

Municipal Association Act Review
c/o Local Government Victoria
PO Box 500
Melbourne VIC 3002

Via email – local.government@delwp.vic.gov.au

30 June 2017

RE: Municipal Association Act (1907) Review

Dear Graeme,

Thank you for the opportunity for the Victorian Local Governance Association (VLGA) to provide feedback on the Municipal Association Act (1907) Review.

Please find attached the VLGA's submission to the discussion paper.

Kind regards,



Kathryn Arndt
CEO VLGA

VLGA Response to Municipal Association Act (1907) Review

Introduction

The Victorian Local Governance Association (VLGA) welcomes the review of the Municipal Association (MA) Act. The review of this Act, written in 1907, is long overdue as acknowledged in the Consultation Paper. It is regrettable that successive governments have failed to address this oversight despite having numerous opportunities to do so, such as when amending related Acts and when the Local Government Act was written.

The VLGA agrees with the 4 principles set out in the Consultation Paper. In addition, the VLGA contends that any Act of parliament set out to establish and regulate a body must:

- Be clear in the aims and functions of the Act;
- Reflect contemporary practice in good governance;
- Enable organisational structures for optimum transparency and accountability;
- Enable the selection of a merit-based and skills based board of directors;
- Contain clear lines of accountability to the relevant government agency and/or Minister; and
- Be subject to regulatory oversight and independent scrutiny.

In the context of the MA Act review, the VLGA contends that there are more fundamental questions, which were not canvassed in the Consultation Paper. These include:

- Does the original stated purpose of the MA Act to “*promoting the efficient carrying out of municipal government ... and protecting the interests rights and privileges of municipal corporations*” warrant an Act of parliament?
- Does the Municipal Association of Victoria (MAV) have any comparable entities in Victoria or in Australia?
- What are the objectives of a new Municipal Associations Act?
- Can these objectives be met through the re-write of the Local Government Act?

This submission will attempt to address the reform options and questions outlined in the consultation paper in the context of these questions.

Governing structures for member based organisations

In the 110 years since the passing of the MA Act, municipal corporations, as they were once known, have been replaced by local government entities, whose actions and purposes are clearly stated in, and regulated by, the Local Government Act (1989). This not only ensured a degree of consistency in the roles and functions of local governments in Victoria, it also provided a framework for the State government to devolve some of its powers and functions to councils on a range of matters.

The VLGA is puzzled by the apparent contradiction regarding the future governing body for the MAV. The VLGA notes page 5 of the Consultation Paper clearly stated that “*MAV’s powers are inconsistent with the powers of a body corporate set out in other Acts*”; but went on the same page to outline the proposed reform as to “*retain MAV’s status as a body corporate under the MA Act*”.

A range of governance structures have been developed and evolved since the MA Act was enacted. For the purpose of this submission, the VLGA makes the following distinction between three types of governing bodies:

1. **Body corporate:** a body established to look after the common interests and act as a broker to achieve economies of scale for its members. The most obvious example is a body corporate for a building acting in the interest of and broker insurance for its owners and tenants.
2. **Membership association:** Individuals and organisations paying an annual fee to a body to advance a profession or sector and access a range of member only benefits such as professional development event. Professional and industry associations would fall into this category.
3. **Peak body:** Similar to an association, with a greater focus on lobbying and advocacy on issues on behalf of their members or sector. The Victorian Chamber of Commerce and Industry (VCCI) describes itself as a peak body.

It is acknowledged that these three types of body do not operate as distinct entities and that often a body would act both as an association and as a peak body at any given time. However, the Consultation Paper made no mention of other possible governing body arrangements for the MAV. Indeed, the MAV has described itself as an “*independent membership organisation*” in its response to the report by the Auditor-General titled Effectiveness of Support Local Government.

The VLGA contends that the stated purpose of the MAV suggests that it is a peak body, formed to lobby the State Government and advance the interest of the local government sector. However, some of the work of the MAV is also consistent with that of a membership based association, such as offering professional development to councillors. The VLGA therefore urges the government to consider if a body corporate is still the most relevant governance body structure for the MAV as part of the MA Act review.

It should also be noted that, notwithstanding the pivotal roles played by the MAV, an Act of parliament is not required to establish a body corporate, an association or a peak body. Where legislations are enacted to establish agencies and other bodies, their scope are usually well defined in order to minimise function creep or unintended consequences. The VLGA is also cognisant of the current work of the Victorian government in the re-writing of the Local Government Act, and the potential for this review to inform that re-write and vice versa. Therefore, it would be prudent for the government to consider these two following questions as part of the MA Act review:

1. Is an Act of parliament required to set out the roles and functions of the MAV?
2. If the answer to the above is Yes, should that Act be drafted in such a way as to describe the current MAV activities; or, should that Act outline the roles and functions of an appropriate body to carry out the Act’s stated purpose and objectives?

The new MA Act

As the Consultation Paper acknowledged, the current MA Act is silent on several matters. Most worryingly, the Act is silent on the roles and responsibilities for the MAV Board and those for the State Council, consisting of nominated representatives of member councils.

These two omissions raise several significant governance concerns, particularly in relation to its commercial operations such as those relating to insurance and procurements. As noted by the Auditor General in his report Effectiveness of Support for Local Government “*the Board (of the MAV) has failed to fulfil its obligations to provide appropriate oversight of the operations, governance and performance of MAV, to the detriment of Victoria’s 79 councils, Parliament and the community*”.

This is complicated by the extensive commercial arrangements MAV has entered into on behalf of Victorian councils. As the Consultation Paper noted, the MAV Board delegates its insurance functions to a separate MAV Insurance Board under a deed of establishment, where the Insurance Board is made up of the CEO, the President and a board member of the MAV and three independent members, of which the Chair is one. There is lack of clarity around the roles and accountabilities (and therefore risks) of the Insurance Board to the MAV Board.

Section 3 of the MA Act allows for the MAV to set out Rules by which the MAV can self-regulate on a range of matters, including the establishment of its governance structure and functions. However, the Act is silent on the roles and powers of the State Council, formed under the Rules, which is described by the MAV as its “*governing body*”.

The proposed reforms seek to formalise the responsibilities of the State Council, and enables it to make and amend the MAV Rules. These reforms are welcomed, as strengthening the roles and responsibilities of council representatives, who make up the State Council will provide greater accountability framework for the MAV Board.

Similarly, the proposed reforms setting out the functions and responsibilities of the MAV Board and conduct for its members under the new MA Act are positive steps in ensuring good governance.

The VLGA notes that these proposals are not dissimilar to the way in which the Local Government Act (1989) regulates councils and councillors. There are analogies between how the new MA Act intends to regulate MAV State Council and the MAV Board and how the current Local Government Act regulates local councils and elected councillors, including their codes of conduct and roles in assessing the performance of council CEOs.

The VLGA also notes that the proposed reforms in the new MA Act in relation to CEO remuneration, sound financial management, increased accountability to member councils, sound procurement policy and establishment of an audit and risk committee are already in place for councils in the current Local Government Act. Again, without knowing the Government’s intentions in the re-write of the Local Government Act, the VLGA offers its in-principle support to these proposed measures outlined in the Consultation Paper.

Finally, the VLGA suggests the following two additional measures in the new MA Act to enhance transparency and good governance of the MAV Board:

1. Maximum terms of directors, including the President; and
2. Nominations for directors, including President, to be open to all current serving councillors whose councils are members of the MAV as opposed to restricting nominations to delegates only.

These two measures will enable the selection of a merit-based and skills based board of directors and ensure organisational renewal and succession planning of the MAV Board.

Insurance

The VLGA is not in a position to provide detailed analysis and feedback on the proposed reforms in relation to MAV's mutual liability insurance scheme. However, as a general comment, the inclusion of a regular review mechanism to assess the appropriateness of MAV's insurance functions is a necessary feature given the sensitive and financial implications for council members of the MAV insurance scheme.

In addition, the establishment of an insurance scheme that is not entirely independent of the MAV may be incongruous with the stated objectives of the MAV. In other words, it could be argued that *"promoting the efficient carrying out of municipal government ... and protecting the interests rights and privileges of municipal corporations"* implies members may be better served if MAV acted as a broker or tendered on behalf of councils for their insurance, rather than establishing an insurance scheme to compete against established insurance brokers and providers for council insurance requirements.

Given the above, the Government may consider if councils' interests in mutual liability insurance are better served through an insurance entity totally independent of the MAV.

Conclusion

The VLGA is mindful of the fact that the review of the MA Act is occurring concurrently with the rewrite of the Local Government Act. While the proposed reforms to the MA Act outlined in the consultation paper offer greater clarity around the roles and functions of the MAV, the VLGA notes that they are analogous to provisions under the current Local Government Act for councils and councillors. Therefore, the VLGA suggests to the government to consider the follow two key questions as of the MA Act review:

1. Is an Act of parliament required to set out the roles and functions of the peak body/membership association of local councils?
2. Can the purpose and objectives of the new MA Act be achieved through the re-write of the Local Government Act?

The VLGA looks forward to the report from the consultation paper and options for the future of the MA Act.



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