

# LOCAL GOVERNMENT ACT REVIEW – RESPONSE TO DISCUSSION PAPER BY MAV ON BEHALF OF THE SECTOR

## Preamble

MAV convened a roundtable of Mayors, councillors, Chief Executive Officers and council officers on Thursday 12 November 2015 to help shape a sector submission on the discussion paper. A preliminary submission was developed based on the feedback and comments made at the roundtable session. The roundtable discussions centred on those issues that were considered by the attendees to be of a higher order of importance, rather than simply trying to address the various questions raised throughout the document. The draft was distributed to councils for comment and these have been taken into account in this submission.

It is considered that many of the questions posed in the discussion paper go to matters of detail which will be teased out in the directions papers and future consultation with the sector.

This submission represents preliminary sector views. It is intended that it stand alongside submissions made by individual councils and councillors in this first phase of consultation. It is recognised that there will be diverse views across the sector on a number of issues. Notwithstanding this, the sector has previously determined a position on some of these matters. Where there is an established sector position, it has been indicated below in the discussion points (and highlighted in shading).

## The role of councils (Chapter 2)

### Discussion point: Status of local government

Chapter 1 acknowledges that local government:

- Is a significant contributor to the Victorian economy and is a critical delivery partner for the state government in improving the lives of Victorians
- Employs over 50,000 people
- Spends more than \$7 billion on service delivery and \$2 billion on infrastructure annually
- Manages over \$70 billion in public assets

MAV submits that the status afforded to local government within the State Government 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. It is noted that in South Australia, local government is the purview of the State Premier. The current review provides the opportunity to elevate the status and prominence of local government commensurate with its importance to the State.

### Sector position:

That consideration be given to ways to elevate the status and prominence of local government commensurate with its importance to the State of Victoria.

### Discussion point: Minister's role

Chapter 9 states that “the Minister’s role is to both oversee the operation of the system of local government and to act as an advocate for local government within government”. MAV submits that the current Minister and her predecessors have largely focused on the overseeing aspect of the role. It is suggested that it is time that the focus shifted towards:

- The Minister’s advocacy role for local government within government
- Building sector capacity
- Strengthening the financial viability and sustainability of the sector generally

Advocacy in government should involve protecting and advancing the interests of local government. This should include advancing the case for local government and, amongst other things, resisting cuts to State Government grants and cost-shifting generally. It is acknowledged that local government may not be aware of any advocacy role played by the Minister on behalf of local government, within the State Government.

**Sector position:**

The Minister is requested to actively develop and strengthen the sector through:

- Increased advocacy on behalf of the sector within the State Government
- Building sector capacity
- Strengthening the financial viability and sustainability of councils

**Discussion point: Role and powers of councils**

MAV submits that any discussion of the role of councils needs to acknowledge the complex nature of councils. Councils perform the functions of a government, an enforcement agency, a planning authority, a service provider and a construction agency (buildings and infrastructure). From time to time councils are required to perform the role of a collection agency on behalf of the State Government.

As a general principle, and in line with the intentions of the current Act when it was enacted, it is considered that the new Act should be predicated on a general power of competence. This would reflect the standing of local government as a distinct and essential tier of government with a commensurate measure of independence and autonomy. A general power of competence would provide a legislative framework that would enable councils “to be accountable to their communities in the performance of functions and the exercise of powers and the use of resources”. In essence, such a power would provide the ability for councils to better reflect the needs and expectations of their local communities.

It is accepted that the new Act will need to strike a balance between normative, enabling and prescriptive provisions. Regardless of the type of provision, it is imperative that the provisions be clear and unambiguous in both intent and language.

In relation to prescriptive provisions, the driving principles for these should be where:

- There is an overriding public interest, including transparency and accountability
- A need exists to safeguard the rights and entitlements of individuals

- There are natural justice and due process considerations
- There are government assurance and probity requirements

The practice of using local government as a collection agency on behalf of the State Government places an unfair burden on councils, particularly lowly resourced small rural councils. This is not considered to be a legitimate role of local government and should cease.

**Sector position:**

That the new Act:

- Recognise and encompass the multi-functional nature of local government i.e. being a distinct and essential tier of government, an enforcement agency, a planning authority, a service provider and a provider of infrastructure
- Provide a general power of competence to councils
- Be drafted so as to be clear and unambiguous in both legislative intent and legislative requirement
- Contain prescriptive provisions based on clear principles and policy objectives. It is proposed that these principles and objectives be framed around:
  - The existence of an overriding public interest, including transparency and accountability
  - The need to safeguard the rights and entitlements of individuals
  - Requirements for ensuring natural justice and due process
  - Government assurance and probity requirements

That the practice of using local government as a collection agency on behalf of the State Government cease.

**Discussion point: Sector consultation on legislative changes**

The discussion paper acknowledges that the current Act has been extensively revised and altered over the past 25 years. The Act has been amended, on average, about three times a year for each of these years. MAV submits that, as a consequence, many changes, some of which have been ad hoc and reactionary, have detrimentally impacted the logic and coherence of the current Act.

The sector has been disappointed and frustrated that many of these changes have been done without any, or only scant, consultation with the sector. There is a real opportunity for the Minister to involve the sector in discussions at an early stage once a policy gap has been identified. Better outcomes are likely to be achieved where the sector is involved in the development of solution options rather than being asked to comment on draft legislation. MAV submits that future legislative changes to the new Act should only take place after a full and proper consultation process has been undertaken with the sector to ensure that the implications of the changes are fully understood and appreciated. This approach is in accordance with the spirit and intention of the Victorian State Local Government Agreement.

**Sector position:**

That:

- the State Government commit to a formal consultation process for the consideration of any proposed amendments to the Local Government Act
- the formalised consultation process provide for sector consultation when a policy gap is first identified

**Discussion point: Administrative decision-making**

The discussion paper recognises that councils function as administrative decision-making bodies. Administrative decisions differ from councils’ other decisions in that they involve the exercise of statutory discretion and affect the rights and interests of individuals. The discussion paper raises the issue of whether the Act should provide clearer guidance on the making of administrative decisions that accord with administrative law requirements but also recognises the uniquely democratic and constitutional status of councils. It also raises the prospect of default provisions addressing external review of councils’ administrative decisions. It is considered that there should be additional guidance for councils in undertaking their administrative decision-making function. As a matter of principle, external review processes should be consistent with those that apply to administrative decisions made by State Government agencies.

**Sector position:**

That:

- Additional guidance should be provided to councils in undertaking their administrative decision-making functions
- Any consideration of external review processes should be based on those that apply to the administrative functions exercised by State Government agencies

**Discussion point: Penalties**

There are a number of instances throughout the discussion paper where the prospect is raised of applying penalties where provisions of the Act are breached. Notwithstanding this, the discussion paper does not identify that councils breaching provisions of the Act is occurring to an extent that it has become a significant problem. From our standpoint, we believe that councils make every endeavour to comply with the provisions of the Act and that where there are breaches, this is caused by inadvertence rather than any intent to do so.

The discussion paper differentiates between the drivers for sanctioning individual wrongdoing from regulatory compliance by the organisation. The need to sanction individual wrongdoing is understood and supported.

MAV submits that in relation to penalties for organisational breaches, local government should be treated in the same way as other levels of government.

It is considered that (if a problem actually exists), organisational non-compliance can be better managed by:

- Clearer and unambiguous legislative provisions
- Sector capacity building

- The issue of frequent and timely advice and guidelines by LGV, particularly where compliance issues with certain legislative provisions are identified
- Providing for the voiding of decisions (where this can be justified because of the denial of natural justice or contrary to the public interest) where the legislative provisions have not been complied with

It is considered that there are inconsistencies in the severity of the penalties applicable in the existing Act for various breaches of the Act. A comprehensive review of the penalties should be undertaken to achieve a consistent approach.

**Sector position:**

That:

- Council non-compliance with legislative provisions be managed by:
  - Clearer and unambiguous legislative provisions
  - Sector capacity building
  - The issue of frequent and timely advice and guidelines by LGV, particularly where compliance issues with certain legislative provisions are identified
  - Providing for the voiding of decisions (where this can be justified because of the denial of natural justice) or in the absence of compliance with prescriptive legislative provisions
- A comprehensive review of the existing penalty provisions for individuals be reviewed to achieve a consistent approach

**Discussion point: Regulatory oversight**

MAV submits that the current review provides an opportunity to consider the extent of regulation and oversight of the activities of the local government sector. As outlined in the discussion paper, the Minister has an oversight role together with a range of powers to intervene in council activities. In addition, there are roles and responsibilities allocated to Local Government Victoria, the Local Government Inspectorate, the Victorian Auditor General’s Office, the Ombudsman, VCAT and IBAC. These are all in addition to the availability, where appropriate, of judicial review. There is a sense across the sector of being over regulated. There is an opportunity to consider clear demarcations between the roles and functions of these various bodies in relation to their involvement in local government.

**Sector position:**

That consideration be given to the existing oversight and regulatory framework of local government with a view to reviewing and establishing clear demarcations between the roles and responsibilities of the various regulatory bodies.

**How councils are elected (Chapter 3)**

**Discussion point: Representational ratios**

The discussion paper identifies that voter ratios vary dramatically across Victoria. It also indicates that the Terms of Reference for the review rule out changing the allowable band of 5 to 12 councillors. MAV submits that the current band does not adequately provide for the future growth in council population numbers. It is considered that better representational ratios could be achieved in the future for growth councils if the band was between 5 and 15 councillors. It is also considered that the band numbers should be restricted to odd numbers to reduce the potential for tied votes at meetings.

The Local Government Electoral Review recommended that the upper limit of the band be increased to 15 with the provision for councils to have 6, 9, 12 or 15 councillors. The MAV submission, based on council feedback, was strongly opposed to increasing the number of councillors on the grounds that:

- There is no evidence of any community concern with the current ratio of voters to councillors
- The increased numbers are likely to have detrimental impacts on good governance
- The increased costs of additional councillors cannot be justified
- The proposed arrangements develop significant anomalies between councillor voter ratios across/between councils.

The ability to increase the number of councillors to 15 without being tied to the combinations of 6, 9, 12 or 15 should be the subject of further discussion with the sector in relation to growth councils and appropriate representational ratios.

#### **Sector position:**

That:

- in order to accommodate increasing population numbers in growth councils and to provide for appropriate voter to councillor ratios, further discussion be undertaken on the prospect of the upper limit of the band being increased to 15
- Councillor numbers should be set at odd numbers only across the number range

#### **Discussion point: Electoral structures**

The discussion paper identifies the range of electoral structures available under the Act. The current arrangements show that 27.8% are unsubdivided, 39.3% are multi-member wards, 19% are a combination of single and multi-member wards and 13.9% are single member wards. At the roundtable plenary a common view was that the current complexion of the electoral structures reflects the VEC's preference for multi-member structures. There is a perception that more councils would have preferred to have single member wards.

The Local Government Electoral Review recommended discontinuing with "mixed wards" (single member wards combined with multi-member wards and non-uniform multi-member wards). The MAV submission stated that "although it is considered that the fairness and equity driver for this recommendation is sound, it is also considered that the option of mixed wards should be available where local circumstances warrant.

MAV submits that the VEC should place greater weight on the local council and community submissions when conducting a periodic electoral review.

**Sector position:**

That:

- the current options for electoral structures be maintained to provide flexibility for a structure to be implemented that better accommodates local circumstances.
- The VEC be directed to place greater weight on the structure preferred by the council and the local community in making electoral structure recommendations to the Minister.

**Discussion point: Voter franchise**

The discussion paper discusses the current voter franchise and possible options.

The Local Government Electoral Review recommended that:

- The voter franchise for Victorian local government elections be broadened to bring it into closer alignment with the “local community” as defined in the Local Government Act 1989.
- To give effect to the revised state-wide franchise, the following eligibility criteria be implemented a through a revision of the Local Government Act 1989:
  - Aged either 18 and above and either
  - Citizens and permanent residents living in the municipality
  - Owners of property in the municipality
  - Lessees of non-residential property in the municipality
  - Those who pay rates on a property in the municipality
- A person may be enrolled only once in a municipality, regardless of how many entitlements they may have
- A corporation may nominate only one representative, who may be enrolled only once in a municipality.

The MAV submission supported:

- the broadened franchise in principle
- the proposition that a person can only be enrolled once in a municipality
- only one corporation nominee
- permanent residents being capped at two per property
- retention of the cap of two on the number of owners who can be enrolled per property
- continuation of the automatic enrolment of two property owners per property
- the enrolment in their own right of lessees and non-resident ratepayers subject to a cap of two per property.

**Sector position:**

The recommendation of the Electoral Review is supported subject to the proposed qualifications advocated in the MAV submission on the Review.

**Discussion point: 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.

The Local Government Electoral Review recommended that:

- the Local Government Act 1989 and electoral regulations be amended to make voting compulsory for all those enrolled to vote
- The application of compulsory voting be extended to persons aged 70 and over, bringing local government arrangements in Victoria into line with other jurisdictions

The MAV submission to the Electoral Review:

- Did not support compulsory voting other than for those on the State roll in line with the provisions for State and Federal rolls
- Supported compulsory voting for those on the State roll aged 70 and over.

#### **Sector position:**

The position taken in the submission to the Electoral Review is reaffirmed.

#### **Discussion point: Candidate eligibility**

The discussion paper raises the question of whether or not all those who are on the council electoral roll should be entitled to stand for election.

The Local Government Electoral Review recommended that “The eligibility criteria to stand for election to local government be broadened to align with the right to vote in local government elections”.

The MAV submission to the Electoral Review was that Australian citizenship should be a prerequisite to stand for council elections as it is at the State and Federal levels.

#### **Sector position:**

The position taken in the submission to the Electoral Review is reaffirmed.

#### **Discussion point: Voter information**

The discussion paper states that a number of recent surveys have found that voters do not have adequate, objective and comparable information on candidates that allows them to vote in a fully informed manner. MAV submits that, as a general principle, measures directed at informing voters about candidates, whether at full postal or attendance elections, should be supported.

The Local Government Electoral Review recommended that “Candidates’ how-to-vote recommendations not be contained in the postal packs circulated by the VEC”.

The MAV submission to the Electoral Review was that the recommendation be opposed on the grounds that:

- Voters have a right to know candidate HTV preferences
- HTV preferences are vital in a proportional voting system

- It is in conflict with the position taken elsewhere that voters need more information on their candidates
- It places more emphasis on the aspect of discouraging “dummy candidates” at the expense of informing voters

For some time now, the sector has been concerned about the prevalence of so called “dummy candidates” at council elections. There is strong support for measures to be introduced to discourage this practice while, at the same time, not unduly impeding or disadvantaging genuine candidates. In this context, there are divided views across the sector about whether how-to-vote preference information should be distributed with the postal pack ballot material.

**Sector position:**

That key objectives of the new Act and any regulations should be to:

- implement measures that will assist voters to make informed decisions/judgements when voting on candidates standing for election
- introduce measures to discourage “dummy candidates” from participating in council elections

**Discussion point: Voting method**

Councils currently have the option of choosing between conducting their elections using postal voting or attendance voting. The discussion paper points out that at the 2012 elections, 8 out of 78 councils used the attendance voting method.

The Local Government Electoral Review recommended that “The State Government adopt a uniform postal voting polling method for local government elections for 2016”.

The MAV submission to the Electoral Review did not support the recommendation and put the view that the two systems should remain.

There are divided views in the sector over the implementation of uniform postal voting. Those councils that currently use attendance voting are strident proponents for retaining this option.

**Sector position:**

That the option for councils to choose between full postal voting and attendance voting be retained in the new Act.

**Discussion point: Electoral material**

The Act currently has provisions dealing with the printing, publishing and distribution of material that is likely to relate to the elections. The number of complaints made at the 2012 elections suggests that the legislative requirements placed on candidates are not clear to either the candidates or members of the community generally. MAV submits that these provisions need to be clarified so that officers, candidates and the community are clear on what they need to do to be legislatively compliant. The advent and growth in the use of social media in relation to elections also needs to be addressed in legislation.

**Sector position:**

That the provisions in relation to electoral material be comprehensively reviewed in the light of new and emerging technology and the requirements and obligations on council officers and candidates be clearly expressed to ensure that their compliance requirements and obligations are clearly understood.

**Discussion point: Electoral disputes**

The discussion paper raises the way matters are handled where they relate to the validity of an election. Some changes have been made with the passing of the Local Government (Improved Governance) Act. These changes which provide additional powers to the Returning Officer and the VEC are supported. MAV submits that the length of time that it takes for a MET to determine on an electoral dispute can have a detrimental impact on the reputation and standing of the council during the time that the matter is before the Tribunal. It is further submitted that the resources of the MET should be increased to enable an expeditious turnaround of electoral disputes.

**Sector position:**

That:

- The additional powers provided to the Returning Officer and the VEC under the Local Government (Improved Governance ) Act are supported
- Additional resources be provided to enable the MET to expedite electoral disputes

**How Councils operate (Chapter 4)****Discussion point: Allowances, role clarity, training**

Chapter 4 describes the provisions under which a Council operates, including the mayoral electoral processes and mayoral role, councillor allowances and expenses and the employment of the CEO and Council staff.

The Discussion Paper asks whether, given that planning, budgeting and governance processes apply to all Councils, the demands on rural councillors are less onerous than those on better resourced metropolitan councillors. The question of the level of commitment required from a councillor is also put, together with the expectation that councillors focus on strategy and policy rather than operational matters.

The LGA needs to clearly set out the roles, functions and responsibilities of the Council, the mayor, councillors and the CEO and administration to avoid ambiguity, confusion and tension. This will assist the effective and efficient functioning of councils. This can then be supplemented with appropriate training for all councillors to ensure that there is a thorough understanding of all roles (mayoral and councillor, CEO and the administration) and the statutory compliance obligations required of mayors and councillors. Such training should be provided within a short period of the election.

MAV further submits that it is important that the allowance for the mayor and councillors properly reflects the level of commitment required to properly discharge those roles. It should also be set at

a level that attracts suitable candidates. Councils should have greater flexibility in setting the allowances so as to ensure that a balance can be made between the commitment required, support provided to discharge the role and differing community expectations.

**Sector position:**

That:

- Mayoral and councillor allowances, training and support and reimbursement of expenses be set at a level that properly reflects the level of commitment required to discharge the roles and at a level that attracts suitable candidates
- Consideration be given to the way in which mayoral and councillor allowances may be set by Councils to enable additional flexibility in the quantum of the allowance to reflect the level of councillor commitment required and local circumstances
- The roles of mayor, councillor, Chief Executive Officer and council administration be detailed clearly and comprehensively
- All Councillors receive training on roles and statutory obligations within two months of election.

**Discussion point: Parental leave for councillors**

Section 69 of the Act deals with leave of absence by a councillor. It provides that the council must not unreasonably refuse to grant leave. This is the extent of the current provisions. There are no provisions in the Act for maternity and paternity leave entitlements for councillors. It is considered that the current provisions should be amended to provide for such leave entitlements.

**Sector position:**

That provision be made in the current Act and the new Act for maternity and paternity leave entitlements for councillors.

**Discussion point: Delegated decision making**

The discussion paper discusses the practice of councils appointing special committees to undertake a number of non-statutory, operational roles for example, managing sporting pavilion hire, collecting and banking fees. It poses the questions of whether or not councils should apply the special committee framework at all to committees they establish solely for non-statutory activities and whether the Act should separately recognise this category of committee and apply different rules for its activities. It is considered that the current arrangements can be cumbersome and that the review should consider alternative arrangements to enable and encourage local community involvement in the management of local facilities.

**Sector position:**

That consideration be given to more effective models for enabling community involvement in the management of local facilities

**Discussion point: Consultation**

The current consultation process, required for significant strategic proposals and specific matters that may affect the rights of individuals, commences with a public notice (which must also be published on the council website and enables submissions to be made for a period of 28 days).

The Discussion Paper identified that submissions on strategic documents were consistently low for some councils and asked whether alternative approaches to improving engagement and feedback should be considered, and if so, mandated in legislation. One option identified was the People's Panel or citizen jury model, which relies on members being provided with extensive access to council data and expert advice.

MAV submits that councils are best situated to determine what methods of engagement will maximise community consultation and input. MAV acknowledge that councils recognise that community engagement and consultation is critical to their success and, accordingly, already undertake engagement and consultation activities well in excess of the statutory requirements. The mandating of specific, additional platforms or processes in the absence of understanding the efficacy, costs and the capacity of the council to resource such platforms or processes, is not supported. It is considered that normative or general provisions generally requiring councils to undertake appropriate levels of consultation and engagement should apply.

#### **Sector position**

No additional mandated processes are considered necessary or desirable.

#### **Discussion point: CEO Complaints**

The Discussion Paper recognises that the current provisions relating to complaints against the CEO alleging bullying, victimisation or harassment are cumbersome. The current arrangements enable the CEO or the Mayor to request that the State appoint a probity auditor, at a cost determined by the State and paid by the council.

MAV submits that as the section addresses only a particular category of CEO complaints, a better approach would be to ensure that the role of council, as employer of the CEO, includes managing complaints relating to the CEO. The Act currently makes it clear that a function of the CEO is "appointing, directing, managing, and dismissing Council staff and for all other issues that relate to Council staff". A similar approach in respect to the Council's role in respect to the CEO would reduce the confusion that currently exists.

#### **Sector position:**

That the role of the council be clearly enunciated in relation to complaints made against the CEO.

#### **Discussion point: Mayoral elections / arrangements**

The discussion paper compares the mayor's powers and functions with those that exist in other Australian jurisdictions.

MAV submits that there are no clear benefits that flow from a directly elected mayor over a mayor that is elected by their colleagues. There are concerns that a directly elected mayor (elected for a four year mayoral term) would change the community's expectations of the mayoral role and the

inherent nature of the role. There are further concerns that this might lead to the role being more of an executive role and may even be a disincentive to prospective candidates who do not want to become career, or long term, politicians. There is a preference for retaining the current arrangements.

**Sector position:**

That the current arrangements which provide for mayors to be elected by their colleagues be continued.

**Discussion point: Role of CEO**

The discussion paper sets out the statutory responsibilities of the CEO and the amendments introduced by the Local Government (Improved Governance) Act designed to overcome some of the conflicts which occur over demarcation issues between councillors and CEOs. It is considered that further clarification between strategic roles of councillors and operational matters would be desirable.

The discussion paper also raises the prospect of the involvement of independent expertise in the appointment and performance evaluation of CEOs. MAV submits that this is a matter for individual councils and should not be a legislative requirement.

**Sector position:**

That

- further consideration be given to clarifying the demarcation between the roles of councillors and the CEO
- the CEO recruitment and performance evaluation arrangements be left to individual councils to manage

**Discussion point: Local laws**

The discussion paper identifies that a council can make a local law on any matter for which it has a power or function under any Act. A local law is inoperative if it is inconsistent with any Act, regulation or planning scheme in force. The discussion paper raises the prospects that local laws be dealt with as state laws or that the State provides “model” local laws that councils can choose to apply to suit their circumstances. The Minister has the power to make guidelines and to revoke a local law. It is considered that as a tier of government councils should continue to have the power to make local laws within the parameters of their powers.

**Sector position:**

That councils continue to have the power to make local laws, such powers to be within the general power of competence proposed in this submission in Chapter 2.

**Discussion point: Drainage powers**

Councils are drainage authorities. They need power over all drainage easements in their municipality and power over those drains that are not in easements in the same way that other

authorities have under the Water Act. The current provisions do not provide councils with the powers that they need to perform their functions. Moreland City Council has made a submission to this Review advocating for changes to Section 198 of the LGA, the introduction of an additional section and amendment to Section 149 of the Water Act. The Moreland submission is supported.

**Sector position:**

That councils be provided with the requisite powers in order to fulfil their drainage functions.

## **Planning & Reporting (Chapter 5)**

### **Discussion Point: Integrated Planning and Reporting**

This chapter details the high level requirements of the current planning and reporting requirements for Councils. It recognises that:

- Party political platforms do not underpin Council elections
- Each new Council adopts a four year council plan within 8 months of a general election
- Many Councils have longer term plans that identify their vision and aspirations

The chapter also suggests that:

- The four year term of the Council plan results in a focus on delivering election promises
- Affordability of services over the long term should be included in financial sustainability and delivery programs

MAV supports a longer term aspirational framework, which guides the Council Plan and other strategic documents. MAV submits that, planning and reporting obligations should reflect government-to-government requirements and respect the autonomy of Councils to respond to local expectations and circumstances. Any change in relation to the planning and reporting obligations imposed on Councils should be counterbalanced by removal of the reporting duplication that currently exists so that the overall resources required to meet these requirements is not increased.

The introduction of the local government planning and reporting framework has placed a significant burden on councils without a corresponding decrease in associated compliance reporting. A complete review of council reporting requirements needs to be undertaken to remove duplication and in support of value-add reporting.

The Council Plan which reflects the Council position on what is in the best interests of the community over the longer term is a dynamic documents that needs to be responsive to changing priorities. It is only electoral promises that reflect this position that are incorporated into the Plan.

MAV submits that the affordability of services over the longer term is subject to numerous external factors over which Councils have had little influence. These factors include a reduction of State and Commonwealth funding, cost shifting, an increase in legislative functions and regulation and a lack of indexation of fees. The upcoming rates capped environment may result in greater transparency of the systemic increase in the financial burden on councils in delivering essential services.

It is imperative that any additional planning and reporting requirements add value. There is widespread concern that the LGPRF does not add value.

**Sector position:**

That:

- The Planning and reporting framework be reviewed and streamlined to remove duplication in reporting
- The LGPRF be reviewed in the context of reporting requirements from one tier of government to another.

## **Council rates and charges (Chapter 6)**

**Discussion point: Rates as revenue source**

The discussion paper raises the question of whether the current method of declaring rates and charges based on “land” is still appropriate. At the same time the discussion paper acknowledges that council rates and charges are, and are likely to remain, councils’ primary source of revenue.

All major reviews of the taxation system have confirmed the (economic) efficiency of municipal rates and have recommended retaining this form of taxation as an important component of Australia’s overall taxation system.

The discussion paper states that there are many sources of revenue available to councils. It is important to highlight the widely varying capacity to make use of alternatives by different councils, and the different levels of vulnerability to changes in State and Commonwealth grants.

In the absence of a viable alternative source of revenue, it is considered that the current method of declaring rates and charges is still appropriate.

**Sector position:**

It is considered that councils should continue to have the power to raise revenue by declaring rates and charges.

**Discussion point: Rating powers**

The discussion paper asks what powers do councils require in relation to levying rates and charges?

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. MAV submits that councils should continue to have the full suite of rates and charges options..

It is submitted that councils should have the discretion to set rates and charges. As a democratically elected tier of government councils should not be subject to a rates cap set by the State

Government. The sector position in this regard has been strongly communicated in relation to the State Government's legislation to cap rates.

**Sector position:**

That:

- Councils should continue to have the full suite of rates and charges available under the existing Act
- Councils should have the discretion to set rates and charges without being subject to a rates cap

**Discussion point: Rating power restrictions**

The discussion paper asks what obligations or restrictions should be imposed on councils in relation to rating powers. MAV considers that the current arrangements have developed and changed over time to meet the contemporary needs of councils. Generally, the current arrangements are workable and effective (except for special rates and charges schemes). No further obligations or restrictions should be placed on councils in relation to their rating powers. The provisions relating to funding projects by special rates and charges schemes are onerous and complicated. They can be confusing for people who are proposed to be the subject of these schemes. In reality, the nature and complexity of these schemes mean that very few projects are likely to proceed using this funding source. It is considered that this should be reviewed with a view to developing a more permissive framework, particularly as these arrangements provide for a funding methodology that more closely aligns contributors and beneficiaries.

**Sector position:**

That the arrangements for special rates and charges schemes be reviewed to increase the likelihood of such schemes being successfully implemented.

**Discussion point: Rating exemptions**

The discussion paper puts the view that a review of the exemptions from rateability is overdue and the appropriateness of some exemptions is contestable. Getting exemptions right is important because councils may be foregoing considerable sums in rate revenue. The sector has held a long-term view that some of the existing rating exemption classes are not appropriate.

**Sector position:**

That a comprehensive review of rating exemptions be undertaken as part of the review of the LGA.

**Discussion point: Ratepayer rights**

The discussion paper asks what rights should rate-payers have in relation to the exercise of council powers in relation to levying rates and charges? The current Act is prescriptive in terms of the steps to be followed for special rates and charges. MAV considers that these provisions provide appropriate safeguards to accommodate and protect the rights of individuals affected by a special rate or charge.

The current arrangement for people to make submissions on the budget is an appropriate avenue for submissions on the proposed rate in the dollar because of the nexus between the budget and the income needed to fund the budget expenditure. MAV does not consider it desirable to provide for a duplication of the submission process by having one for the budget and another for the quantum of rates.

**Sector position:**

That:

- The provisions for submissions and appeal processes in relation to special rates and charges in the current Act are adequate to safeguard the rights of individuals affected by a special rate or charge
- The budget submissions process is adequate to provide for the community to make submissions on the budget process and the setting of the rate in the dollar

**Discussion point: Penalties**

The discussion paper poses the question as to what sanctions should be imposed on councils failing to comply with the requirements relating to levying rates and charges. The issue of organisational penalties has been dealt with in the context of the chapter on the role of councils. MAV submits that there should be no penalties applied against councils who fail to comply with the requirements of the legislation.

**Sector position:**

That no penalties should apply for breaches of legislative provisions committed by councils. The broader issue of penalties should be dealt with as suggested in the comment in the section on the role of councils.

## **Service delivery and financial decision making (Chapter 7)**

**Discussion Point: Flexible and efficient service delivery**

This chapter deals with financial decision making including procurement, entrepreneurial activities and collaborative arrangements.

MAV submits that, as a tier of government, a non-prescriptive, enabling service delivery framework should apply to local government to ensure that councils have flexibility and can introduce innovative solutions in service delivery. 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.

**Sector position:**

The Act should provide an enabling approach to procurement and service delivery which supports flexible, innovative and collaborative solutions.

**Discussion point: Best value principles**

The discussion paper refers to the best value principles as high level principles. It contends that the principles are applied in a widely varied manner, and there are few service level reviews published that show the actual cost and quality of a service comparing similar groups of councils. The discussion paper does not recognise the extent to which the quality and cost of a service will be reflective of the priorities of a particular council and the resources it can and chooses to apply. It is considered that the essence of the principles of best value should be captured in the role of councils, with councils acknowledged to exercise their powers and discretions in the best interests of their communities.

**Sector position:**

That the principles of best value be captured in the role of a council.

**Discussion point: Budget process**

As a distinct and essential tier of government, councils should have the right to set their own budgets having regard to their own unique circumstances and the principles of sound financial management. MAV submits that the current budget process should be reviewed along the lines of the process applied at State and Federal level. Consideration could also be given to budgets being prepared for a longer period than the current annual budget timeframe. There are concerns about the length of time that the current statutory consultation process (which includes 28 days exhibition time plus hearing and consideration of submissions) adds to an already extensive process. It is also considered that the exhibition of the budget should enable more effective utilisation of current technology. The budget process including submissions should be reviewed to bring it into line with other levels of government, contemporary practices and alternate community engagement techniques.

**Sector position:**

That a comprehensive review of all elements of the annual budget process be undertaken in the context of the process adopted at other levels of government, contemporary practices and alternate community engagement techniques.

**Councillor Conduct, offences and enforcement (Chapter 8)****Discussion Point: Clarity of roles and obligations: timely intervention**

As discussed earlier in the submission, there is general support for greater clarity in the roles of councillors and CEOs. MAV considers that in the context of councillor conduct, increased clarity would minimise the grey area of uncertainty, which creates tensions between councillors, councillor/s and the CEO and, sometimes, between the Council and the CEO.

The difficulties inherent in expecting CEOs to resolve councillor conduct issues that relate to occupational health and safety should be recognised and addressed. As a general principle, it is considered that the council should be responsible for managing the behaviour of individual councillors with appropriate tools to enable this to be done in a timely and effective way.

The issue has also been raised earlier in this submission about the plethora of oversight bodies. There seems to be confusion as to who people should go to with their councillor complaints. There is need for greater clarity in this regard.

Mechanisms that are intended to ensure councillors comply with the requirements of the Act should be properly resourced by the State to ensure timely investigation and resolution of complaints. The resourcing of the Local Government Compliance and Investigations Inspectorate should be reviewed to ensure that it can both address complaints within a reasonable timeframe and provide meaningful compliance guidance to the sector on issues that are the subject of complaints.

As discussed earlier in the submission, additional training should be provided to councillors.

**Sector position:**

That

- There is a pressing need for role clarity in respect to councillor and CEO roles and the obligations attached to those roles
- Arrangements for the resolution of councillor conduct issues involving health and safety matters be established as the responsibility of the council and properly resourced to ensure timely and effective outcomes
- The role and involvement of oversight bodies be reviewed and clarified
- The Local Government Compliance and Investigations Inspectorate be properly resourced to perform its role and functions expeditiously
- A comprehensive training program be developed to fully equip councillors to perform their role and functions

**Discussion point: Conflict of interest**

The discussion paper sets out the current provisions that apply to conflicts of interest. MAV submits that the current provisions are complex and can be confusing. They also lead to misconceptions by the community as to what is, and is not, a conflict of interest. This can detrimentally impact reputations of councillors and the community standing of the council.

It is considered that the conflict of interest provisions should be expressed with sufficient clarity to enable a clear understanding of the requirements by any person.

**Sector position:**

That the conflict of interest provisions be reviewed and revised to achieve a clear understanding of the requirements by any person.

## **Ministerial powers (Chapter 9)**

**Discussion point: Ministerial intervention**

As discussed under the role of council, it is considered that the “Minister’s role is to both oversee the operations of the system of local government and to act as an advocate for local government within government”. The submission sets out opportunities for the Minister to more actively be involved in advocating and capacity building for the sector.

A new Act that clearly establishes the role, functions, powers and accountabilities of councils and councillors should reduce the need for the Minister to intervene in council affairs.

As a level of government and a democratically elected body, councils are and should ultimately be answerable to their constituents.

It is accepted that the Minister should have the power to intervene where there is a serious risk to the health and safety of councillors or council staff, where the council is prevented from performing its functions, where a councillor is behaving in a manner that does not accord with the role of a councillor or where there is a failure to provide good government. MAV considers that, as a general principle, the capacity for the Minister to intervene should be fettered by appropriate checks and balances. The key issue for local government is that appropriate and measured processes should be undertaken in order to resolve any issues prior to any decision to take formal intervention. Ministerial intervention should be a last resort.

**Sector position:**

An objective in the framing of the new Act should be to limit the circumstances in which the Minister can intervene in the internal affairs of a council. As a general principle, the power for the Minister to intervene should be subject to stringent checks and balances as befits a democratically elected tier of government.

**Discussion point: Power to issue guidance**

The discussion paper sets out the powers of the Minister to make guidelines in relation to a number of things. The Minister has used these powers in very few instances. The discussion paper also discusses the powers of the Minister to issue guidelines without specific power in the Act and also the issue of circulars and other guidance by the Department. It is considered that the status and expectations around guidelines needs to be clarified, particularly with the emphasis in the discussion paper on compliance. The provision of circulars and general guidance by LGV is supported, in principle, to provide consistency of interpretation and treatment across councils. It is considered that guidance to councils should be coming from LGV and not from the various other regulatory authorities so as to ensure all guidance is appropriate for the sector.

**Sector position:**

That:

- The status and expectations in relation to Ministerial guidelines be the subject of detailed discussion in the next phase of the review
- The other state regulatory authorities should channel their views and recommendations in relation to local government functions through Local Government Victoria

