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Municipal Association Act Review
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Dear Sir/Madam

Municipal Association Act 1907 – Consultation Paper

East Gippsland Shire Council welcomes the opportunity to provide comment on the reforms proposed to the *Municipal Association Act 1907* (the Act). Council's submission in response to the Consultation Paper is attached.

Should you require further information or clarification with regard to this submission please contact Maryanne Bennett, Director Corporate on (03) 5153 9532.

Yours sincerely



GARY GAFFNEY
Chief Executive Officer

Att



East Gippsland Shire Council Submission to the Review of the *Municipal Association Act 1907*

East Gippsland Shire Council (Council) has considered the key reforms proposed in the May 2017 Consultation Paper and is pleased to provide this submission in the interests of helping to develop the future legislative framework for the Municipal Association of Victoria (MAV).

The Directions Paper is a positive move towards establishing a clear framework within which the Association can continue to support the work of Local Government in Victoria. However, through the creation of this framework Council respectfully requests that the independence of the MAV be preserved. Council believes this is critical, if the MAV is to retain its ability to proactively advocate to, and negotiate with the Victorian Government on behalf of and in the best interests of the Victorian Local Government sector.

As a general principle, it is considered that wherever possible, the Act and any supporting regulations or guidelines need to be written succinctly and without ambiguity so that the need for subjective decision-making or judgements is minimised.

A table is provided below listing each proposed reform, a summary of Council’s specific feedback where relevant, and an indication of whether the proposed Direction is ‘Supported’, ‘Not Supported’, or in some instances ‘Qualified Support’. The latter has been offered where the principle of the proposed reform is supported but a component of its detail requires clarification or further expansion before a fully informed position can be taken.

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Role and Powers

Reform No	Proposed Reforms	Reform Objectives	Comment	Supported/Not supported
1.	<p>Replace the preamble with a provision that clearly sets out that the role of 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>The current preamble no longer reflects the scope of the work MAV is doing in the local government sector.</p> <p>The objective of the proposed reform option is to capture MAV's overarching role to represent the interest of its member councils and its broader responsibilities to advocate on behalf of councils and support and provide services to councils.</p> <p>The proposed role of MAV also seeks to capture MAV's role in building the capacity of councils and facilitating beneficial collaborative working relationships and shared services between councils. As a peak local government body, MAV is in an ideal situation to assist councils to improve their social, economic and environmental sustainability through collaborative arrangements and shared services.</p> <p>The objective is not to limit the scope of MAV's functions but to clarify MAV's role in line with its activities.</p>	<p>The role as proposed is appropriate and so is supported. However, consideration could be given to either expanding or clarifying the role to ensure the following roles and responsibilities of the MAV are clear:</p> <ul style="list-style-type: none"> Providing services that strengthen the role and functions of the sector; Being the representative body for councils in Victoria acting as a sector self-insurer under section 374 of the Workplace Injury Rehabilitation and Compensation Act 2013. 	Qualified support (see comment)
2.	Retain MAV's status as a body corporate under the MA Act	<p>MAV's powers are inconsistent with the powers of a body corporate set out in other Acts, including the <i>Associations Incorporation Reform Act 2012</i>, <i>Local Government Act 1989</i> and the <i>Victorian Managed Insurance Authority Act 1996</i>. The aim of the proposed reforms is to provide greater consistency with other legislation and provide MAV with the powers needed to perform its role</p>	<p>Proposed reforms 2 and 3 will address deficiencies in the current Act, which have arisen in the main because of the length between reviews.</p>	Supported
3.	<p>Amend MAV's powers to provide that MAV has the power to:</p> <ul style="list-style-type: none"> do all other 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. 			
4.	Provide that each council has a right to appoint a councillor from that council as their representative and that these representatives constitute MAV	The proposed reform seeks to retain and strengthen the representative nature of MAV	<p>This reform is consistent with 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. However, Council believes the member Councils should constitute the MAV – not the individual Councillors appointed to represent those Councils.</p>	Qualified support (see comment)

Responsibilities

Reform No	Proposed Reform	Reform Objectives	Comment	Supported/Not supported
5.	<p>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. 	The proposed reform seeks to retain and strengthen the representative nature of MAV and provide greater understanding of the responsibilities of the State Council representatives.	Essentially this will enshrine in legislation, the current role of State Council.	Supported
6.	Provide MAV the power to make rules for the management of MAV	<p>The proposed reforms seek to provide the flexibility to MAV to adopt a robust set of rules that reflect any changes to MAV's governance and corporate arrangements that may flow from this review and that align with best practice. The reform option seeks to enable MAV to put in place robust processes for the election of the board of management and the dismissal of the board or individual board members in the event of governance failure.</p> <p>The reforms also seek to clarify that the rules are the responsibility of MAV and do not constitute a legislative instrument under the <i>Subordinate Legislation Act 1994</i>.</p>	Currently the MAV can only make rules with the approval of the Governor in Council. This is a somewhat draconian arrangement that is out of step with most other associations.	Supported
7.	Provide that a rule that is inconsistent with the Municipal Association Act or contrary to law is of no effect			Supported
8.	<p>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 		Council believes this proposed reform should include "Regulation of proceedings of the State Council and the management board". Embedding proceedings in the Rules would provide both surety and transparency for members.	Qualified support (see comment)
9.	Provide that the rules may be amended, removed or remade if 60 per cent of the representatives vote in favour of the change.		Consistent with traditional quorum principles, so is seen as appropriate.	Supported
10.	<p>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 excising 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 proposed reforms seek to strengthen the accountability and transparency of the board of management by specifying the functions of the board and ensuring appropriate systems are in place to manage the affairs of MAV and monitor the exercise of delegated powers.</p> <p>The proposed reforms also seek to obtain consistency with the <i>Public Administration Act 2004</i> and the <i>Victorian Managed Insurance Authority Act 1996</i>.</p>	Officers believe it is appropriate that the new MA Act include provision for a Board of Management. Although noting that the preamble to the proposed reform includes the phrase, "with functions to include" there does seem to be one significant omission, i.e. appointment of the CEO.	Qualified support (see comment)
11.	Provide that the board of management must have mechanisms in place for monitoring the exercise of delegated authority.		Important from a probity and good governance perspective.	Supported
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.	The proposed reforms seek to provide a framework for good governance in the carrying out of the board of management's functions.	Consistent with the principles of good governance and the requirements imposed on the MAV's members.	Supported

Reform No	Proposed Reform	Reform Objectives	Comment	Supported/Not supported
13.	Provide that board members must at all times in the exercise of the functions of their office act: <ul style="list-style-type: none"> honestly in good faith 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 MA Act and MAV Rules. 	The proposed reforms seek to: <ul style="list-style-type: none"> establish that the board of management has the ultimate responsibility to ensure good governance of the organisation define what conduct is expected of board members increase confidence in MAV's governance processes. 		
14.	Provide that the board of management may appoint a CEO for the day to day management and administration of MAV.	The proposed reforms seek to provide transparency and certainty for CEO employment consistent with the reforms to council CEO remuneration and contract management set out in the Local Government Act Review Directions Paper.		Supported
15.	Provide that MAV must have in place a CEO remuneration policy that broadly aligns with the Victorian Public Sector Commission's <i>Policy on Executive Remuneration for Public Entities in the Broader Public Sector</i>		This reform was put forward in the Directions Paper for the Review of the Local Government Act and was supported by Council at that time (September 2016).	Supported

Reporting and Accountability

Reform No	Proposed Reform	Reform Objectives	Comment	Supported/Not supported
16.	<p>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>The Auditor-General's report raised concerns that the types of financial management provisions that normally apply to demonstrate the accountability of public bodies, do not apply to MAV.</p> <p>The proposed reforms seek to demonstrate MAV's financial management by providing an overall financial reporting framework. The reforms seek to do this by introducing principles of sound financial management (similar to those set out in the <i>Financial Management Act 1994</i> and the <i>Local Government Act 1989</i>) and requirements to keep proper accounts and records and prepare and have audited financial statements.</p> <p>The obligations to report seek to ensure that MAV is transparent to its representatives, the community and the Minister.</p>	<p>Proposed reforms 16, 17 and 18 are all consistent with good governance and the requirements imposed on other organisations like the MAV.</p>	Supported
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 four 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.			
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>These proposed reforms seek to achieve greater accountability for the appointed representatives, given the responsibility of the representatives to determine the strategic direction for MAV.</p>	<p>Proposed reforms 19, 20 and 21 are consistent with the principles of good governance and are generally consistent with the requirements placed on other organisations.</p>	Supported
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.	<p>The <i>Local Government Act 1989</i> requires councils to have a procurement policy that sets out the principles, processes and procedures that will apply to all purchases of goods, services</p>	<p>Proposed reforms 22, 23 and 24 are considered very appropriate; particularly given the role the MAV plays in acting as a procurement agent on behalf of its member Councils.</p>	Supported

Reform No	Proposed Reform	Reform Objectives	Comment	Supported/Not supported
23.	<p>This procurement policy would need to specify</p> <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. 	<p>and works by councils. The reforms seek to mandate this requirement to strengthen MAV's procurement practices and increase confidence that the costs of the goods and services councils are procuring from MAV are commercially competitive.</p> <p>The proposed reforms also seek to assist councils in determining whether MAV Procurement contracts meet the council's specifications and in assessing shared service options.</p>		
24.	<p>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.:</p>			
25.	<p>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.</p>	<p>The <i>Local Government Act</i> 1989 requires councils to establish an audit committee to provide advice on financial operations and compliance. The Local Government Act Review Directions Paper indicates that the role of the audit committee will be further strengthened and expanded under proposed new legislation.</p> <p>The proposed reform seeks to mandate and strengthen the role of MAV's existing audit committee in line with the proposed reforms to the Local Government Act and the Australian Prudential Regulation Authority's (APRA) prudential standard CPS 510 which requires APRA regulated bodies to have an audit committee to review the effectiveness of financial reporting and risk management frameworks.</p>	<p>This proposed reform would provide consistency between the MAV and its member Councils, which seems only logical.</p>	Supported

Insurance

Reform No	Proposed Reform	Reform Objectives	Comment	Supported/Not supported
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 interest of the participating Victorian member councils.	The proposed reforms seek to ensure that councils continue to have access to mutual liability insurance and that there is a regular review mechanism built into the MA Act	Proposed reforms 26 and 27 are strongly supported. 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. Retaining this requirement is considered critical to the long-term financial sustainability of councils and is strongly supported.	Supported
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.			
28.	Remove the provisions relating to the fidelity guarantee fund and accident insurance	<p>MAV carries out significant insurance operations with substantial assets and liabilities and generates substantial premiums annually to fund the liabilities. Claims against the fund are paid out over many years into the future. It is therefore critical that MAV Insurance is prudentially managed to:</p> <ul style="list-style-type: none"> ensure the assets held are sufficient to fund the liabilities safeguard the interests of policy holders and claimants. <p>The reform proposals seek to introduce a regulatory framework comparable to the oversight of APRA-regulated bodies and other Victorian public sector insurance agencies including:</p> <ul style="list-style-type: none"> WorkSafe Transport Accident Commission Victorian Managed Insurance Authority. <p>These insurance agencies are regulated through a comprehensive prudential supervision framework that includes legislation, policy and guidelines designed to ensure appropriate financial management and risk management practices and consistent financial reporting.</p> <p>The proposed reforms enable the Minister to prudentially supervise MAV's insurance activities and undertake further investigations and enquiries as the Minister considers appropriate. This will provide the Minister with the power to determine prudential standards that must be complied with and</p>	Proposed reform 28 is supported. It is considered that 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 product to the sector that would provide cover commensurate with contemporary crime policies in the market.	Supported
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>Council opposes the proposed reform for the following reasons:</p> <p>This reform proposes government interference in the operations of an independent body that operates in an existing commercial market. The reform 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. 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>	Not supported (see comment)

Reform No	Proposed Reform	Reform Objectives	Comment	Supported/Not supported
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>request information.</p> <p>The proposed reforms also seek to consolidate MAV's insurance activities to meet the same accounting and risk management standards for each of the different insurance schemes.</p> <p>The proposed reforms are not intended to diminish or reduce the responsibility of the MAV board of management in ensuring that MAV's insurance funds and the risks involved are being managed appropriately.</p>	<p>Council opposes this proposed reform on the following grounds:</p> <p>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. It would be concerning if a direction disadvantaged the insurance activities of the MAV relative to commercial insurers. It is considered 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.</p>	Not supported (see comment).
31.	Provide that MAV must include in its annual report any directions issued by the Minister and MAV's compliance with each direction		If the Victorian Government proceeds with recommendation 30, support for proposed reform 31 would be important for a transparency perspective.	Qualified support (see comment)
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.		This reform would formalise what occurs now.	Supported
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		Providing clarity around this process is supported; however, the reform proposed appears somewhat simplistic and would benefit from further exploration of alternative methods of disbursing residual funds, in the event that an insurance scheme is discontinued.	Qualified support (see comment)