

**Chief Executive Officer
Mildura Rural City Council**

**SUBMISSION TO THE
MUNICIPAL ASSOCIATION ACT REVIEW**

CONSULTATION PAPER

23 JUNE 2017

Overview

Thank you for the opportunity to provide feedback on the Municipal Association Act Review Consultation Paper. The extension of time between the release of the Consultation Paper and the deadline for submissions did provide time for consultation with staff and Councillors.

The Submission was referred to the Ordinary Council Meeting held 22 June, 2017 and the Recommendation to endorse this Submission lapsed due to a lack of a Mover.

Therefore, this submission is from the Chief Executive Officer of Mildura Rural City Council [CEO-MRCC]. My comments are limited to the general directions as outlined in the proposed reforms, and from reviewing other submissions made.

From the CEO-MRCC's perspective it is essential that the new MAV Act:

- Reinstates the full suite of body corporate powers that were inadvertently diminished by a previous amendment to the current Act
- Clarifies the role and functions of the MAV removing any perceived ambiguity
- Embeds a commitment to Engagement and Consultation from the State Government within the current legislation
- Maintains the MAV as a strong and independent advocate for the sector not unreasonably constrained by State Government direction, oversight or regulation
- Be sufficiently enabling for the MAV to meet the evolving needs and expectations of its member councils
- Provides power for MAV to engage in insurance activities

It is considered that the new Act should contain clear borrowing and investment powers consistent with the standard powers from the *Borrowing and Investment Powers Act 1987* by reference to that Act.

Gerard José
Chief Executive Officer
Mildura Rural City Council

MAV ROLE AND POWERS

PROPOSED REFORM

1. *Replace the preamble with a provision that clearly sets out that the role of the MAV is to represent members' interests and be accountable to member councils including:*
 - *Advocating and promoting local government interests*
 - *Building the capacity of councils*
 - *Facilitating collaboration and shared services between councils*
 - *Providing support and advice to local government*
 - *Providing insurance protection for local government.*

CEO-MRCC response:

CEO-MRCC is supportive of the objective “not to limit the scope of MAV’s functions but to clarify MAV’s role in line with its activities”. The “role” of MAV is critical in defining the range of MAV’s powers as a body corporate. The five dot points set out in this reform are supported. It is also considered that the role should also encompass:

- Proving research, activities and services [episodic or continuous] that reflect the changing role and functions of local government
- Being the representative body for councils on a state-wide and regional basis
- CEO-MRCC is very supportive of the MAV being able to act as a self-insurer under section 374 of the Workplace Injury Rehabilitation and Compensation Act 2013
- The establishment of the Local Government Funding Vehicle
- MAV’s participation as an employer body in relation to the Local Authorities Superannuation Fund
- Grant funded projects with other levels of government, financial institutions and philanthropic organisations.

PROPOSED REFORMS

2. *Retain MAV’s status as a body corporate under the MA Act.*
3. *Amend MAV’s powers to provide that MAV has the power to:*
 - *Do all things necessary or convenient to be done for or in connection with, or as incidental to, the achievement of its role or the performance of its functions*
 - *Undertake and carry on in Victoria or elsewhere insurance business for the purpose of providing insurance or insurance services under and for the purposes of the MA Act.*

CEO-MRCC response:

These reforms address deficiencies in the current Act. CEO-MRCC fully supports that the MAV should have all of the powers of a body corporate in order to perform its role and functions.

PROPOSED REFORM

4. *Provide that each council has a right to appoint a councillor from that council as their representative and that these representatives constitute MAV.*

CEO-MRCC response:

CEO-MRCC supports the current Act that requires a member council to appoint a representative from amongst its own councillors and that these representatives constitute the MAV. Member councils require the right to appoint a councillor from their own council to be that council’s representative.

RESPONSIBILITIES

PROPOSED REFORM

5. *Insert a provision that provides that the appointed representatives are responsible for:*
- *Determining the rules of the association*
 - *Appointing the president and board of management*
 - *Determining the strategic direction of MAV.*

CEO-MRCC response:

This proposed reform is supported with these additions. The MAV representatives should also be able to appoint the Independent Auditors to the MAV and that the representatives should comprise the State Council of the MAV, and the State Council should have a legislative foundation within the MAV Act.

PROPOSED REFORMS

6. *Provide MAV the power to make rules for the management of MAV.*
7. *Provide that a rule that is inconsistent with the Municipal Association Act or contrary to law is of no effect.*
8. *Provide that the following matters must be provided for in the rules:*
- *Annual fees*
 - *Rights, obligations and liabilities of members*
 - *The election of the President and board of management*
 - *Procedures for assessing the performance of the board of management and dealing with governance failures.*
9. *Provide that the rules may be amended, removed or remade if 60 per cent of the representatives vote in favour of the change.*

CEO-MRCC response:

The current Act provides the MAV with the power to make rules with the approval of the Governor in Council. CEO-MRCC believes that the MAV as a representative body should have the power to make its own rules without state government oversight. Accordingly, proposed reform 6 is supported.

It is considered that proposed reform 8 should include *Rights, obligations and liabilities of members, including the conduct of State Council.*

Further, the *The election of the President and board of management* should also include *appointment of Independent Auditor.*

PROPOSED REFORMS

10. *Provide for MAV to have in place a board of management with functions to include:*
- *The sound and prudent management of the affairs of MAV*
 - *Exercising the powers of MAV (including the power of delegation)*
 - *Providing general directions as to the performance of MAV's functions and the achievement of its objectives*
 - *Reporting on MAV's performance and financial transactions*
 - *Monitoring the performance of its Chief Executive Officer.*
11. *Provide that the board of management must have mechanisms in place for monitoring the exercise of delegated authority.*

CEO-MRCC response:

Any future Act should contain provisions for the existence of the board of management. Some of the functions should include:

- Determine and classify regional groupings of councils
- Develop a strategic plan (refer to proposed reform 19)
- Determine the annual budget that resources the Strategic Plan
- Sets the subscriptions to be paid by category of participating member councils
- Determine the levels of cover, guarantees and associated matters for all insurance coverage
- Determine the maximum allowances to be paid to members of the board
- The appointment of a CEO for the day to day management of and administration of MAV (refer to proposed reform 14)

PROPOSED REFORMS

- 12. Provide that the board of management must have processes in place for dealing with conflicts of interest, misuse of position and the prevention of fraudulent behaviour.*
- 13. Provide that board members must at all times in the exercise of the functions of their office act:*
 - *Honestly*
 - *In good faith and in the best interests of MAV*
 - *With integrity*
 - *In a financially responsible manner*
 - *With a reasonable degree of care, diligence and skill*
 - *In compliance with the MAV Act and MAV Rules.*

CEO-MRCC response:

These conduct provisions are considered to be a reasonable component of any sound governance framework. The proposed reforms are supported.

PROPOSED REFORMS

- 14. Provide that the board of management may appoint a CEO for the day to day management and administration of MAV.*
- 15. Provide that MAV must have in place a CEO remuneration policy that broadly aligns with the Victorian Public Sector Commission's Policy on Executive Remuneration for Public Entities in the Broader Public Sector.*

CEO-MRCC response:

It is considered that the Act should provide for the appointment of a Chief Executive Officer. Proposed reform 15 is supported.

REPORTING AND ACCOUNTABILITY

PROPOSED REFORMS

16. Insert a provision that provides that MAV must comply with the following principles of sound financial management:
 - Manage financial risks prudently, having regard to economic circumstances
 - Undertake responsible spending and investment for the benefit of member councils
 - Provide services which are accessible and responsive to local government needs
 - Ensure full, accurate and timely disclosure of financial information.
17. Provide that MAV must keep proper accounts and records of MAV's transactions and affairs in order to sufficiently explain the financial operations and financial position of MAV.
18. Provide that within 4 months after the end of each financial year, MAV must prepare and have independently audited financial statements in accordance with the Australian Accounting Standards. The financial statements must be included in the annual report for the relevant financial year and contain such information as is necessary to give a true and fair view of the financial transactions and state of affairs of the insurance scheme.

CEO-MRCC response:

MAV's annual reports are currently prepared in accordance with the Australian Accounting Standards and submitted for tabling in both houses of Parliament. The inclusion of provisions covering "principles of sound financial management", keeping of accounts and financial statements are all appropriate for MAV's operations. These reforms are supported.

PROPOSED REFORMS

19. Insert a provision that provides that the board of management must develop a strategic plan for the implementation of the strategic direction set by the State Council.
20. Provide that MAV must develop an annual report setting out MAV's performance against the objectives set out in the strategic plan.
21. Provide that, within four months after the end of each financial year, MAV must submit the annual report to the annual general meeting of MAV and lodge with the Minister a copy of the annual report to be tabled in both houses of Parliament.

CEO-MRCC response:

The proposed reforms are supported, with 19 to include, following sector-wide consultation.

PROPOSED REFORMS

22. Insert a provision to require MAV to adopt a procurement policy detailing the principles, processes and procedures that will apply to all purchases of goods and services by MAV.
23. This procurement policy would need to specify:
 - The circumstances in which MAV will invite tenders or expressions of interest from any person interested in undertaking the contract
 - The form and manner in which MAV will undertake tenders or expressions of interest
 - A process to regularly review contractual arrangements to ensure they are achieving value for money
 - A process to manage conflicts of interest.

24. *Insert a provision to provide that when MAV is carrying out procurement activities on behalf of councils, MAV must provide information to councils on the specifications of the tender and how the tender process was undertaken, and seek to facilitate share service arrangements.*

CEO-MRCC response:

CEO-MRCC is supportive of the principle that MAV be required to adopt a procurement policy.

PROPOSED REFORM

25. *Provide that MAV establish an independently chaired internal audit and risk committee to review the effectiveness of MAV's financial reporting and risk management frameworks.*

CEO-MRCC response:

CEO-MRCC supports this reform as good practice.

INSURANCE

PROPOSED REFORMS

26. *Retain the requirement for MAV to provide mutual liability insurance for the benefit of Victorian councils and any other sector if expansion of the fund is in the interests of the participating Victorian member councils.*
27. *Provide that the Minister must ensure a review of the insurance provisions in the MA Act is completed every five years to determine whether the provisions remain appropriate.*

CEO-MRCC response:

CEO-MRCC supports the reform to enable the MAV to retain the capacity to establish a mutual liability insurance scheme to provide public liability and professional indemnity insurance. CEO-MRCC does not believe it should be a “requirement” as this assumes it will always be a role for the MAV.

The proposal for a review every five years seems to be a sound governance oversight and is also supported. It should be noted that the market cycle of liability insurance is longer than five years and hence it is essential that any review considers this.

PROPOSED REFORMS

28. *Remove the provisions relating to the fidelity guarantee fund and accident insurance.*
29. *Provide that, in addition to the mandatory provision of mutual liability insurance, MAV may, subject to Ministerial approval, arrange insurance and receive commissions.*
30. *Provide that in the performance of all of MAV’s insurance functions (including mutual liability insurance), MAV be subject to the general direction of the Minister.*
31. *Provide that MAV must include in its annual report any directions issued by the Minister and MAV’s compliance with each direction.*
32. *Provide a requirement for MAV to appoint an independent actuary to evaluate the risk and uncertainty associated with MAV’s insurance liabilities and provide advice on premium rates, scheme changes and the financial sustainability of each scheme.*
33. *Provide that, should an insurance scheme be discontinued, the funds after payment of all liabilities and expenses are to be distributed to the contributing members, pro rata based on the sums contributed.*

CEO-MRCC response:

CEO-MRCC supports proposed reform 28 to remove current limitations.

Reforms 29, 30 and 31 are not supported as they embed oversight by the State Government interference in the operations of an independent body which operates in an existing commercial market.

Proposed reform 32 reflects current practice by the MAV and is supported.

Proposed reform 33 is not required and disbursement methodologies need to reflect best practice at the required time that provide the fairest outcome for participating members of the scheme.
