory requirements of the planning scheme, Councillors frequently can confuse this role with that of being an advocate for the views of residents in a local municipality or a single Council Ward. Some specific direction may be useful in this regard. However, this could readily be covered in Councillor induction and training.

Example

According to the Planning and Environment Act 1987, planning schemes must seek to further the objectives of planning in Victoria within the area covered by the scheme. In turn, this means a Council, in applying the scheme, must "balance the present and future interests of all Victorians" (section 4(1)(g)). This requirement to consider the needs of all Victorians (potentially at the expense of local constituents) creates conflicting obligations for Councillors as democratically elected representatives.

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?**

The focus of this review should be the Local Government Act.

5. **Does the Act contain any matters that should be transferred to other Victorian legislation? If so, why?**

There are a number of inclusions in the Local Government Act which could be considered for transfer:

- Part 3 – Elections (to the Electoral Act)
- Schedule 6 – Equal Employment Opportunity (to the Equal Opportunity Act)
- Schedule 10 – Power of Councils over roads (to the Road Management Act)
- Schedule 11 – Power of Councils over traffic (to the Road Management Act)

It is important that any decision to transfer provisions from the Local Government Act 1989 to another Act does not seek simply to directly transfer the current provisions to that alternate legislation. This review provides an opportunity for further dialogue with the sector on the scope of Councils powers in relation to these matters.

Example

The Local Government Act 1989 and the Road Management Act 2004 together provide Councils with powers over the management of local roads. This review provides an opportunity to transfer these provisions entirely to the Road Management Act and at the same time provide more flexibility to Councils in road management to enable innovative approaches to the use of roads including shared spaces, urban agriculture, pop up parks and innovative traffic management.

Additional Matters

In addition to the matters raised in the Discussion paper, the City of Yarra has identified a number of other issues which warrant consideration at this early stage.

Municipal Associations Act 1907

A comprehensive review of the Municipal Associations Act should include:

- consideration of the relevant recommendations of the Victorian Auditor General in his February 2015 report *Effectiveness of Support for Local Government*.
- consultation with the sector about whether the scope of the Municipal Associations Act reflects the contemporary role of the Municipal Association of Victoria and the existence of the Victorian Local Governance Association.

If the MAV is to remain the peak body for local government in Victoria, it needs to be supported with enabling legislation that empowers the MAV membership to determine the organisation's role and should have powers in its enabling legislation that are broadly defined and consistent with the powers afforded to its constituent member Councils.

City of Melbourne Act 2001 and City of Greater Geelong Act 1993

The review of these Acts should ensure that wherever possible, the legislative framework for the Cities of Greater Geelong and Melbourne are consistent with that for other municipalities, and these Acts should be narrowly defined to only include those matters which are unique to these municipalities.

Establishment of regional bodies and local government partnerships

In the contemporary environment, Councils have increasingly turned to the formation of regional collaborations or partnerships with each other, and there is no straight-forward mechanism to do this in the current Act. The only relevant provision relates only to the establishment of Regional Library Corporations and this could perhaps be used as a model for the development of a more broadly drafted provision.

Example

The City of Yarra is a member of the Inner Melbourne Action Plan Implementation Committee – a partnership of five councils from across Melbourne's inner region. In order to provide the group with necessary delegated authority, each of these councils has been required to establish a separately constituted special committee under section 86 of the Local Government Act. Five committees with five separate (yet identical) Instruments of Delegation.

Future changes to the Local Government Act

The need for the current review of the Local Government Act 1989 has arisen in part due to the sporadic and ad hoc nature of changes introduced to the Act over the past 25 years. These changes have often been made as a result of a specific event, and there has been limited consultation with the sector as to the implications of the changes.

Consideration should be given to introducing a mechanism requiring meaningful engagement with the local government sector and its representatives about any future changes to ensure that this cycle of sporadic change is not repeated. Different models for achieving this objective (with different levels of effectiveness) include:

- A description of the role of the Minister for Local Government set out in the new Local Government Act that includes a requirement to consult with the sector prior to considering any change to the future Act.
- A requirement similar to that set out in section 208J of the Local Government Act 1989 which currently requires that the Minister must consult with any local government body that the Minister thinks it appropriate to consult with prior to the making of a Best Value Code.
- A requirement similar to that set out in section 18 of the Constitution Act 1975 which makes it unlawful to present an alteration of that Act to the Governor for assent unless it has been subject to a referendum, modified to require a referendum of Victorian Councils, with each Council entitled to one vote.

Consultation with the local government sector should include all local Councils, as well as Local Government Professionals Inc., the Municipal Association of Victoria, and the Victorian Local Governance Association.

Responding to future issues

A key strength of local government is its engagement with and focus on delivering services and infrastructure for community with lesser administrative costs than other tiers. It is essential that the focus by the State on controls and processes does not undermine this strength. Already Councils have had to engage additional staff and apply additional resources to reporting and processes at the behest of the State agencies – compliance obligations that have often arisen as a result of a failing in governance at just one Council. This has shifted scarce local government resources away from service and infrastructure delivery to administrative processes. Councils are subject to a far wider array of scrutiny mechanisms unknown to other tiers of government even though the practices and consequences are higher at those tiers.

In response to future issues, it is suggested that the Local Government Act provide a mechanism for the Minister to introduce compliance or reporting obligations on just one Council, rather than through a legislative change with a blunt application of obligations across all municipalities.

Further Information

For further information about any of the matter raised in this submission, please contact:

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