

# SUBMISSION FROM MONASH COUNCIL IN RESPONSE TO THE MUNICIPAL ASSOCIATION ACT REVIEW CONSULTATION PAPER

## Overview

Thank you for the opportunity to provide input into the Victorian Government's review of the *Municipal Association Act 1907 (the Act)*. In our submission below, Council responds to each of the questions set out in the consultation paper.

Council supports the broad approach proposed in the discussion paper to update and modernise the Act, although we have suggested several further matters which we believe are worth considering in response to some of the questions posed.

By way of a general overview and summary of our position, we would like to stress our view of the fundamental importance of the Municipal Association of Victoria (**MAV**) to Monash Council and local government in Victoria generally. It is our peak body and has stood the test of time for 138 years. During this time, it has valiantly backed the interests of Victoria's councils and communities they serve through good times and bad. It has played an important part in improving the quality of government in this state at the point where it interfaces most with where people live. Please respect this history and the MAV's importance to councils and communities in Victoria in your drafting of a new act.

Remember, the MAV belongs to us – not you. You merely create the basis for its formal existence through an enabling act of Parliament – much in the same way that the Australian Parliament does to the millions of companies which exist today in Australia through its *Corporations Act 2001*.

While we support the four principles on which the proposed reforms are based, it is critical in our view that any new act must achieve the following principles:

1. above all else, it *must preserve and enhance the independence of the MAV* from the State Government;
2. it *must ensure that the MAV is answerable to, controlled by and directed by its members* (i.e. the councils which exist from time to time in Victoria) as opposed to being directed or potentially influenced by the Government of the day;

3. *it must allow the MAV to act fearlessly, boldly, freely and impactfully* in its dealings with the Government, the Australian Government, the media and other entities, institutions and people which are relevant to Victorian councils from time to time;
4. *it must enable the MAV to adapt and evolve over time* (without the need for amending acts) and to be able to expand its member services in any manner it likes (such as what would be available to a common incorporated association or company). In other words, *this must be a principles-based, enabling act – not a constraining act*;
5. *it must ensure that the MAV operates in an accountable and transparent manner*, including with the appropriate level of oversight and in a way which is consistent with modern expectations of public sector practice, but, and very importantly, *this must be achieved in a way which does not inhibit or reduce the MAV's independence* from the Government. In this regard, we believe that the approach that should be taken to monitoring and overseeing the MAV by the Government should be one that is consistent with the approach that the Government and Parliament takes to monitoring and overseeing the statutory integrity agencies in Victoria such as the Ombudsman, the Auditor General and the Independent Broad Based Anti-Corruption Commission.

To the extent that any new act is consistent with these principles, then we support the Government's efforts to establish a new act.

However, to the extent that the principles set out above are weakened or undermined by a new act, then we will regard such steps as a retrograde step which is not in the interests of the independence of local government or Victoria's communities which they serve. In our view, the drafters of the new act would do well to have these five principles pinned below their monitors as they set about their task of drafting the new act.

## Responses to questions posed in the consultation paper

### ROLE AND POWERS

Do you support the proposed reforms to the role of MAV?

Generally, yes. We support each of the five dot points proposed. However, we would also suggest that the following additional roles be specifically included as well:

- representing councils on a state-wide basis

*Rationale: This is a key function currently performed by the MAV. Many key decision makers engage with it on this basis everyday such as Ministers, MPs, stakeholders, Government Departments, Statutory Authorities, the Australian Government, the media and other relevant stakeholders.*

- facilitating policy development and aggregating common interests between councils

*Rationale: This is also a key function currently performed by the MAV. Much of the day to day work of the MAV is focused on this role – such as by responding to Government consultation processes and the policy motions passed at the twice-yearly MAV State Council meetings. For instance, the MAV is the best way that the Government can talk effectively to local government (without having 79 separate conversations) and with which councils can speak with one voice to the Government.*

- participating as the employer-body nominating body for councils in relation to the Local Authorities Superannuation Fund (LASF) administered by Vision Super

*Rationale: This is also a key function currently performed by the MAV. Given the significant financial risks that this (now closed) defined benefit scheme poses to the sector and all Victorian ratepayers, it is important that the MAV's role in ensuring the local government 'employer' interest in the management of LASF is effectively and appropriately discharged by Vision Super.*

If no, what alternative option(s) would you propose?

Not applicable, save for the additional roles suggested above.

Do you support the proposed amendments to MAV's powers as a body corporate?

Yes.

If no, what alternative option(s) would you propose?

Not applicable.

Do you support making clear that each council has a right to appoint one of their councillors as their MAV representative?

Yes, but the representatives should not 'constitute MAV'. The new act should make it clear that councils, as entities, and not their appointed representatives, are the members of the MAV and what constitutes the MAV. It is simply through appointed representatives that these councils (i.e. the members of MAV) act and participate within the MAV.

The right to appoint a councillor as an MAV representative (and for a council to be a formal member of the MAV) should be contingent upon two things: (1) the council in question voluntarily electing to be a member of the MAV; and (2) the council being up to date in its membership subscriptions.

It is unclear from the consultation paper whether this proposed reform is proposing a change from the current non-compulsory nature of MAV membership. Membership of the MAV should not be mandatory (i.e. there should be no change from the status quo). As with other membership based associations, the MAV should have to earn and retain the active membership of its members rather than this being compelled by law. Equally important, a non-financial member should not be able to continue to enjoy the rights of membership within the MAV until such time as it is fully up to date with its financial obligations.

If no, what alternative option(s) would you propose?

Not applicable, save for the qualifications in our answer above.

## RESPONSIBILITIES

Do you support the inclusion of responsibilities for the appointed representatives?

Yes, subject to appropriate parameters around what is intended by the inclusion of the proposed reform, 'determining the strategic direction of MAV'. In our view this should mean determining positions of policy only (as in, matters upon which the MAV takes a position in the external environment) and should be qualified to make it clear that, beyond being responsible for the rules of the MAV, this body has no further role to play in the day to day operations of the MAV which more properly fall to the board and to the MAV management team.

If no, what alternative option(s) would you propose?

Not applicable, save for the qualifications in our answer above.

Do you support the proposal that the State Council have the power to make or amend the MAV Rules?

Yes, this is a sensible and appropriate reform. However, in relation to the Proposed Reform 8, it is important in our view to make clear that while the Rules must provide for procedures relating to 'annual fees' and 'procedures for assessing the performance of the board of management and dealing with governance failures' these must be constrained to setting a general governance framework which must be observed by the board, rather than prescribing or determining certain outcomes. For example, the board must retain discretion to set and alter the annual fee each year and it must be empowered to assess, manage and improve its own performance and processes, while also dealing promptly with any governance failures or challenges.

In relation to Proposed Reform 9, we suggest that this requirement be altered to clarify a 60% threshold of votes of those representatives in attendance and voting on the motion (rather than merely requiring 60% of all representatives). Coupled with a quorum requirement of, say, 50% of councils for State Council, we think this strikes the right balance in terms of ensuring an appropriate hurdle for rule changes without inhibiting its achievement given variable attendances.

If no, what alternative option(s) would you propose?

Not applicable, save for the qualifications in our answer above.

Do you support setting out the functions and responsibility of the board of management in the MA Act?

Yes. However, in addition to the functions and responsibilities listed in Proposed Reform 10, we would suggest a further responsibility be added 'monitoring its own performance as a board' and a further broad catch-all function 'any other functions consistent with the management of a body corporate'.

If no, what alternative option(s) would you propose?

Not applicable, save for the qualifications in our answer above.

Do you support the addition of conduct provisions for the board of management?

Yes.

If no, what alternative option(s) would you propose?

Not applicable.

Do you support the requirement for a remuneration policy?

Yes.

If no, what alternative option(s) would you propose?

Not applicable.

## REPORTING AND ACCOUNTABILITY

Do you support the principles of sound financial management?

Yes, although we would suggest that a further principle be added 'consistently act in an accountable and transparent manner'. There is no specific reference to acting in a transparent manner in the proposed reform or commentary and we think there should be. Transparent decision making is very important for a member based organisation, as it is for local councils. The MAV should demonstrate best practice standards of accountability and transparency in how it manages and reports on its finances, including by reporting on commissions received within its procurement business and more generally in terms of its wider decision making.

If no, what alternative option(s) would you propose?

Not applicable, save for the suggestion in our answer above.

Do you support increased accountability to the member councils and the Minister as set out in the proposed reforms?

Yes, save that we think it would be more desirable for the MAV to report directly to the Parliament (through the presiding officers) rather than to the Minister. This recognises the unique role and independence of the MAV from the Government of the day. We think this could be appropriately modelled on the approach used in the case of the integrity agencies such as the Victorian Auditor General's Office.

We also note your reference in the discussion paper to 'Each year MAV develops a strategic plan in consultation with *the appointed representatives* through a series of strategy sessions' (our italics). With respect, this would be better described by using *councils* in this sentence rather than 'the appointed representatives'. The relevance of the appointed representatives is merely that these people are the ones who ultimately exercise the vote for each member council as to whether to accept the strategic plan at the May State Council meeting. The strategic sessions are typically full of non-MAV representatives including mayors, CEOs, other councillors and other senior council officers.

This is an important distinction to appreciate because the key to a successful MAV, and we would hope the cornerstone of the next act, is a premise that participation in the MAV by each council extends far beyond that council's MAV representative. In line with our comments above in response to question 5, we stress that the new act should treat *councils* as *the members* of the MAV and the appointed representative councillor for each council as nothing more than the mechanism with which each council participates at MAV State Council and participates in MAV elections.

If no, what alternative option(s) would you propose?

Not applicable, save for the qualifications in our answer above.

Do you support the requirement for the MAV to adopt a procurement policy?

Yes. In addition to the requirements included in Proposed Reform 24, we would also suggest that this should be expanded to include a need for transparent and full disclosure of the MAV's costs in running each tender and its income/commission forecast and, later, generated for each contract.

In our view, this is an important accountability and transparency measure for the procurement aggregators in local government. In the past, Council has been critical of the lack of disclosure and deliberate obfuscation by Procurement Australia in response to questions from Council about particular contracts which they appear to derive grossly excessive commission income from which is completely disproportionate to the costs of managing the tender on behalf of the participating councils.

In our view, coupled with the privilege extended by the Ministerial exemptions to operate joint procurement tenders on behalf of councils across the sector, should be a disclosure obligation for both bodies (and any others) for clear and full cost and income disclosure in relation to each individual contract or tender.

If no, what alternative option(s) would you propose?

Not applicable, save for the qualification in our answer above.

Do you support the requirement to establish an audit and risk committee as detailed in the proposed reform?

Yes.

If no, what alternative option(s) would you propose?

Not applicable.

## INSURANCE

Do you support the inclusion of a regular review mechanism to assess whether the provisions relating to MAV's insurance functions remain appropriate?

We question whether there is a need for a regular review mechanism for the MAV's insurance functions built into the new act. In our view, given the significance of these operations for the MAV and councils, and the substantial benefit the operation of mutual insurance has delivered over many years to councils, reviews and improvements to this offering should be (and in our experience, is) a business as usual function for the MAV and individual councils rather than requiring some arbitrary five-yearly review bolted onto the act.

We are uncertain why there needs to be, or ought to be, a five-yearly review of whether these provisions remain appropriate. What would the benefit of that be? The insurance environment is a fast moving one and new case law, legislative change, a tragic incident or an insurer collapse can produce wide-reaching consequences in a short period. Given this, it would make more sense from our point of view for the new act to retain an *enabling provision* which *enables* the MAV to provide insurance product, rather than a prescriptive requirement that *mandates* that it *must do so*.

If no, what alternative option(s) would you propose?

See the proposal contained in the answer above.

Do you support the inclusion of a prudential supervision framework for MAV's insurance activities?

Yes, this seems appropriate. However, we are concerned that the proposed prudential supervision is proposed to be from the Minister (presumably, the Minister for Local Government – given that is what 'Minister' refers to in the rest of the consultation paper). The Minister has no other prudential obligations or responsibilities in relation to insurance or similar financial matters. Neither does Local Government Victoria. In our view, this prudential oversight should sit with the Minister for Finance. This fits consistently with the Finance Minister's existing prudential responsibilities in relation to WorkSafe, the Transport Accident Commission and the Victorian Management Insurance Authority.

If no, what alternative option(s) would you propose?

Not applicable, save for the suggestion we make in the answer above that prudential supervision should be exercised by the Minister for Finance rather than the Minister for Local Government.