

17 December 2015



**CITY OF MELBOURNE**

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Mr Tim Presnell  
Local Government Victoria  
Department of Environment, Land, Water and Planning  
GPO Box 2392  
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Dear Mr Presnell

### **LOCAL GOVERNMENT ACT 1989 REVIEW – SUBMISSION**

Thank you for the opportunity to make a submission on the *Local Government Act 1989*.

The City of Melbourne considers this is an exceptional opportunity to review and have input into the legislative framework that underpins local government in Victoria.

We attach the Council administration's submission for your consideration, along with a more detailed response to the specific questions raised in the *Review of the Local Government Act 1989 Discussion Paper*. The submission has not been endorsed by Council and individual councillors do not agree with all aspects of the submission.

I understand that the Lord Mayor, Deputy Lord Mayor and Councillors may make a number of submissions providing the views of our elected representatives.

Thank you again for the opportunity to make a submission and I look forward to our continued involvement in the development of the new Act. Please contact me or Keith Williamson, Manager Governance and Legal, should you wish to discuss our submission further.

Yours sincerely

**Ben Rimmer**  
Chief Executive Officer

# CITY OF MELBOURNE SUBMISSION

## LOCAL GOVERNMENT ACT 1989 REVIEW

### EXECUTIVE SUMMARY

Overall, the City of Melbourne considers the *Local Government Act 1989* ('the Act') no longer adequately meets the needs of local government, has become cumbersome and contains unnecessary prescription. The Act does not reflect the role of local government as a separate tier of government and in many ways is unrepresentative of the mature relationship between councils and the State.

We consider that this is an exceptional opportunity for the State to work with the community and local governments to achieve a more modern and effective legislative framework, underpinned by recognition of the vital and independent role local government plays within the community.

While there are many relevant issues raised by the State Government's review of the Act, and a wide range of matters that require discussion, the City of Melbourne has identified six main priorities for change:

- Firstly, in order to achieve a more responsive regulatory system, we suggest a system of 'differential oversight' for local government be established under the Act. This system would provide higher levels of autonomy for those councils that have demonstrated they are able to sustain high ongoing levels of governance, accountability and stability. It would also provide for higher levels of support for some other councils experiencing governance challenges or where their small size creates challenges.
- Secondly, and in the context of outdated references to newspaper advertising and rapidly changing technology, the Act needs a comprehensive refresh to ensure that it is supporting councils to embrace digital technology.
- Thirdly, all employment related provisions need to be modified to the extent necessary to enable employees to pursue flexible working options, to allow administrations to adapt and change to meet new priorities, and to enhance gender equity and especially pay equity.
- Fourthly, the role of the CEO and administration in supporting councils needs to be far better defined. In particular, it is important to recognise the crucial role of the CEO and council administrations in providing impartial and professional advice to Council.
- Fifthly, the Act needs to ensure, encourage and enable much greater level of collaboration across the local government sector on service delivery, procurement, boundary interface issues and other projects of common significance.
- Finally, it is essential that the review lays out higher standards of governance in the *Municipal Association Act 1907* ('MAV Act') and takes the opportunity to clearly distinguish between two important roles within the local government sector:
  - the role of MAV in supporting Councillors to have a 'whole of local government' voice
  - the role of the MAV and other organisations in supporting CEOs and administrations to deliver efficient and effective local government services.

We note a comprehensive and wide variety of questions have been asked within the Discussion Paper. Rather than dealing with all matters within this Submission, we have instead addressed the majority of these at Attachment 1. Specific matters of significance are discussed below.



## CITY OF MELBOURNE ACT 2001

Given this Council's role as a capital city council, separate legislation signalling the City of Melbourne's important function is appropriate. However, this is a prime opportunity to review some redundant provisions within the *City of Melbourne Act 2001* ('CoM Act').

We consider the CoM Act should continue, either as a new Act or in a revised form, for the following reasons and outlining the following key objectives:

- To establish the continued importance of the City of Melbourne as the capital city council.
- In order to provide a separate legislative vehicle from time to time for innovation or strategic schemes unique to the City of Melbourne, for example, the environmental upgrade scheme<sup>1</sup> or Docklands Coordination Committee.
- To reflect the additional role of this Council internationally. The City of Melbourne plays an important role in business, economic development and international city relationships. The maintenance of our position as an international city with global connections, and in acting as an advocate for the city on a global stage, is critical. By contrast, a smaller council would not be expected to perform this function and as such it is artificial to include it within the Act.

We suggest the CoM Act should focus on the City of Melbourne's role as a capital city government, and as a steward and leader of local government in facilitating collaborative and contracting arrangements. Consideration should be given to enabling a 'piggyback' process within the CoM Act for the City of Melbourne to lead in order to increase local government procurement efficiencies.

There is also an opportunity to identify the role of this Council in pursuing the resilience of the City (see also page 10).

The operation of the current separate election provisions would benefit from review and we would welcome the integration of the election provisions within the Act, with a subpart for the City of Melbourne within the Act and Regulations. Currently, a person reviewing how the City of Melbourne election works must refer to the CoM Act and its Regulations, Part 3 of the Act along with Schedules 2 and 3. This places an increased administrative burden in maintenance of the voters' roll and causes confusion amongst voters.

The integration of all electoral provisions within one Act (recognising separate electoral regulations may be necessary) would benefit all involved in the running of elections, as well as the community. We discuss elections further below.

In relation to the City of Melbourne's distinct franchise, this model is sound and functions well to represent the interests of all constituents within the municipality. The vote of both property owners and occupiers and non-property interests recognises the valuable role of both personal and corporate interests in Melbourne. A balance that protects the interests of all constituents and a right to participate through voting is important.

Limiting voter franchise to voters enrolled on the State roll is not representative of all constituents within our municipality and would disenfranchise a significant proportion of the electorate who contribute financially and in other ways to the municipality. This is demonstrated by the categories of voters on the 2012 Melbourne City Council voters roll, of which 60 per cent comprised business

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<sup>1</sup> The environmental upgrade scheme was in the first instance inserted within the CoM Act allowing for its trial on a smaller scale before rolling out state-wide).

occupiers, corporate representatives and absentee owners. In our view, a good democratic process should be representative of all those with interests regardless of where they reside.

It is noted that as part of this review, questions have been raised about the value of expanding the directly elected mayor model to all of local government. Certainly, the model is a valuable one and facilitates a continuity of leadership that we consider could also be valuable for other local governments. This continuity is particularly important for the City of Melbourne given this Council is frequently acting on an interstate and international stage.

## **LOCAL GOVERNMENT LEADERSHIP**

Section 74A (1) of the *Constitution Act 1975* provides that 'local government is a distinct and essential tier of government...': In practice, the Act places restrictions and controls on local government that do not adequately reflect its place as an autonomous and democratically elected tier of government. The balance between State Government oversight and local government autonomy is currently inadequate. We recognise, however, there is a need for some level of oversight and accountability and that community expectations are high. Striking the right balance is further complicated by the wide discrepancies in levels of local government size, capacity, performance, governance and accountability. These restrictions ultimately inhibit local governments' ability to innovate, remain competitive and respond dynamically to community needs and expectations.

If the State is serious about achieving a more balanced relationship and empowering local governments to have more control over areas such as procurement, employment practices and investment, one option may be to consider a 'differential oversight' system where greater autonomy is given by the Minister to those councils that can demonstrate that their governance and performance is up to task.

Under such an 'earned autonomy' model, councils accredited as 'lower oversight' entities would be entitled to set their own procurement thresholds, have more discretion on employment practices, lead collaborative procurement arrangements, and self-regulate their own investments. This would in turn release the onus on the Minister to oversee these functions. Some councils may also benefit from 'greater oversight' – either because of their small size, current governance problems or other relevant factors. We would be pleased to work further with the State on this proposed model.

## **MUNICIPAL ASSOCIATION ACT 1907**

We consider that there is an ongoing role for the MAV in representing and assisting councillors. However the MAV Act is outdated and does not provide any clarity about either the role of the MAV in supporting councillors to have a 'whole of local government' voice or its potential role in supporting CEOs and administrations to deliver efficient and effective local government services. There needs to be clear role definition and consideration given to whether the role of representing both councillors and CEOs/administrations is compatible, or whether it would be better for these roles to be undertaken by different entities.

Regardless of role, it is essential that the governance requirements of the MAV are updated to reflect current public sector best practice and to tackle some current challenges. The MAV should be subject to the same openness and transparency requirements (including freedom of information) as other public bodies established under legislation. Areas that could be covered in a new Act include:

- employment of senior officers
- disclosure of senior officer remuneration in its annual reports
- management and disclosure of conflicts of interest



- requirement for a Code of Conduct
- procurement practices and payments
- meeting procedures
- transparency measures and publication of material as the default position.

The governance structure of the MAV should also be reviewed to consider a mix of independent non-executive directors, councillors and council officers.

There is a clear need for a support role within the local government sector, a function which could be performed by a Ministerial approved class of providers. This class would include the MAV, or a redefined part of the MAV, together with the VLGA, LGPro, private sector providers, or even another council.

## THE ROLE OF COUNCILS

Overall, the role and functions of councils are well set out within the Act, but would benefit from a refresh. Specifically, we suggest consideration be given to:

- the addition of specific stated role of local government engagement with State, Commonwealth and other local governments
- emphasis on the provision of services for all those who live, work and visit the municipality – not just the local community
- a specific stated objective of collaborating with other local governments on service delivery, boundary issues and projects of significance that would benefit the community and drive cost savings
- emphasis on the important role of local government in driving local innovation and responsiveness to new and emerging issues
- the addition of an explicit role in promoting and informing the community about the Aboriginal heritage within each municipality, as a legislative recognition of the first peoples of this state.

## HOW COUNCILS ARE ELECTED

Under the current electoral model, the City of Melbourne holds two simultaneous elections. One election is for the leadership team (directly elected Lord Mayor and Deputy Lord Mayor) and the other is for the nine Councillors. As discussed, a directly elected leadership team is highly effective as it provides clear community leadership and continuity.

While all people who own or occupy property within the City of Melbourne should be entitled to vote, we do not consider people aged over 70 years of age, living overseas or interstate, should be penalised for failing to vote. Currently, under the *Local Government (Electoral) Regulations 2005*, exemptions from compulsory voting include voters over 70 years of age and voters who were absent from Victoria 15 days before the last day of voting (in postal elections). However, people are required to prove they were outside the State of Victoria in order to satisfy the prosecution officer and avoid penalty. Given it is compulsory for all people on the voters' roll to vote in City of Melbourne elections, this has unnecessary cost impacts and reputational issues for this Council. It would be much simpler to have the ability to remove certain individuals when preparing the list of non-voters prior to the commencement of the non-voter process<sup>2</sup>. This approach is further supported by the fact that pursuing these categories of individuals will not result in a successful prosecution.

<sup>2</sup> Issuing of Apparent Failure to Vote Notice, Penalty Notice and Penalty Reminder Notices.

While the City of Melbourne agrees the requirement to exhibit the voters' roll should be removed, provision needs to be made for people to check their enrolment.

In the event the State decides to prescribe additional powers to certain bodies to improve the integrity of the electoral system, it is our view any additional powers should be given to the Victorian Electoral Commission (VEC) in its capacity as the election services provider.

Additional information on candidates can be provided by them in any form they choose. We do not support making the voter postal packs any larger or more cumbersome. There may, however, be opportunity for the VEC to make provision for candidates who wish to include additional information, over and above what they already include in the candidate information booklets, on the VEC's website.

We consider that councils should be able to verify property ownership through Land Registry at no cost in order to produce the most accurate voters' roll possible.

Consideration should be given to amending the definition of **rateable property** to include 'occupancies that have not been separately valued but form part of another rateable valuation'. To avoid disenfranchising people, the practice adopted by the City of Melbourne has been to automatically enrol occupiers even where their office isn't separately rated (e.g. where a ratepayer is issued one rate notice for the whole building or floor, as opposed to individual occupancies). It is our view the legislation should be changed to reflect this practice.

While attendance voting may be the preferred method in some municipalities, it is not practical for City of Melbourne elections, chiefly because of the high percentage of absentee voters on the roll (38 per cent in 2012 elections). Rather than discontinuing attendance voting, it may be more practical to specify in the legislation that where the number of absentee voters on the roll exceeds a certain percentage of the total roll, then the method of voting will default to postal voting. However, given the rate of change and reliability in technology, this is a perfect time for the Act to enable the future adoption of electronic voting systems, which would arguably have the ability to enfranchise the greatest number of voters in local government elections.

The City of Melbourne has concerns regarding Australia Post's changing service levels and how this may affect postal voting generally in future elections (particularly ensuring people receive their ballot papers with sufficient time to review the material and return it within time). Consideration should be given to extending the period for ballot paper returns to mirror the State Government elections.<sup>3</sup>

## HOW COUNCILS OPERATE

### Technology

It is important in crafting new and responsive legislation that care be taken to avoid references to technology that may become outdated during the time of the new Act. For example, it was probably never foreseen when drafting the Act, even at the time of its introduction in 1989, that newspapers would no longer be the most effective and efficient form of advertising. For this reason, 'technological neutrality' in drafting will be important to ensure the Act remains responsive for a reasonable period into the future.

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<sup>3</sup> In the 2012 Melbourne City Council elections, there were 4335 ballots received in the week following the close of voting (6pm on Friday 26 October 2012). Under the current legislation, these ballots could not be admitted to the count.

## **Chief Executive Officer Role and Appointment**

The Act does not adequately encapsulate the robust leadership function expected of the CEO and would benefit from revision.

We suggest a more expansive description that includes six key roles:

- provide impartial and professional advice to Council
- implement Council decisions efficiently and effectively
- manage on-going programs and services
- support good local governance in the community
- build partnerships and advocate in the best interests of the community, consistent with Council priorities
- lead the organisation and its people, including stewardship, for the future.

In relation to the appointment of the CEO, there is value in the mandatory adoption of an 'Employment Matters Committee' established with an independent chair to oversee the process of appointment and ongoing performance management. The CEO contract details should be made available on council websites, and we suggest the use of independent advisors to support the Employment Matters Committee with appointments and negotiations.

## **Senior Officer Contracts**

The senior officer provisions of the Act create significant problems for this Organisation and in particular the specification of a remuneration level. These requirements result in 'bracket creep' so that individuals who would not otherwise be considered senior officers are captured by the definition due to the amount they are paid under the Council's enterprise agreement.

We recognise the importance of maintaining competitive and open processes for the hiring of senior officers, however, suggest these provisions require a complete review so that they properly accommodate the need of local government to attract quality candidates, offer a competitive salary, but remain transparent. Consideration should be given to removing the thresholds in the first instance, and possibly replacing these with a reference to the levels of remuneration specified in a council's enterprise agreement.

For a range of reasons, including gender equality and workforce agility, it is important for councils that the CEO has the capacity for achieving greater mobility within the Organisation to allow for a more dynamic, responsive, skilled and flexible workforce. Enabling provisions that permit the flexible deployment of all staff across the Organisation are important. We would be pleased to work further with the State on such a framework.

We suggest revisions to section 95A of the Act and the appointment of a person in an acting capacity at senior officer level (currently restricted to up to 12 months) to allow greater flexibility when people take parental leave and to better reflect parental leave practices.

## **Consultation and Engagement**

While a requirement for community consultation and engagement as a general principle is important, the appropriate method of engagement will vary depending on the specific circumstances. For these reasons, the Act should set out a minimum level of engagement rather than becoming overly prescriptive about when and where councils must consult. General statements that are enabling rather than prescriptive around community engagement and consultation should be considered.



Consideration could be given to Ministerial guidelines with similar principles to those adopted by the Victorian Auditor General's Office and as articulated in '*Public Participation in Government Decision-Making Better Practice Guide*'<sup>4</sup>.

### **Other Matters**

As elaborated on within Attachment 1, we also specifically request consideration of:

- the removal of all requirements for newspaper advertising
- virtual attendance for councillors at meetings at the discretion of each council
- model local laws for use to be published by the State, that can be tailored by councils.

### **PLANNING, REPORTING AND BUDGETING**

Consideration could be given to a four-year budget for a Council adopted in its first year that it reviews annually to facilitate longer term planning.

The tension between council mandates and long-term planning can be resolved by reviewing and refreshing a longer term council plan at the commencement of each new political term. Consideration could be given to 10 or 12-year future plans reviewed by each new council with four-year plans prepared by each council in year one and reported on in year three.

A lack of legislative compulsion has not prevented the City of Melbourne using community planning to engage the public in informed discussions about long-term issues as a matter of good practice. For these reasons, we do not consider there is any need to take a prescriptive approach and embed additional requirements in the new Act. To this end, where the Act predetermines the timing of engagement, this can impede a council's ability to constructively engage with its community at the optimum time in the budget process.

The problem of long-term community planning cutting across council mandates is avoided if the exercise is clearly understood as a community-owned process. Community planning is not a fetter on councils' discretionary authority but rather an enabling tool to ensure councils have the considered views of their communities before them when making long-term decisions. While a 10 or 12-year time horizon is longer than council terms, consideration should be given to community plans refreshed on a more regular basis at the commencement of each political term.

Council financial management practice, perhaps encouraged by the current Act, focuses attention on small and incremental financial matters, sometimes at the expense of an overall strategic perspective on 'zero base' expenditure analysis. The Act could be more helpful in pointing councils and administrations to the desirability of better focus on strategic budgeting and financial management.

### **COUNCIL SERVICE DELIVERY AND FINANCIAL DECISION MAKING**

#### **Procurement**

The provisions relating to councils' powers to enter into contracts would benefit from an overall review and we have received a considerable response from within the Organisation calling for change to

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<sup>4</sup> Victorian Auditor General's Office January 2015.



procurement requirements within the Act which they see getting in the way of, rather than supporting, efficient and effective administration.

We note that the current procurement thresholds have not been regularly reviewed or indexed, and the financial limits create processes that can be cumbersome and restrictive, and may not result in deriving the best outcome for ratepayers. We further note that the 'one size fits all' approach and low statutory limits are especially restrictive for larger councils.

For these reasons, we suggest that the new Act permit councils to determine their own tender limits and procedures, the details of which can be made available to the public on council websites.

We further suggest that it is entirely appropriate for a council, or at least for some councils under a 'differential oversight' model, to decide in open session when not to call a tender, rather than having to seek ministerial authority, which is in itself at odds with the apparent direction of more autonomous local government and undermines the success of some transactions given the time involved in seeking consent.

In the event that statutory limits are retained, we strongly suggest the limits be refreshed more frequently, and that they be tied to the size of a council, possibly through its rate revenue.

In relation to section 98(1)(d) of the Act and the prohibitions on delegating the power to approve expenditure not contained in a budget approved by council, in order to facilitate more efficient processes and speed in decision making, it would be desirable for the CEO to have the ability to approve any expenditure necessary for the operation of the council so long as that expenditure lies within the current budget forecasts.

### **Investment**

Councils need broad powers of investment. While it is appropriate that council investments are not too speculative, the current provisions regarding entrepreneurial powers act as a disincentive to innovation. Section 193 is unwieldy and difficult to interpret, and in practice this provision deters innovation and collaboration, especially with other councils. The approval process can be time consuming and cumbersome for all concerned, including multiple state departments.

We suggest, for at least 'lower oversight' councils, the removal of the ministerial oversight and approvals process, and its replacement with a council investment policy or strategy for review annually and approved by its audit committee.

If a requirement for ministerial oversight is retained, we suggest this only be for very large transactions based on a council's rate revenue, and ask that the process be reviewed as the time taken to approve applications for categories of investments or borrowings is lengthy and can jeopardise transactions.

### **MINISTERIAL POWERS**

Currently the Act provides a diverse range of circumstances where the Council must obtain the consent of the Minister for Local Government and/or the Treasurer (sections 186 and 193) before an action can be taken, comply with ministerial codes (section 208H), take into account guidelines laid down by the Minister (sections 160(2A) and 111A) or where the Council's action can be subsequently disallowed (sections 160(4) and 123).

Whilst it is appropriate that the Minister retain oversight of local government and this be embedded in the Act, the role of the Minister should be:

- simplified
- focused on a 'differential oversight' model
- refocused toward providing guidance and advice.

It is suggested that many of the requirements to obtain the Minister's consent could be replaced with general powers allowing the Minister to issue non-binding guidelines to local governments. Transparency could be maintained by requiring the local government identify variances from the guidelines.

## **OTHER OPPORTUNITIES**

In focusing on the role of local government, and the evolution of local government's role over the past two decades, this is a crucial opportunity to give consideration to what else local government could be empowered to do in order to serve the community and meet the objectives and functions set out within Part 1A – the Local Government Charter.

To this end, we ask that consideration also be given to the following strategic functions:

### **Resilience**

The City of Melbourne is currently leading a project with the 31 other local government areas (including the Mitchell Shire) that make up Metropolitan Melbourne to develop a 'resilience strategy' for our metropolitan City.

In keeping with the agreed priorities of the Resilient Melbourne project, we would suggest the Act retain and enhance minimum standards for councils to consider the impacts of decisions in integrated and inter-connected ways.

We would also suggest that councils be required to include in their Council Plan, Municipal Public Health and Wellbeing Plan and Municipal Emergency Management Plan details on how they are promoting:

- community connectedness and well-being
- a built environment that encourages social cohesion, environmental sustainability and well-ness
- economic diversity and opportunity
- protection of natural assets and eco-systems,

and to consider the inter-relationship between these matters.

### **Built Form Sustainability Reporting**

Some of the world's leading cities<sup>5</sup> have demonstrated that mandatory energy reporting requirements are an important tool in achieving better sustainability outcomes within the built environment. We know that voluntary action alone by owners of existing commercial and residential buildings will not meet the city's energy efficiency or renewable energy targets. We ask that consideration be given to empowering local governments to require mandatory energy reporting by all commercial buildings of a certain size within their municipalities to be provided and published on an annual basis. We would be pleased to work with the State Government further on such an initiative or trial it within the CoM Act to test its efficacy and operation.

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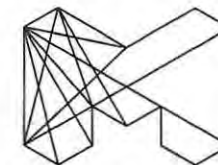
<sup>5</sup> New York, Tokyo, Singapore.



## **Partnerships and Collaboration**

The Act should positively encourage collaboration between councils to support the sharing of services and joint projects. Currently, collaboration between councils can be restricted by procurement, ministerial approval and exemption requirements.

We request consideration of exemptions or simplified procedures around joint procurement that encourage cooperative arrangements supported by a sound business case and that drive better outcomes for constituents.



CITY OF MELBOURNE

# **ATTACHMENT 1** **REVIEW OF THE LOCAL GOVERNMENT ACT 1989**

## **Comment on Specific Questions from Discussion Paper**

### Sections:

1. General Questions and Key Issues
2. The Role of Councils
3. How Councils are Elected
4. How Councils Operate
5. Council Planning and Reporting
6. Council Rates and Charges
7. Council Service Delivery and Financial Decision Making
8. Councillor Conduct, Offences and Enforcement
9. Ministerial Powers
10. Harmonisation of the Local Government Act
11. Other Issues



# 1. General Questions and Key Issues

Chapter 1 Discussion paper (pages 12–15)

1.	Question	Comments
A	What is the appropriate balance between state government oversight and sector autonomy?	Section 74A(1) of the <i>Constitution Act 1975</i> provides that 'local government is a distinct and essential tier of government...'. In practice, the <i>Local Government Act 1989</i> ('the Act') places restrictions and controls on local government that do not adequately reflect its place as an autonomous and democratically elected tier of government.
B	Is the role and function of council appropriately described in the Act?	<p>Overall, the role and functions of councils are well set out within the Act, but would benefit from a refresh. Specifically, we suggest consideration be given to:</p> <ol style="list-style-type: none"> <li>1. the addition of specific stated role of engagement with State, Commonwealth and other local governments consistent with the existing section 1(2) of the Preamble to the Act</li> <li>2. emphasis on the provision of services for all those who live, work <i>and visit</i> the municipality – not just the local community</li> <li>3. a specific stated objective of collaborating with other local governments on service delivery, boundary issues and projects of significance that would benefit the community and drive cost savings</li> <li>4. emphasis on the important role of local government in driving local innovation and responsiveness to new and emerging issues</li> <li>5. the addition of an explicit role in promoting and informing the community about the Aboriginal heritage within each municipality, as a legislative recognition of the first peoples of this state.</li> </ol>
C	Is the level of prescription required appropriate? (Act and Regulations)	<p>The Act is too prescriptive and the level of prescription does not reflect local government as a distinct and separate tier of government.</p> <p>In addition, the Act allows for Orders in Council to change requirements (for example, the tender threshold – we still refer to the order in Council of 7 August 2008), the gazettal of higher thresholds for senior officers [section 97B]) and various other provisions that allow variations which mean a person has to read more than the Act and the Regulations to know the current requirements.</p> <p>If there were provision for an annual gazettal that set or confirmed all of the variables that can be set under the Act that would assist.</p>
D	What parts of the Act could be removed in their entirety without affecting the performance of councils.	We question whether the schedules which are actually very important should be buried down the back? They either should be given more prominence or incorporated into other relevant statutes.

## 2. The Role of Councils

Chapter 2 Discussion Paper (pages 18-26)

2.	Question	Comments
A	Does describing the key objectives, roles and functions of councils in the <i>Local Government Act 1989</i> 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?	See 1B (above). This is a valuable component of the Act and the current description gives the Council a sense of its purpose.
B	Should the legislation provide consequences such as penalties or sanctions, for any non-compliance with either the general and prescriptive provisions? If so, what form should these take?	In general, the rules for each level of government should reflect similar standards.  Specifically, financial penalties for individuals are appropriate with disciplinary action for councils (noting that any monetary penalties for councils impacts on ratepayers).
C	Should councils have an internal review function for reviewing complaints about council administrative decisions?	There is an important role for all governments to have a robust, transparent internal review process including councils but there is no one size that works for all, so if required individual councils should determine how internal review should operate. The Act could simply require a council have an internal review process and publish details on its website.  There is also a level of comfort with the Ombudsman being able to review council administrative decisions if internal review is not successful.



### 3. How Councils are Elected

Chapter 3 Discussion Paper (pages 28-41)

3.	Question	Comments
A	What are the key elements of a system aimed at ensuring the integrity of council elections that should be included in the ACT?	<p>The system needs to be clear and transparent and that means it needs to be consolidated in one location. A person looking at how the City of Melbourne election works has to refer to the <i>City of Melbourne Act 2001</i> ('CoM Act') and the regulations under that Act, the Act (part 3 at one end of the Act and schedules 2 and 3 at the other) and its regulations. All local government electoral provisions should be in one part of the Act (with subparts for Melbourne and Geelong). It might still be necessary for different electoral regulations but at least they sit under the one Act.</p> <p>The directly elected Lord Mayor/Deputy Lord Mayor and councillors system within this municipality is highly effective and should be considered as a model for all of local government.</p>
B	<p>To ensure the integrity of the electoral system, should additional powers be provided to:</p> <ol style="list-style-type: none"> <li>1. the Minister for Local Government?</li> <li>2. the Victorian Electoral Commission?</li> <li>3. council CEOs?</li> </ol>	<p>If the Victorian Electoral Commission is running the local government elections, then it makes sense to give the VEC additional powers.</p>
C	Should a distinct franchise for the City of Melbourne be maintained?	<p>Yes, this model is sound and functions well to represent the interests of all constituents within the municipality. The vote of both property owners and occupiers and non-property interests recognises the valuable role of both personal and corporate interests in Melbourne. A balance that protects the interests of all constituents and a right to participate through voting is important.</p>
D	Should only voters on the state roll be entitled to vote at Council election?	<p>The vote of both property owners and occupiers and non-property interests recognises the valuable role of both personal and corporate interests in Melbourne. A balance that protects the interests of all constituents and a right to participate through voting is important.</p> <p>Limiting voter franchise to voters enrolled on the State roll is not representative of all constituents within our municipality and would disenfranchise a significant proportion of the electorate who contribute financially and in other ways to the municipality. This is demonstrated by the categories of voters on the 2012 Melbourne City Council voters roll, of which 60 per cent comprised business occupiers, corporate representatives and absentee owners. In our view, a good democratic process should be representative of all those with interests regardless of where they reside.</p>

E	Should voting be compulsory for all voters (extending to voters over 70 and non-residents)?	People aged over 70 years of age, living overseas or interstate, should not be penalised for failing to vote. Currently, under the <i>Local Government (Electoral) Regulations 2005</i> , exemptions from compulsory voting include voters over 70 years of age and voters who were absent from Victoria 15 days before the last day of voting (in postal elections). However, people are required to prove they were outside the state of Victoria in order to satisfy the prosecution officer and avoid penalty. Given it is compulsory for all people on the voters roll to vote in City of Melbourne elections, this has unnecessary cost impacts and reputational issues for this Council. It would be much simpler to have the ability to remove certain individuals when preparing the list of non-voters prior to the commencement of the non-voter process (issuing of Apparent Failure to Vote Notice, Penalty Notice and Penalty Reminder Notices). This approach is further supported by the fact that pursuing these categories of individuals will not result in a successful prosecution.
F	Should the requirement to exhibit the voters' role be removed and combined with the state roll?	The requirement to exhibit the voters' roll should be removed, but provision needs to be made for people to check their enrolment.
G	During elections, what would be the best way for additional information on candidates to be provided by them to voters? (e.g. set of questions in voter postal packs)	Additional information on candidates can be provided by them in any form they choose. There may however be opportunity for the Victorian Electoral Commission (VEC) to make provision for candidates who wish to include additional information, over and above what they already include in the candidate information booklets, to be made available on the VEC's website. We do not support making voter postal packs any larger or more cumbersome.
H	Should political donations be banned, or ban categories of donors, set upper limits on donations or strengthen disclosure requirements?	Rules on donations to Councillors should mirror rules for donations to State Parliamentarians.
I	Should partial preferential vote counting be introduced for un-subdivided councils?	Full preferential counting is currently used in both the Leadership Team and Councillor elections. Ballot papers for the Councillor election are usually large and people can choose to vote above the line (only mark one team) or below the line (where they are required to mark all boxes). Partial preferential vote counting would mean a voter only had to mark the first one to five boxes below the line, which could potentially reduce the number of informal votes.
J	Should attendance voting be discontinued with only postal voting?	<p>While attendance voting may be the preferred method in some municipalities, it is not practical for Melbourne City Council elections, chiefly because of the high percentage of absentee voters on the roll (38 per cent in 2012 elections). Rather than discontinuing attendance voting, it may be more practical to specify in the legislation that where the number of absentee voters on the roll exceeds a certain percentage of the total roll, then the method of voting will default to postal voting.</p> <p>Given the rate of change and reliability in technology, this is a perfect time to for the Act to enable the future adoption of electronic voting systems, which would arguably have the ability to enfranchise the greatest number of voters in local government elections.</p>

K	Other comments or suggestions you may have.	<p>The City of Melbourne has concerns regarding Australia Post's changed service levels and how this may affect postal voting generally in the 2016 elections and beyond (particularly ensuring people receive their ballot papers in enough time to review the ballot material and post back before 6pm on the Friday before election day). Consideration should also be given to extending the period for ballot paper returns to mirror say, State Government elections, where postal ballot paper returns are received (and counted) up until nine days after the close of voting. In the 2012 Melbourne City Council elections, there were 4335 ballots received in the week following the close of voting (6pm on Friday 26 October 2012). Under the current legislation, these ballots could not be admitted to the count.</p> <p>The City of Melbourne is the only Victorian Council with deeming provisions. It is our view that changing the order of how company representatives are deemed is a practical one. It is easier and more cost effective to deal with company representatives based in Melbourne, Victoria or Australia, than those based overseas (some of whom may have limited understanding about why they are being sent ballot papers).</p>
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## 4. How Councils Operate

Chapter 4 Discussion Paper (pages 42–59)

4.	Question	Comments
<b>Mayor and Councillors</b>		
A	How effective are the directly-elected mayor arrangements at Melbourne and Greater Geelong city Councils?	A directly elected leadership team is highly effective as it provides good community leadership and continuity.
B	Should councillors be paid a salary instead of an allowance?	The current system of paying an allowance is adequate but levels of remuneration need review to ensure that candidates from all backgrounds and levels of wealth are not discouraged from public service.
C	Should mayors and councillors be part time or full time?	This depends on the Council and should be left to individual councils to determine. It is not reasonable to expect that a Councillor should not have other substantial employment given the relatively low allowances that are paid.
<b>CEO contracts</b>		
D	Should CEO terms be limited or at the least, their position market tested at the end of their contract?	No, the current legislation allows Council to reappoint without advertising or market testing. We do not think that the Act should place more prescription on CEO performance issues and reappointment.
E	How can the way in which new and reappointed CEOs' contract negotiations, preparation and execution and performance reviews be improved (for example with councillors?)	<p>The CEO is the only employee of Council and it is appropriate that the CEO continue to be solely responsible to manage staff.</p> <p>In relation to the appointment of the CEO, there is value in the adoption of an 'Employment Matters Committee' established with an independent chair to oversee the process of appointment and ongoing performance management. The CEO contract details could be made available on council websites, and we suggest the use of independent advisors to support the Employment Matters Committee with appointments and negotiations.</p>
<b>Council Staff</b>		
F	Should the ACT define the type of position that should be subject to contractual arrangements (senior officer contracts) or should this be	The Senior Officer provisions of the Act create significant problems for this Organisation and in particular the specification of a remuneration level. These requirements result in 'bracket creep' so that individuals who would not otherwise be considered senior officers are captured by the definition due to the amount they are paid under the Council's enterprise agreement.

	freed up to mirror the marketplace and assist in attracting the best candidates? (e.g mid-level IT positions not normally subject to contract can be above the senior officer remuneration threshold).	<p>We recognise the importance of maintaining competitive and open processes for the hiring of senior officers, however, for a range of reasons, including gender equality and workforce agility, it is important for councils for review of these provisions so that they properly accommodate the need of local government to attract quality candidates, offer a competitive salary, but remain transparent. Consideration should be given to removing the 'senior officer' thresholds in the first instance, and possibly replacing these with a reference to a council's enterprise bargaining agreement. By way of example, the 'senior officer' threshold would be linked so that it wasn't triggered if below the Total Employment Package for the highest band level under the Council's enterprise agreement.</p> <p>The provision relating to appointing a person in an acting Senior Officer role for up to 12 months needs to change to allow greater flexibility when people take parental leave. It is not uncommon for someone to take more than 12 months leave for the birth and care of a child and the current provisions are too restrictive. It is suggested that appointments in an acting Senior Officer role be permitted for up to 24 months when the incumbent is on parental leave.</p>
G	How should senior officer contract positions be advertised (currently required to be in state-wide newspapers) (e.g. centralised portal)?	The Council has requested in the past that public notices no longer be required to be placed in a newspaper but be published in ways that are actually effective. Newspaper advertising is out-dated, expensive and often ineffective. This position would apply to any requirement for a notice to be placed in a newspaper.
H	Is the requirement for an equal opportunity program now redundant given that other legislation deals with this?	<p>This is now a redundant requirement.</p> <p>Consideration should also be given to allowing councils an express ability to provide affirmative support (for example employment of indigenous peoples).</p>
I	Other	It is also important to this Council that the CEO has the capacity for achieving greater mobility within the organisation to allow for a more dynamic, responsive and flexible workforce. Enabling provisions that permit the flexible deployment of all staff across the organisation are important. We would be pleased to work further with the State on such a framework.
<b>Council Proceedings</b>		
J	Should councils apply the special committee framework at all committees they establish solely for non-statutory activities or could the Act recognise this category of committee and apply different rules for activities?	The Council can already distinguish between committees using its local law provided there is no conflict with the Act. What has always been lacking is express reference to creating advisory committees (as against a recognition by reference in section 86(1) and the provision about the audit committee). There is also a need to create the ability for more than one council to create a joint committee (IMAP).
K	Do you think the current	The current requirements recognise a need for flexibility but also require disclosure (closed meetings).

	requirements governing council meetings are necessary in the Act and if so what sanctions are appropriate for councils that do not comply with these requirements?	It seems to strike the right balance.  Reprimand from the Minister or a warning system for non-compliance.
L	Should councillors be required to be physically present at council meetings or is it sufficient to attend via electronic means?	The virtual attendance at meetings would be appropriate, but also this should be at the discretion of each council.  Submitters should also be permitted to attend virtually and make submissions this way. This would facilitate broader participation in the meeting process especially for people with disabilities, carers and parents of young children.  Some issues to overcome with virtual meetings would be what steps should be taken to ensure that those with a conflict of interest are 'removed' from the virtual meeting and what steps are taken to ensure that no third parties are privy to the 'closed sessions' of meetings.
M	How frequently should council meetings be held and should there be a formal requirement for public participation?	Meetings should occur to the extent required so frequency will vary between councils. There could be a requirement that the meeting local law include a public question time. Suggest this should be the responsibility of the relevant council but the Act should include an overall commitment of open and transparent governance to be actioned by each council in its own way and documented in its annual report and website.
N	Should the Act be so prescriptive about meetings and meeting types? Could instead the Act leave councils to decide what meetings to hold, who can call them and when they are scheduled?	The current Act and requirements around council meetings together with the requirement for a meeting procedure local law is valuable and strikes the right balance.
<b>Consultation and Engagement</b>		
O	Should the ACT provide a more general requirement for councils to consult and engage with their communities? If so, what sanctions are appropriate for councils that do not do so, such as sanctions affecting the validity of council decisions.	The Act only requires a consultation process in defined circumstances and that is a very tight submission process under section 223. As a general principle, consultation is an essential element of government and some degree of overarching requirements should be set out. However, this should be balanced against councils' autonomy and different circumstances. The Act could prescribe a minimum level of community consultation and engagement.  Consideration could be given to Ministerial guidelines with similar principles to those adopted by the Victorian Auditor General's Office and as articulated in ' <i>Public Participation in Government Decision-Making Better Practice Guide</i> '.
P	As part of the public consultation process, is giving notice through a local newspaper the most effective way of notifying the community, or are electronic notifications sufficient?	The Council has requested in the past that public notices no longer be required to be placed in a newspaper but be published in ways that are actually effective. Newspaper advertising is out-dated, expensive and often ineffective.



Q	Should alternative approaches to improving engagement and feedback be considered and if so, mandated in legislation?	Delivering engagement methods that are appropriate for each audience is good practice and should be encouraged (innovation is a key component of this).
R	Should the involvement of citizens' bodies like the City of Melbourne People's Panel in the framing of certain major policy decisions of council be formalised in the ACT?	Engagement techniques should be planned, appropriately resourced and 'fit for purpose'. Panels can be costly, resource intensive and are designed to support deliberation on complex issues. They should only be used if identified as the best and most appropriate approach, and therefore not mandated. Emphasis should be on mandating a planned, strategic approach to engagement.
<b>Complaint Handling</b>		
S	Should there be a definition of 'complaint'?	This is unnecessary.
T	Should councils be required to adopt uniform approaches to complaint handling?	No. Councils have different resources for doing this.
<b>Local Laws</b>		
U	How should notice of proposed local laws be advertised?	The Council has requested in the past that public notices no longer be required to be placed in a newspaper but be published in ways that are actually effective. Newspaper advertising is out-dated, expensive and often ineffective.
V	Should the state make 'model' local laws that council can apply to suit their circumstances?	Model local laws could be useful and published by the state, but the use of these should be discretionary and councils be permitted to tailor them according to their individual circumstances and needs. Consideration might be given to encouraging the use of the model local laws by making breaches of the local law lodgeable infringements.
W	Should councils be required to prepare community impact statements when advertising proposed local laws?	No.
X	Should penalty units for breaches of local laws be regularly indexed?	The <i>Sentencing Act 1991</i> should be amended so a penalty unit is adjusted as per the <i>Monetary Units Act 2004</i> process.
<b>Insurance and Indemnity</b>		
Y	Should the Act be strengthened by a framework in which indemnity is specifically excluded in certain circumstances (e.g speeding while on council business) or any indemnity is not considered until proceedings against a councillor or staff member in a court, tribunal or	Such a provision regulating a specific issue would appear to directly conflict with the overall thrust of the Act to empower the third level of government. The provisions should be the same as for the State.

	other body has been determined?	
Z	Should the Act continue to regulate insurance for local government?	The statutory minimum is a useful tool in dealing with third parties on contractual issues.

## 5. Council Planning and Reporting

Chapter 5 Discussion Paper (pages 60–65)

5.	Question	Comments
A	What requirements should be imposed in the Act on councils in relation to planning and reporting on their strategy, budget and operations?	<p>Flexible requirements would be appropriate with consideration of:</p> <ul style="list-style-type: none"> <li>• a 12-year Future Plan prepared and reviewed/updated by each council</li> <li>• a four-year Council Plan prepared by each council in year one and reviewed and reported on in year three for the next Council to use in reviewing the 12-year Future Plan and preparing its Council Plan.</li> </ul>
B	<p>How could councils be encouraged to undertake longer term planning that is integrated into existing annual or four-yearly planning and reporting requirements? (For example, it is not a current legislative requirement for councils to prepare a long-term community plan and such a plan could complement the existing council plan. However, the 10-year time period goes beyond councillor terms of office and may have implications for council mandates.)</p>	<p>Council financial management practice, perhaps encouraged by the current Act, focuses attention on small and incremental financial matters, sometimes at the expense of an overall strategic perspective on 'zero base' expenditure analysis. The Act could be more helpful in pointing councils and administrations to the desirability of better focus on budgeting and financial management.</p> <p>Consideration could be given to a four-year budget for a Council adopted in its first year that it reviews annually to facilitate longer term planning.</p> <p>The tension between council mandates and long-term planning can be resolved by reviewing and refreshing a longer term council plan at the commencement of each new political term. Consideration could be given to ten or twelve year future plan reviewed by each new council with four-year plan prepared by each council in year one and reported on in year three.</p> <p>A lack of legislative compulsion has not prevented the City of Melbourne using community planning to engage the public in informed discussions about long-term issues as a matter of good practice. For these reasons, we do not consider there is any need to take a prescriptive approach and embed additional requirements in the new Act.</p> <p>The problem of long-term community planning cutting across council mandates is avoided if the exercise is clearly understood as a community owned process. Community planning is not a fetter on councils' discretionary authority but rather an enabling tool to ensure councils have the considered views of their communities before them when making long-term decisions. While a 10 or 12-year time horizon is longer than council terms, consideration should be given to community plans refreshed on a more regular basis at the commencement of each political term.</p>
C	Should strategic resource plans be required to provide an explanation of how it responds to the objectives of the council plan, how it was developed, or the key assumptions	<p>Strategic Resource Plans should include key assumptions underlying it. Councils tend to use the strategic resource plan to be a financial framework in which the objectives of the Council Plan work within.</p> <p>Disclosure of key assumptions should be mandated. This would be a valuable requirement as current practices in Victorian councils are varied and disclosure would significantly contribute to an improved culture of transparency</p>



	underlying the forecasts?	and accountability.
D	Can council planning and reporting processes be streamlined? If so, how?	Yes – council reporting requirements are currently too detailed resulting in cumbersome reports with too much information. There is little consistency within councils on reporting. A review of requirements would be valuable.
E	How should consultation over the council plan, strategic resource plan, budget and the declaring of rates occur, and at what frequency?	<p>The current obligation on councils to consult on their proposed four-year council (including strategic resource) plans is an appropriate statutory minimum (section 125(3)). However, so long as council plans are tied to the four-year political term of the council, there is minimal opportunity for meaningful engagement to take place due to the reality of time constraints. Once the council is elected, it has only six months to familiarise itself with the workings of local government and develop a draft plan (effectively by May latest) for public exhibition.</p> <p>Therefore it has made more sense, from our perspective, for any in-depth public consideration of the issues to occur before the election of a new council, potentially as part of a community plan conversation (see under B above). The ensuing council plan can then be seen as the council's response to the community's long-term vision and aspirations. If the 'blue-sky' conversation with the community belongs under the umbrella of the long-term community plan, then the council plan conversation should be concerned with where the council should best allocate its resources over the next four years based on its capacity to deliver. Engagement might still occur, except that its focus would be on testing the community's desires in the context of broader feasibility and resourcing constraints.</p> <p>On the question of frequency of consultation on the council plan, assuming the four-year objectives of the council have been informed by the long-term views of the community and backed by solid rationale, it should not be necessary to revisit the fundamental commitments made other than to review any underlying assumptions (via the ordinary annual planning and budgeting process). In any event, the City of Melbourne's experience is the statutory requirement to carry out an annual review of the council plan tends to default to an administrative exercise rather than any significant conversation with the public. In our experience, the more concrete public discussion in the annual space occurs around the annual plan and budget.</p> <p>Where the Act predetermines the timing of engagement, this can impede a council's ability to constructively engage with its community at the optimum time in the budget process.</p>
F	Should rates be set four years in advance as part of a council's priority setting?	This would seem unrealistic.
G	Should there be greater transparency/disclosure in the budget such as operating and finance leases that are not currently required to be disclosed?	What should be disclosed is meaningful information that informs the ratepayer and not for the sake of it. This is already a practice of the City of Melbourne. Non-statutory disclosures on expenditure and assets here <a href="http://www.melbourne.vic.gov.au/AboutCouncil/financegovernance/Pages/RegistersNonStatutoryRequirements.aspx">http://www.melbourne.vic.gov.au/AboutCouncil/financegovernance/Pages/RegistersNonStatutoryRequirements.aspx</a>
H	Is there still a need for copies of planning and reporting documents	No

	to be provided to the Minister now that these documents are widely available on council websites?	
I	Other comments or suggestions you may have.	<p>Existing reporting requirements have been modified to try and achieve standardised reporting among councils to assist with comparability (eg financial statements). This is an excellent initiative but requires a common sense approach. Currently there is a model set of financial statements which all councils must adhere to. Recently the adherence to these disclosures has been tightened and little leeway has been given by VAGO and the State to stray from what is required in model budget document and financial statements. Certain disclosures mandated may be relevant for a capital city council but may not be relevant for a rural council and vice-versa. This causes some relevant information to be lost and some irrelevant information to be disclosed.</p> <p>One size fits all seems to be a too simplistic approach to disclosure, the standardised approach to disclosures should only be mandated where appropriate and some judgement should be allowed to the preparers of these statements to provide meaningful disclosures for users of these statements. Changes to model accounts are frequent and even slight changes impact on the presentation of budget documents, financial statements and the annual report. Users of these statements benefit from meaningful and relevant disclosures but there needs to be a balance struck with continuity and comparability of these statements from year to year. It needs to be noted that not all users come from an accounting and financial background and constant change sometimes inhibits their ability to be able to interpret these reports.</p>

## 6. Council Rates and Charges

Chapter 6 Discussion Paper (pages 68–76)

(refer also to *Local Government Better Practice Guide 2014*)

6.	Question	Comments
A	<p>Is the current method of declaring rates and charges based on "land" still appropriate?</p> <p>a. With the expansion of council services, e.g. beyond just property based services, is the continuation of making land owners primarily liable for paying rates and charges in step with the broad range of services?</p> <p>b. Is this inequitable as one section of the community (property owners) bear a greater responsibility for funding council services not necessarily used by them?</p> <p>c. Should owners be legally liable to pay council rates and charges in all instances? If not, is section 156(2) and (5), which provides that occupiers of land in certain instances are liable to pay rates and charges, appropriate?</p>	<p>While the rating system generally works, there are opportunities for review of its operation to simplify processes. There is value in retaining the ability to apply differential rates and for a rate being a charge on the property (especially with the EUA process being grounded on the first charge).</p> <p>The different process for recreational land should not be buried in the <i>Cultural and Recreational Lands Act 1963</i>.</p> <p>The exemption for charitable purposes needs to be tightened as major entities such as universities and hospitals should not be able to use the argument about ancillary to the charitable purpose to shift liability from commercial activities.</p> <p>If there is an appetite for evaluating ownership rating versus occupancy rating, we comment that ownership-based rating as opposed to occupancy-based rating assessments on property ownership provides a sound platform for revenue generation and would increase efficiency with flow on impacts for payment processing and voting eligibility.</p> <p>Section 158 of the Act requires rates and charges to be levied on each occupancy. The requirement for a rating assessment to be returned for each occupancy is expanded on in the <i>Valuation of Land Act 1960</i>, s.13DC. Rating assessments based on ownership would be more transparent and provide a sound platform for payments, land titles are the legal basis for ownership and there is a legal process surrounding the recording of titles information. Conversely occupancy changes frequently and there is no readily available reliable data. Legislation surrounding the collection of same is restricted and often subject to confidentiality claims. There is a logical flow on for payment processes which would be simplified.</p>
B	<p>Is the current power of councils to declare a municipal charge still required?</p> <p>a. Could instead councils provide specific charges for specific purposes, such as infrastructure levies to fund particular infrastructure projects of general benefit to those within the municipal district?</p>	<p>The power to declare charges is too narrow which is why the EUA process ended up being developed.</p> <p>Current available tools for differential rates/service charges/special charges are well established and effective if managed well. The administration of these rating tools may need to be tightened. Standardisation would allow easier comparison across local governments. A refresh of the language would be beneficial as local government strives to fund innovation.</p> <p>The current differential rating model is open to manipulation, is confusing in its variation between</p>



	b. If so, are legislative safeguards about expenditure of the proceeds and the transparency of the funding process necessary?	<p>councils and can lead to groups of ratepayers being heavily subsidised by another.</p> <p>The application of differential rates needs to be simplified, better planned, better explained and more aligned along councils. In 2013, the Ministerial Guidelines for Differential Rating started this process but more work should be considered.</p> <p>A robust community engagement consistent with council's long-term financial planning should be required when implementing a differential rate. History shows that changing differential rates sometime after introduction is extremely difficult.</p>
C	What rights should rate-payers have regarding the exercise of councils' powers in relation to levying rates and charges?	The appeal process in respect to rates running in parallel with the process to object to valuations every two years is complex and the process would benefit from an end to end review on how it works.
D	Are the current review and appeal rights of ratepayers in relation to rates and charges in the Act appropriate? If not, how should they be changed?	Concern is expressed that the annual budget declaration process is not readily understood in rate dollar terms to the ordinary ratepayer. Ratepayer interest only arises when they receive their rate bill. At this stage objection rights are detailed in the <i>Valuation of Land Act 1960</i> . Appeal rights to rates should be restricted to the budget consultation process.
E	Other comments or suggestions you may have.	<p><b>Rate Exemptions</b></p> <p>Legislation surrounding rates exemptions should be tightened and better reflect first principles. The terminology of section 154 of the Act is open to interpretation and needs to evolve along with the changing community. Revenue is impacted as there is no requirement for notification when exempt use no longer applies and no capacity to recover back rates when non- exempt use is identified. The legislative wording is generic and open to interpretation, how far is the charitable definition intended to be taken? For example what use constitutes 'advancement of education' in modern day education establishments providing facilities beyond classrooms and lecture theatres? There needs to be a capacity to balance commercial pursuit against the charitable intent. Currently legislation only covers the sale of goods, however increasingly charitable organisations / education providers are capitalising on their assets and making them available to the wider range of community and commercial endeavours. There needs to be clarity around actual use and intention to use in terms of eligibility for exemption and provision made where that intended use never eventuates to recoup past rates due.</p> <p>Currently the onus is on the local authority to check continuing eligibility for an exemption, time and resources limit the capacity to do this. Should the onus not be on the exempt rate payer to reapply on an annual basis thereby confirming their continuing exempt use?</p>

## 7. Council Service Delivery and Financial Decision Making

Chapter 7 Discussion paper (pages 78–83)

7.	Question	Comments
<b>Investments and Borrowing</b>		
A	What powers do councils need to undertake their financial decision-making functions?	<p>Councils need broad powers of investment. While it is appropriate that council investments are not too speculative, the current provisions regarding entrepreneurial powers act as a disincentive to innovation. Section 193 is unwieldy and difficult to interpret, and in practice this provision deters innovation and collaboration, especially with other councils. The approval process can be time consuming and cumbersome.</p> <p>We suggest the removal of the ministerial oversight and approvals process, and its replacement with a council investment policy or strategy for review annually and approved by audit committee.</p> <p>If a requirement for ministerial oversight is retained, we suggest this only be for very large transactions based on a council's rate revenue, and ask that the process be reviewed as the time taken to approve applications for categories of investments or borrowings is lengthy and can jeopardise transactions.</p> <p>The financial thresholds contained in section 189 needs to reflect the commerciality relating to significant income earning real estate. Arguably the current legislation had that intention many years ago however market levels have not remained stationary over the same timeframe.</p>
<b>Exchange and Sale of Land</b>		
B	Should the Act contain provisions limiting the powers of councils in relation to the sale or purchase of property?	If a council owns the land being sold or will own the land being purchased and the process is transparent, then a council should have the same rights as any other body corporate.
<b>Procurement</b>		
C	How should public tendering requirements be treated in the Act?	<p>The provisions relating to councils' powers to enter into contracts would benefit from an overall review and we have received a considerable response from within the Organisation calling for change to procurement requirements within the Act.</p> <p>We note that the current procurement thresholds have not been regularly reviewed or indexed, and the financial limits create processes that can be cumbersome and restrictive, and may not result in deriving the best outcome for ratepayers. We further note that the 'one size fits all' approach and low</p>

		<p>statutory limits are especially restrictive for larger councils.</p> <p>For these reasons, we suggest that the new Act permit councils to determine their own tender limits and procedures, the details of which can be made available to the public on council websites. In the event that statutory limits are retained, we strongly suggest the limits be refreshed more frequently, and that they be tied to the size of a council, possibly through its rate revenue.</p>
D	Should the requirement for councils to seek ministerial exemptions from a public tendering process be removed, leaving it to councils to develop, and comply, with their own Procurement strategies aimed at ensuring public tendering? (see also discussion at pages 103-4)	It is appropriate for a council to decide in open session when not to call a tender, rather than having to seek ministerial authority, which is in itself at odds with the apparent direction of more autonomous local government and undermines the success of some transactions given the time involved in seeking consent.
E	Should tendering requirements apply to goods, services or works stemming from other statutory requirements? (e.g. under s173 of the Planning and Environment Act 1987 mutual obligations are carried out by council and developer).	No, and the tendering requirements should also not apply to software/intellectual property licences.
F	Other	In relation to section 98(1) (d) of the Act and the prohibitions on delegating the power to approve expenditure not contained in a budget approved by council, in order to facilitate more efficient processes and speed in decision making, it would be desirable for the CEO to have the ability to approve any expenditure necessary for the operation of the council so long as that expenditure lies within the current budget forecasts.
<b>Entrepreneurial Activities</b>		
G	How should the entrepreneurial activities of councils be treated under the Act? (see page 81)	<p>The original section 193 straitjacketed the councils. That was relaxed in 2003 but it still can be a fairly disempowering process in seeking the approval. The \$5million threshold is particularly an issue with a large council.</p> <p>Legislation should be an enabler of innovation. At present the approvals required to undertake entrepreneurial activities acts as a disincentive.</p> <p>The approval process is time consuming and cumbersome.</p> <p>Section 193 is unwieldy and difficult to interpret, and in practice this provision deters innovation and collaboration, especially with other councils.</p>



<b>Collaborative Arrangements</b>		
H	Should collaborative arrangements between councils be broadened beyond library services?	The Act should positively encourage collaboration and provide clear tools that councils can use to encourage collaboration but it is then for each council to decide whether to use them or not.
I	Should these arrangements require ministerial approval?	No

## 8. Councillor Conduct, Offences and Enforcement

Chapter 8 Discussion Paper (pages 86–99)

8.	Question	Comments
A	Do standards of councillor conduct need to be improved? If so, how can this be achieved?	Having prescriptive behaviours in the Act is good, but there is difficulty in understanding who the appropriate person is to challenge a Councillor in relation to behaviour. Escalation to the Local Government Inspectorate for investigation is appropriate if a matter is not dealt with.
B	Does the system of councillor conduct panels need to be improved? If so, how?	The principle is right, but it needs to operate in timely fashion. Consideration could be given to a preliminary hearing before a full hearing is necessary. A mediator in the first instance may also be appropriate, and based on their report, progression to the next stage.
C	How can the conflict of interest provisions be made simpler?	They are complex and difficult to understand. More scenarios could be provided to illustrate.

## 9. Ministerial Powers

Chapter 9 Discussion paper (pages 102–111)

9.	Question	Comments
A	As the council is a separate tier of government, should councils be able to decide on issues without ministerial intervention?	<p>Local Government's role as the third level of government is undermined when it is controlled by the Minister and the State in the way the Act currently provides.</p> <p>Currently the Act provides a diverse range of circumstances where the Council must obtain the consent of the Minister for Local Government and/or the Treasurer (sections 186 and 193) before an action can be taken, comply with ministerial codes (section 208H), take into account guidelines laid down by the Minister (sections 160(2A) and 111A) or where the Council's action can be subsequently disallowed (sections 160(4) and 123).</p> <p>Whilst it is appropriate that the Minister retain oversight of local government and this be embedded in the Act, the role of the Minister should be:</p> <ul style="list-style-type: none"> <li>• simplified</li> <li>• focused on a 'differential oversight model'</li> <li>• refocused toward providing guidance and advice.</li> </ul> <p>It is suggested that many of the requirements to obtain the Minister's consent could be replaced with general powers allowing the Minister to issue non-binding guidelines to local governments. Transparency could be maintained by requiring the local government identify variances from the guidelines.</p>
B	What powers should be provided to the minister in the Act.	Generally speaking, the Minister should be able to provide non-binding guidelines and the Council be required to report/resolve why it chose not to follow the guidelines.
C	Are the provisions in the Act relating to boards of inquiry and commissioners relevant or are they redundant or inconsistent with current council needs?	There will always be a need for a third party to look into processes within an individual council when things go wrong.
D	Should the minister have the power to intervene in the employment of CEOs and senior staff?	Yes in respect to the performance by the CEO but otherwise no.
E	Should there be other grounds for suspension of a council in addition to the existing grounds, such as strong community support for such intervention?	Possibly though they need to be objective and not subjective or based on numbers. The community can become angry over a decision which is absolutely justified and correct.



## 10. Harmonisation of the Local Government Act

Chapter 10 Discussion paper (pages 112–115)

10.	Question	Comments
A	<p>What aspects of the Act should be amended to better harmonise with related legislation?</p>	<p>The election provisions of the <i>City of Greater Geelong Act</i> and CoM Act, and the <i>Municipal Association Act</i> should be consolidated into one Act with special parts relevant to Melbourne, Geelong and the MAV.</p> <p>The road provisions in schedule 10 and 11 could be moved into the <i>Road Management Act</i> and the <i>Road Safety Act</i>.</p> <p>There is a lack of clarity on how the Act interacts with the <i>Crown Land (Reserves) Act 1978</i>. Where a local government is also a committee of management it has a constant issue on whether it can consider allowing a proposed activity on reserved Crown land in its capacity as municipal council under its local law or through a licence under the <i>Crown Land (Reserves) Act</i>.</p> <p>Where a local government is required to give public notice of a proposal to grant a lease of reserved Crown land, the grant and purpose consent for the lease should not be the subject of the extended parliamentary scrutiny process under the <i>Crown Land (Reserves) Act</i>. This is unnecessary duplication.</p>
B	<p>How can council responsibilities in relation to other legislation be made clearer?</p>	<p>There are 120 plus Acts which affect this Council as a Council. Issues need to be looked at holistically across departments of the State and not in isolation.</p> <p>The fact that road and public highway have different meanings under the Act, <i>Road Management Act</i> and <i>Road Safety Act</i> and that there is limited cross referencing between the Acts creates confusion.</p> <p>Why are 'rates' for recreational lands dealt with in the <i>Cultural and Recreational Lands Act 1963</i> instead of being addressed within the Act?</p>
C	<p>Are there provisions in relevant legislation relating to road management that should be transferred to or from the Act?</p> <p>Does the Act contain any matters that should be transferred to other Victorian legislation? If so, why?</p>	<p>A simplification of the road closures provisions would be valuable, along with the ability being given to councils to install road signage on private buildings.</p> <p>We also question whether the provisions in respect to roads and traffic should remain in the Act or be placed within the <i>Road Management Act</i> and the <i>Road Safety Act</i>? (with the former Act being amended to require any road authority that proposes to discontinue a road being required to carry out a public notice and submission process).</p>
D	<p>Does the <i>City of Melbourne Act 2001</i> need to remain as separate legislation or should its provision be incorporated into the Act?</p>	<p>Given this Council's role as a capital city council, separate legislation signalling the City of Melbourne's important function is important, however, this is a prime opportunity to review some redundant provisions within the <i>City of Melbourne Act 2001</i> ('CoM Act').</p>



		<p>We consider the CoM Act should continue, either as a new act or in a revised form, for the following reasons:</p> <ul style="list-style-type: none"><li>• To establish the continued importance of the City of Melbourne as the capital city council.</li><li>• In order to provide a separate legislative vehicle for innovation or strategic schemes unique to the City of Melbourne, for example, the environmental upgrade scheme or Docklands Coordination Committee.</li><li>• To reflect the additional role of this Council internationally. The City of Melbourne plays an important role in business development and international city relationships. The maintenance of our position as an international city with global connections, and in acting as an advocate for the City on a global stage, is critical. By contrast, a smaller council would not be expected to perform this function and as such it is artificial to include it within the Act.</li></ul>
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## 11. Other Issues

11.	Question	Comments
A	Is there anything else that should be included in the Act?	<p>The Act should commence by acknowledging the first nations' peoples.</p> <p>The Act or relevant road legislation should provide greater powers to local authorities to enforce the reinstatement of roads by service authorities undertaking works within the road reserve.</p> <p>Clause 3(1)(a) of schedule 11 of the Act should be amended to provide an objective criteria on when a registered vehicle can be deemed to be abandoned.</p>
B	Are there any other provisions that have not been identified above that are redundant, ambiguous or should be amended due to issues such as interpretation problems, inconsistencies etc?	<p>Clause 3(1)(a) of schedule 11 of the Act should be amended to include a specific period after which a vehicle can be considered abandoned.</p> <p>Could the Act be amended to include:</p> <ul style="list-style-type: none"> <li>• provisions addressing the requirements for contribution to the public realm from developers?</li> <li>• guidelines on the provision and maintenance of Infrastructure in the Public Realm.</li> </ul> <p>The provisions in the Act that require a submission process under section 223 of the Act are disjointed and spread throughout the Act.</p>
C	Other comments or suggestions you may have.	<p>The penalties referred to in Section 115 of the Act are in need of review and increase. They have not been reviewed or altered since the Act was introduced.</p> <p>Section 224(6) of the Act should be amended to expressly allow an authorised officer to ask for a person's residential and/or business address.</p> <p>The ability for infringement notices issued by local governments to be lodged with the infringements court needs to be reinvestigated but in the absence of this change, lodgeable infringement offences under the Act need to be expanded to assist in enforcing compliance.</p> <p>The terms of schedule 10 and 11 of the Act need to be generally reviewed in light of the change in other road legislation in recent decades. In addition, the powers over roads and/or traffic need to be amended to expressly allow a Council to place obstructions on roads for environmental purposes. This is to ensure the Council can place waste compactors, food dehydrators and similar devices on roads including public highways.</p> <p>There are a number of Acts that provide a local government must or may include content within its Council Plan including the <i>Public Health and Wellbeing Act 2008</i>, the <i>Domestic Animals Act 1994</i> and the <i>Disability Act 2006</i>. There should at least be a cross reference to these other statutes in the Act.</p>