

29 June 2017



Maribyrnong

CITY COUNCIL
ABN 86 517 839 961

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

Email: local.government@delwp.vic.gov.au

Dear Hannah

**MARIBYRNONG CITY COUNCIL SUBMISSION IN RESPONSE TO THE
MAV ACT REVIEW CONSULTATION PAPER**

Thank you for the opportunity for Council to provide its comments and feedback on the Municipal Association Act review consultation paper. Please find enclosed Maribyrnong City Council's submission in response to the consultation paper.

Should you require any further information please contact Council's Director Corporate Services, Celia Haddock on 9688 0202 or celia.haddock@maribyrnong.vic.gov.au.

Yours faithfully,

Stephen Wall
Chief Executive Officer

MUNICIPAL OFFICES

Napier Street
Footscray

POSTAL ADDRESS

PO Box 58
Footscray
Victoria 3011

DX

DX 81112
Footscray

TELEPHONE

(03) 9688 0200

FACSIMILE

(03) 9687 7793

INTERNET ADDRESS

www.maribyrnong.vic.gov.au

SUBMISSION FROM MARIBYRNONG CITY COUNCIL IN RESPONSE TO THE MUNICIPAL ASSOCIATION ACT REVIEW CONSULTATION PAPER

Introduction

Thank you for the opportunity to provide feedback on the Victorian Government's review of the Municipal Association Act 1907 (the Act).

As local government is the community's most accessible level of government, and provides a considerable level of service in an increasingly constrained fiscal environment, it is important that the sector is well represented by a strong and independent advocate. The MAV has long provided this important role as the sector's key advocate to State and Federal Governments as well as other independent interest groups. Council, therefore, broadly supports the State Government's approach towards modernising the Act and formalising in legislation the association's important role. It should be noted, however, that limited time was made available for Councils to provide considered input to the review that might be endorsed within a Council meeting cycle.

Provided here is a general response to the consultation paper along with some key points we believe require further consideration in the context of this review. This response is provided subject to formal endorsement in Council's July Ordinary Council Meeting.

Overview of Principles

Principle 1 – An Act that is contemporary, meets future needs and is clear and comprehensive

In reference to the proposed changes to the acts preamble regarding the role of the MAV, Council would submit that this is an important opportunity to describe the MAV's role as independent of other levels of government. The important role the MAV plays in facilitating networks and initiating policy development (as acknowledged in the consultation paper) has seemingly been subsumed by dot point three of the Act review which suggests the MAV will play a role in facilitating shared services between councils.

Council routinely looks to optimise service delivery to our community through ongoing partnerships and dialogues with other regional Councils. This is well evidenced by our participation in such networks as Inner Melbourne Action Plan forum and as a key stakeholder in Lead West. Council also participates in the State Government's Metropolitan Partnerships Forum.

In an environment where ever increasing pressure is placed on Local Government as a result of State Government cost shifting and changes proposed to the Local Government Act it is important that the MAV is not seen as a facilitator of stratified services of diminishing quality.

Council submits that this proposed dot point may be seen as eroding of the MAVs independent role in this environment.

Principle 2 – Enable good governance and corporate effectiveness

Council broadly supports the reforms proposed under this principle, however, expressed concern in relation to the proposed State Government oversighting of insurance activities, “subject to Ministerial approval” (see proposed reforms No. 28 to 31). These reforms do not make clear which Minister would assume responsibility for “approval” and “general direction.”

Should these reforms proceed Council submit that the appropriate Minister is a Minister with an appropriate financial/insurance related portfolio rather than the Minister of Local Government.

Principle 3 – Ensure transparency and accountability to member councils, the community and the state

Council supports the reforms proposed under this principle. Transparency and accountability is paramount to a successful MAV. The MAV should be no different than its member Councils in its reporting requirements, especially with regards to its financial reporting framework. The proposed reforms bring the MAV in line with industry standards.

Principle 4 – Ensure there is appropriate oversight over insurance activities

The proposed reforms under this principle have the least direct impact on Council. Nonetheless, Council offers broad support to this principle with a caveat in relation to proposals 28-31 as mentioned under principle 2.

MCC Comments in response to Proposed Reforms

ROLE AND POWERS		
PROPOSED REFORM	MAV POSITION	MCC COMMENTS
<p>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:</p> <ul style="list-style-type: none"> • 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. 	<p>MAV 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:</p> <ul style="list-style-type: none"> • Proving services that strengthen the role and functions of the sector • Being the representative body for councils on a state-wide basis • 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 <p>The issue of private health insurance for council employees and councillors is flagged here as a matter requiring further consideration.</p>	<p>MCC supports the setting out of the MAV’s role to reflect the current day scope of the MAV.</p> <p>It is considered that the role should be outlined in broader terms rather than the more detailed manner the MAV has proposed. The six dot points detailed by the MAV could form part of supporting documentation outside of the Act.</p> <p>Further clarification of dot point three of proposed reform 1 is required with regards to comments made in the above overview.</p>
<p>2. Retain MAV’s status as a body corporate under the MA Act.</p>	<p>These reforms address deficiencies in the current Act. MAV should have all of the powers of a body</p>	<p>Council is supportive of the proposal to retain MAV’s status as a body corporate.</p>

ROLE AND POWERS

PROPOSED REFORM	MAV POSITION	MCC COMMENTS
<p>3. Amend MAV’s powers to provide that MAV has the power to:</p> <ul style="list-style-type: none"> • 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. 	<p>corporate in order to perform its role and functions. MAV supports these reforms subject to any broadening of the role to cover the full range of MAV’s activities (refer to comments on proposed reform 1).</p>	<p>Council is supportive of the proposal to amend MAV’s powers to be consistent with the powers of a body corporate as prescribed within the relevant Acts.</p>
<p>4. Provide that each council has a right to appoint a councillor from that council as their representative and that these representatives constitute MAV.</p>	<p>This provision confirms the decision of the Supreme Court on 20 February 2017 that the current Act requires a council to appoint a representative from amongst its own councillors. The MAV supports this position. Under the current Act, “... each council has a right to appoint a councillor from that council as their representative and that these representatives constitute MAV”. It is considered that the member councils should constitute the MAV rather than their representatives. The member councils would continue to have the right to appoint a councillor from their own council to be that council’s representative.</p>	<p>MCC agrees that each Council has the right to appoint a Councillor as their representative and that the representative must be a current Councillor of that Council.</p> <p>MCC believes that the member Council’s constitute the MAV rather than the representatives of each Council and that representatives act as delegates of their respective Council.</p>

RESPONSIBILITIES		
PROPOSED REFORM	MAV POSITION	MCC COMMENTS
<p>5. Insert a provision that provides that the appointed representatives are responsible for:</p> <ul style="list-style-type: none"> • Determining the rules of the association • Appointing the president and board of management • Determining the strategic direction of MAV. 	<p>Currently, there is no reference to the State Council in the MA Act. The State Council is a creation of the MAV Rules. It is considered that the State Council should have a legislative foundation. This proposed reform is supported.</p>	<p>MCC considers that the Act should provide for a legislative foundation for the responsibilities of member Councils (through their representative) which will in effect legislate the MAV State Council. However, it should not go so far as to be overly prescriptive in its nature.</p>
<p>6. Provide MAV the power to make rules for the management of MAV.</p>	<p>The current Act provides the MAV with the power to make rules with the approval of the Governor in Council. It is considered that the MAV should have the power to make its own rules without government oversight. Accordingly, proposed reform 6 is supported. It is considered that proposed reform 8 should include “Regulation of proceedings of the State Council and the management board”. Embedding proceedings in the Rules provides certainty and transparency for members.</p>	<p>The MAV is an organization by member Councils for member Councils and as such its rules for its management should be made by its members (through their representatives).</p>
<p>7. Provide that a rule that is inconsistent with the Municipal Association Act or contrary to law is of no effect.</p>		<p>MCC supports proposed reform 7.</p>
<p>8. Provide that the following matters must be provided for in the rules:</p> <ul style="list-style-type: none"> • 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. 		<p>MCC supports the added accountability and transparency afforded by proposed reform 8.</p>
<p>9. Provide that the rules may be amended, removed or remade if 60 per cent of the representatives vote in favour of the change.</p>		<p>Clarification required if the 60% mentioned in proposed reform 9 means 60% of representatives in attendance or 60% of all representatives regardless of the number in attendance. Council would be supportive of the later.</p>

RESPONSIBILITIES

PROPOSED REFORM	MAV POSITION	MCC COMMENTS
<p>10. Provide for MAV to have in place a board of management with functions to include:</p> <ul style="list-style-type: none"> • 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. 	<p>The current Act does not contain any provisions for the existence of the board of management. The board of management is enabled by the MAV Rules. MAV supports the provision for a board of management in the new Act. It is considered that the functions specified should also include:</p> <ul style="list-style-type: none"> • Determine and classify regional groupings of councils • Determine the annual budget and set the subscriptions to be paid by participating member councils • Determine the levels of cover, guarantees and associated matters for all insurance coverage • Determine the 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) • Develop a strategic plan (refer to proposed reform 19) 	<p>MCC supports the proposal for a board of management as the board operates in MAV current environment.</p>
<p>11. Provide that the board of management must have mechanisms in place for monitoring the exercise of delegated authority.</p>		<p>MCC supports the added accountability and transparency afforded by proposed reform 11.</p>
<p>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.</p>	<p>These conduct provisions are considered to be a reasonable component of any sound governance framework. The proposed reforms are supported.</p>	<p>MCC supports the added accountability and transparency afforded by proposed reform 12 and 13.</p>
<p>13. Provide that board members must at all times in the exercise of the functions of their office act:</p> <ul style="list-style-type: none"> • Honestly • In good faith and in the best interests of MAV 		

RESPONSIBILITIES

PROPOSED REFORM	MAV POSITION	MCC COMMENTS
<ul style="list-style-type: none"> • With integrity • In a financially responsible manner • With a reasonable degree of care, diligence and skill • In compliance with the MA Act and MAV Rules. 		
<p>14. Provide that the board of management may appoint a CEO for the day to day management and administration of MAV.</p>	<p>It is considered that the Act should provide for the appointment of a Chief Executive Officer. Proposed reform 15 is consistent with the proposal in the Local Government Act Review Directions paper (supported in the sector submission to that review) and is supported.</p>	<p>MCC supports proposed reform 14.</p>
<p>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.</p>		<p>MCC supports proposed reform 15.</p>

REPORTING AND ACCOUNTABILITY

PROPOSED REFORM	MAV POSITION	MCC COMMENTS
<p>16. Insert a provision that provides that MAV must comply with the following principles of sound financial management:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>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.</p>	<p>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.</p>	<p>Proposed reforms 16, 17 and 18 provide for accountable and transparent financial management which is expected within any organization. It is considered appropriate that MAV finances are managed in accordance with accounting standards.</p>
<p>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.</p>	<p>The proposed reforms are generally consistent with other governance models, such as those of companies governed by the <i>Corporations Act 2001</i>, and are supported.</p>	<p>Proposed reforms 19, 20 and 21 are supported by MCC as they provide good governance standards which are consistent within the industry.</p>

REPORTING AND ACCOUNTABILITY

PROPOSED REFORM	MAV POSITION	MCC COMMENTS
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.		
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.	MAV is supportive of the principle that MAV be required to adopt a procurement policy. MAV is keen to comply with any requirements applied by the Minister in order to preserve its exemption pursuant to section 186 of the Local Government Act 1989 when acting as a procurement agent on behalf of councils.	MCC supports proposed reform 22 as it is consistent with the requirements within the industry.
23. This procurement policy would need to specify: <ul style="list-style-type: none"> • 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. 		MCC supports proposed reform 23.
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.		MCC supports proposed reform 24 with the added provision that information relating to the cost/income associated with each tender process be made available to member Councils.
25. Provide that MAV establish an independently chaired internal audit and risk committee to review the	MAV has had an audit committee since 2004. The Committee has for a number of years comprised of a	MCC supports proposed reform 25.

REPORTING AND ACCOUNTABILITY

PROPOSED REFORM	MAV POSITION	MCC COMMENTS
effectiveness of MAV's financial reporting and risk management frameworks.	majority of independent members with an independent chair. The proposed reform would place similar requirements on MAV as proposed for councils in the Local Government Act Review Directions Paper. This reform is supported.	

INSURANCE

PROPOSED REFORM	MAV POSITION	MCC COMMENTS
<p>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.</p>	<p>The requirement for MAV to establish a mutual liability insurance scheme to provide public liability and professional indemnity insurance came about because of market failures that led to excessive premiums, a narrowing of coverage, inadequate limits and the withdrawal of insurers from the market. In the view of the MAV, retaining this requirement is imperative for the long-term financial sustainability of councils and is strongly supported. The requirement to do so being specified in the Act preserves the provisions of the Insurance Act 1973 and the Insurance Regulations 2002. 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.</p>	<p>MCC supports the retention of the requirement for MAV to provide mutual liability insurance.</p>
<p>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.</p>		<p>MCC supports the proposal for periodic review of the Insurance provisions of the Act.</p>
<p>28. Remove the provisions relating to the fidelity guarantee fund and accident insurance.</p>	<p>Proposed reform 28 is supported because of its current limitations. In the view of MAV, there is still a benefit to the sector in the provision of a fidelity guarantee fund, albeit that any power would need to extend beyond the current capacity of the MAV to offer protection to councils from losses of the fraudulent acts of employees only to also include third parties. If this was extended, the MAV could offer an affordable and high quality product to the sector that would provide cover commensurate with contemporary crime policies in the market. In relation to proposed reform 29, it is unclear whether</p>	<p>MCC supports the removal of this requirement as it may enable MAV to offer broader protection to Councils.</p>
<p>29. Provide that, in addition to the mandatory provision of mutual liability insurance, MAV may, subject to Ministerial approval, arrange insurance and receive commissions</p>		<p>MCC has no objection to this proposal.</p>
<p>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.</p>		<p>MCC has no objection to this proposal.</p>

INSURANCE

PROPOSED REFORM	MAV POSITION	MCC COMMENTS
<p>31. Provide that MAV must include in its annual report any directions issued by the Minister and MAV's compliance with each direction.</p>	<p>the Minister referred to is the Minister for Local Government or the Minister for Finance. If this proceeds, it is considered that the appropriate Minister is the Minister for Finance given his existing prudential responsibilities for WorkSafe, the Transport Accident Commission and the Victorian Management Insurance Authority. Notwithstanding this, this reform proposes further government interference in the operations of an independent body which operates in an existing commercial market. Proposed reform 29 relates to arranging insurance and receiving commissions, that is conducting a broking service (as distinct from providing insurance). MAV should continue to be able to provide broking services without the approval of the Minister as currently provided for in the current Act. Accordingly, proposed reform 29 is opposed. Any new insurance products contemplated by MAV as an insurer (rather than a broker) will require enabling legislation in order to comply with the Insurance Act 1973.</p> <p>MAV believes that reform 30 is potentially problematic depending on the types of directions that could be issued by the Minister. The MAV's insurance activities currently operate within a commercial market and the power of the Minister to issue Directions could have an influence on the operation of this market. The MAV would be concerned if a direction disadvantaged the insurance</p>	<p>MCC has no objection to this proposal.</p>
<p>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.</p>		<p>MCC supports the requirement for independent review of MAV's insurance liabilities and risk exposure.</p>
<p>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.</p>		<p>MCC supports the principle that in the event of an insurance scheme being discontinued, the surplus funds should be distributed to contributing members. However, the disbursement of funds should be consistent with the rules of establishment within the specific scheme.</p>

INSURANCE

PROPOSED REFORM

MAV POSITION

MCC COMMENTS

activities of the MAV relative to commercial insurers. The State should also give consideration to any risk that is assumed by the Victorian Government in its decision to issue directions and whether this imposes a contingent or other liability on the State. It is important to note that the insurance activities of the MAV are not analogous to those of the state insurers, unless it were to structure the LMI scheme and others as a captive, in which case ministerial oversight and directions would be appropriate. If the State proceeds with recommendation 30, then the MAV would support recommendation 31 on the basis of good governance.

Proposed reform 32 reflects current practice by the MAV and is supported. Proposed reform 33 is already contemplated within the LMI scheme’s Deed of Establishment and Supplemental Deeds of Establishment and requires the return of excess funds to members in proportion to their contributions of fund years that are in surplus. This right is not extinguished upon a member ceasing to participate in the scheme. The proposal as it is currently structured is thus inconsistent with the methodology by which the funds would be disbursed if the scheme were discontinued under the current governance framework. In addition, there are alternative methods that could be acceptable, such as a disbursement based on the loss ratios of

INSURANCE

PROPOSED REFORM	MAV POSITION	MCC COMMENTS
	participating members, which would benefit those members with low claims experience. As such, the recommendation as it currently is structured would have unintended consequences and would not provide any additional financial benefits to participating members of the LMI scheme.	