



**Corporate Centre**

76 Royal Avenue, SANDRINGHAM  
PO BOX 27 SANDRINGHAM VIC 3191  
T (03) 9599 4444  
F (03) 9598 4474  
enquiries@bayside.vic.gov.au  
www.bayside.vic.gov.au

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

Dear Sir

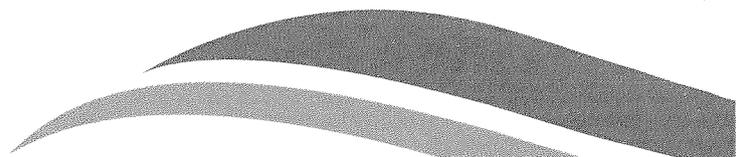
Please find attached a submission on the Review of the Local Government Act discussion paper endorsed by Bayside City Council at its meeting on 15 December 2015.

Bayside City Council looks forward to further engagement and consultation of the review in the coming months.

Yours faithfully

A handwritten signature in black ink, appearing to read "Terry Callant", written in a cursive style.

Terry Callant  
**Manager Governance**



# Submission on the review of the Local Government Act December 2015

## Executive Summary

Bayside City Council welcomes the opportunity to make a submission on the review of the Local Government Act. This is an important review which touches on many key areas that are fundamental to the integrity and good governance of local government.

The need for review and possible reform in some specific areas will ensure the reputation of the local government sector is enhanced and bring with it increased community confidence within the sector.

History tells us that the Local Government Act has had very few complete reviews, namely 1958, 1989 and the 1989 has been the subject of more than 90 amending Acts. Local Government continues to evolve and it is essential that the Local Government Act reflects the desires and integrity of the sector.

The views expressed in this submission were endorsed by Council at its meeting held on 15 December 2015. Whilst there have been many issues and questions raised within the Discussion Paper, Bayside has focussed its submission on those areas that it believes will most impact on improved local government integrity, governance and democracy.

This submission provides Bayside City Council's views on the following chapters outlined in the Discussion Paper:

- Chapter 1    Reviewing the Local Government Act 1989
- Chapter 2    The role of Councils
- Chapter 3    How Councils are elected
- Chapter 4    How Councils operate
- Chapter 5    Planning and Reporting
- Chapter 6    Council rates and charges
- Chapter 7    Service delivery and financial decision making
- Chapter 8    Councillor conduct, offences and enforcement
- Chapter 9    Ministerial powers
- Chapter 10   Harmonisation of the Local Government Act

## Chapter 1 – Reviewing the Local Government Act 1989

Council acknowledges the need to review the Local Government Act 1989 given the Act has been extensively revised and altered over the past 25 years with over 90 amending Acts.

The Act overtime has become ambiguous and inconsistent, whilst the structure of the Act is considered cumbersome. The 1989 Act was initially designed as an enabling Act, however it now also includes highly prescriptive sections which make the Act difficult to use and often unclear.

The opportunity for the sector to be involved in the architecture of the revised Local Government Act is one that does not come often. It is important that the Act reflects modern and contemporary governance practices, and at the same time strengthen the logic and coherence of the legislative framework. More importantly the Act needs to have the appropriate balance between state government oversight and local government sector autonomy.

One of the key discussion points overarching the review paper is considering the types of the provisions in the Act. The three fundamental types are:

‘Normative’ – which describes the normal behaviour or ways of doing things that should be followed through broad principles;

‘Enabling’ – which provide a general power to perform an act, such as giving councils power to make local laws and levy rates; and

‘Prescriptive’ – which set out detailed requirements that must be followed and raise the further issue of how non-compliance with these provisions should be dealt with.

The level of prescription required in the legislation either in the Act itself or through regulations is indeed the talking point. It is considered that the Local Government Act should be far more empowering than prescriptive.

However, it is important to acknowledge that the intent to modernise and streamline the Act will present some risks including:

- A decrease in parliamentary scrutiny and increase in Ministerial powers may dilute the strength of local government as a legitimate tier of government;
- An increase in cost-shifting if local government is increasingly required to increase its services and regulatory functions without the power to adequately fund these.

The efficiencies gained in streamlining and modernising the Act at this stage of discussion are unclear and would require further understanding of the framework and processes that would underpin a new Act for this to work effectively.

## Chapter 2 – The role of Councils

### Preamble

The status afforded to local government within the State Government and through legislation is not reflective of the importance placed on local government in the Victorian Constitution as a distinct and essential tier of government, an economic force and a major service provider and more importantly the closest form of government to the people and encouraging a sense of community belonging. Therefore consideration should be given to ways to elevate the status and prominence of local government within the State of Victoria.

### Objectives, roles and functions of Council

The current objectives, roles and functions of Council as currently expressed within the Local Government adequately express the key roles and functions of Council, and provide a clear understanding to the reader of Councils' responsibilities, however it could be summarised with an overarching statement being *Local Government is to provide good and sound government of its community*.

As the sector moves forward to a rate capping environment the concept of efficiency and effectiveness will be of increasing focus, and this will be a key objective of future councils, therefore greater emphasis should be placed on efficiencies and effectiveness.

Currently the key objectives, roles and functions do assist Councillors, staff and members of the community to clearly understand the broad functions of a Council. The objectives, roles and functions should be maintained within the Act. The recent amendments within the Local Government (Improved Governance) Act 2015 have gone a little way to assist in providing clarity on the role of the Mayor and a Councillor, however, this should be further explored to provide clear guidance to elected representatives.

## Chapter 3 – How Councils are elected

Recent legislative change establishing the Victorian Electoral Commission (the VEC) as the statutory provider of election services and non-voting enforcement is an appropriate reform contribution to the integrity of council elections.

Bayside City Council provided a submission to the Local Government Electoral Review in the Panel in 2014. Some of those key points in the submission are reinforced for consideration in this review:

- Update of CEO's list undertaken every two years
- Introduction of a standard candidate information template to provide consistent information;
- Candidates preferences not to be included in the ballot pack for postal voting;
- Increase candidate application fee to \$1,000;
- Payment of fee made by personal credit card or cheque no cash;
- Compulsory attendance of candidates to a basic induction training prior to lodging an application;
- Refund of candidate application fee whereby candidate obtains 10% of first preference votes;
- Campaign donations disclosure to occur immediately a donation is received rather than after the election; and
- Release of candidate application fee be linked to the receipt of the campaign donation disclosure form.
- Improved guidance from Local Government Victoria on what material can remain on websites during Caretaker Period; and
- Review of the certification process of all council documents during Caretaker period.
- Method of voting remains a decision of the local government authority;
- Development of guidelines and restrictions in relation to authorising electoral material on social media;
- Education opportunity of the electoral process be included in the mandatory candidate induction program.

### Electoral structures

In relation to the electoral structures of local government councils, this should be a matter for individual councils to determine having regard to detailed research of communities of voters and a fair and equitable distribution of voters, but also an effective number of councillors that supports team dynamics.

The electoral structures of the local government sector vary from 27.8% unsubdivided, 39.3% multi member wards, 19% a combination of multi and single member wards and 13.9% single member wards. This combination of structures is complex, and if the VEC continue to conduct electoral reviews, greater weight should be placed on the local council and community submissions when reviewing structures.

It is suggested that the current options for electoral structures be maintained to provide the flexibility for a structure that better accommodates local circumstances and communities.

It is also suggested that the VEC place greater weight on the structure preferred by the council and the local community as a result of submissions in making electoral structure recommendations to the Minister.

### Compulsory voting

The discussion paper raises the question of whether compulsory voting should apply to all persons on the voters roll including those aged over 70. Council is supportive of ensuring compulsory voting be extended to persons aged 70 and over, bringing local government arrangements in Victoria into line with other jurisdictions. Council also raised this matter in its submission to the Local Government Electoral Review.

## **Chapter 4 – How Councils operate**

### Improved governance

Bayside City Council supports the greater clarification of roles and responsibilities of the Mayor, Councillors and the Chief Executive Officer as provided within the Local Government (Improved Governance) Act 2015. However, appropriate mandated training should be provided to all councillors to ensure that there is a thorough understanding of all roles including the administration and the statutory obligations required of mayors and councillors. Ideally this induction training should take place prior to undertaking the Oath of Office.

The current arrangements for Council to hold Ordinary and Special Council meetings should be retained. Guidance should be provided on the conduct of Councillor Informal Meetings (assemblies of Councillors). The ability for individual councils to determine the meeting procedures through the development of a Local Law should be retained.

The discussion paper raises the practice of councils appointment of special committees to undertake a number of non-statutory, operational roles for example managing sporting pavilion hire, art gallery etc. It is suggested that this model should be explored further to enable community involvement in the management of local facilities.

### Consultation and engagement

Bayside strongly supports the enabling provisions provided within the current Act including the principles provided in the role of Council in Section 3D(2):

- Acting as a representative government by taking into account the diverse needs of the local community in decision making; and
- Fostering community cohesion and encouraging active participation in civic life.

Bayside encourages consultation and values the contribution of its engaged community. Consultation is a priority and accordingly Council has adopted its own engagement framework which will assist in a greater reach to the community. Consultation and engagement is fundamental of the role of local government and greater effort needs to be focused on quantifying the value and benefit of current practice in the sector, rather than a focus on greater prescription and/or compliance.

## **Chapter 5 – Planning and Reporting**

Bayside takes seriously its fundamental role in improving liveability, both now and for communities and it is suggested that longer term planning would achieve this. The opportunity to link long term plans with tangible measures of liveability can only enhance the performance of councils through meaningful community outcomes.

Currently the sector is required to develop a Council Plan, a number of strategic documents such as budget, long term financial plans and strategic resource plans and also the ever increasing performance reporting requirements, any further increase in the development of plans and increased reporting should be counterbalanced by the removal of the reporting duplication that currently exists so that the overall resources required to meet these requirements is not increased. It is imperative that any additional planning and reporting requirements add value.

Across many councils the strategic document known as the 'Community Plan' is seen as a more long term document spanning more than 10 years, whilst the Council Plan largely fulfils the need for a medium term strategy. However, stronger guidance on the content and structure across the sector would help to ensure more consistency across the sector using the same language.

Similarly more guidance on community engagement relating to the Council Plan, Strategic Resource Plan, Long Term Financial Strategy and Annual Budget is required. The existing public exhibition process and public submission process should be retained. However the provisions of Section 223 of the Act regarding publication of public notices in newspapers do not reflect the new digital paradigm in society.

Diminishing newspaper readership suggests that classified advertising in daily newspapers is unlikely to reach a broad cross-section of the community, let alone the target audience within a particular local government area. Mandatory advertising in newspaper classifieds is both costly and inefficient. Council therefore supports a change to the definition of public notice for the purposes of Section 223 to remove the requirement to publish public notices in a newspaper.

It is important that the Act does not place unreasonable demands or unrealistic timeframes on Councils, particularly given the increasing tight fiscal climate faced by the sector. Any sanctions required, should be developed with engagement with councils or additional support mechanisms put in place, to assist councils regarding compliance requirements and best practice processes.

## **Chapter 6– Council rates and charges**

### Rate revenue

The discussion paper raises the question of whether the current method of declaring rates and charges based on “land” is still appropriate. Given that rates and charges are likely to remain councils’ primary source of revenue (in relation to Bayside that is 71% of revenue), Bayside submits that the current method of declaring rates and charges is still appropriate.

### Rating powers

The current suite of rates and charges provide councils with the flexibility to raise revenue by application of a general rate, by differential rates, by a municipal charge, by a service rate or annual service charge and by special rates and charges. Under this regime, councils have the ability to consider which option best suits a particular circumstance. It is Bayside’s view that councils should continue to have the full suite of rates and charges options.

Bayside also prides itself on delivering valued and affordable services to the community and is committed to continuous improvement. However, rates capping represents a significant risk to its long-term financial sustainability and its ability to continue to deliver those valued services to the community. While it is commonly accepted that the rates capping policy has a legitimate electoral mandate, it inadvertently erodes the local government powers as a legitimate level of government and exacerbates the imbalance between the three levels of government.

An alternative framework could be introduced which is focussed on performance based mechanism that drives local government efficiency and transparency for performance and value for money. Liveability outcomes measures could be central to this model.

### Ratepayer rights

The current Act is prescriptive in terms of the steps to be followed in relation to levying rates and charges. The current provisions provide appropriate safeguards to protect the rights of individuals affected by a special rate or charge.

The process for community members to make submissions on the budget is an appropriate avenue for submissions on the proposed rate in the dollar given the linkage between the budget and the income needed to fund the budget expenditure.

## **Chapter 7 – Service delivery and financial decision making**

Delivery of high quality services, performance reporting, service standards and reviews are considered to be an important part of building community confidence and are the ingredients of a high-performing Council. Service reviews provide a wonderful opportunity to continuously improve programs and services that provide improved public value, community benefit. Inter-Council collaboration should be encouraged and supported by the removal of existing barriers and an efficient legislative base for joined up Council procurement, service delivery and resource sharing.

The strength of the current best value principles as indicated within the Act is that there is great flexibility in how they are applied across the sector. There is some value in comparing service levels and the cost and quality of services delivered across municipalities. However it has become more difficult to compare service levels, cost and quality across all services given the variation in the types of services provided.

## **Chapter 8 – Councillor conduct, offences and enforcement**

More recent amendments introduced to Parliament to address councillor conduct will improve standards. In reality, only a relatively small number of councillor conduct issues arise as a small proportion of total councillor numbers, and these can be mostly dealt with under the current and proposed Code of Conduct and Council Conduct provisions.

As a Council that has experienced a Councillor Conduct Panel hearing, the system requires a review to ensure it is respectful to all parties. The currency of panel members should be refreshed annually to ensure a greater weighting of individuals with local government knowledge and experience to better understand the issues associated with a panel hearing.

The existing criminal or serious misconduct provisions appear adequate to deal with serious misconduct of a councillor.

The signing of the Councillor Code of Conduct has some merit, however a key success factor of the Code of Conduct is ensuring all Councillors are involved in the development of the Code, and have completed a mandatory induction program to understand the roles and responsibilities. The signing of the Code is merely a formality.

## **Chapter 9 – Ministerial powers**

This is a key principal for discussion as part of this review. Local Government in Victoria is constitutionally recognised as a distinct and essential tier of government. Further, councils are democratically elected, and are accountable to the voters to comply with relevant legislation and act in the best interest of their community.

The system of local government in Victoria is established and administered by state legislation, and therefore the Minister has an important and fundamental responsibility to oversee the Act and its workings in its entirety. Further, there is considerable existing public sector accountability frameworks (eg: VAGO, Ombudsman, IBAC, etc) exist to monitor the performance of local government. The Minister's powers to appoint boards of inquiry, local government panels, commissioners or administrators should only be used in exceptional circumstances.

The Minister's power to make subordinate legislation should be retained, and should enable more prescriptive matters to be contained in regulations rather than the Act.

The suspension or dismissal of either a councillor or a council should only be exercised by the Minister in extreme circumstances.

One of the most important decisions councils make is the appointment of a Chief Executive Officer. The Minister should not have the power to intervene in the employment of the Chief Executive Officer.

## **Harmonisation of the Local Government Act**

### Conflict of Interest

The Conflict of Interest provisions are too complex and can be confusing. They also lead to misconceptions by the community as to what is, and is not, a conflict of interest. It is suggested that the conflict of interest provisions should be expressed with sufficient clarity to enable a clear understanding of the requirements by any person.

### Public Consultation provisions – Section 223

The Section 223 provisions were enacted well prior to privacy legislation being introduced and abiding by privacy legislation causes variation across the sector. Clarity is required as to the information to be made available from the public submission process.