

ALL WARDS

13.3 SUBMISSION TO THE MUNICIPAL ASSOCIATION ACT REVIEW

SUMMARY: *Manager – Governance and Innovation (Fleur Cousins)*

This report seeks Council endorsement of the draft submission, refer to Appendix A, in response to the Municipal Association Act Review that is being conducted by the Department of Environment, Land, Water and Planning.

RECOMMENDATION

That Council endorse the draft submission in Appendix A, in response to the Municipal Association Act Review and submit in by Friday 30 June 2017.

1. INTRODUCTION

The Department of Environment, Land, Water and Planning, on behalf of the State Government has advised Council that it is currently conducting a review of the *Municipal Association Act 1907* (the MA Act) and provided a consultation paper containing a number of proposed reforms for consideration. A copy of the consultation paper is at Appendix B.

2. DISCUSSION

The Municipal Association of Victoria (MAV) was formed in 1879 and is a representative body established to ‘promote efficient municipal government throughout the State of Victoria and promote the interests, rights and privileges of municipal corporations’ (*Municipal Association Act Review Consultation Paper*).

The review of the MA Act, is the first comprehensive review of the legislative framework since it was enacted in 1907. Since this time, the MAV has evolved and developed to respond to and support the Victorian local government sector.

As defined within the Municipal Association Act Review Consultation (the consultation paper) the objectives of the proposed reforms are to:

- *Modernise the MA Act to reflect current standards of good governance.*
- *Clarify the roles and powers of MAV and ensure a level of independence from State Government is maintained to ensure that MAV can act as an effective advocate.*
- *Provide appropriate oversight over MAV’s insurance function to ensure these activities are transparent and accountable and that councils are receiving the best outcome from MAV’s services.*
- *Where possible, be consistent with the reforms to the Local Government Act 1989 and the governance standards imposed on public entities, incorporated associations and State insurers.*

13.3 Submission to the Municipal Association Act Review (cont'd)

Overall, the draft submission for Knox Council supports the proposed reforms outlined in the consultation paper.

3. CONSULTATION

The draft submission attached as Appendix A is in response to a consultation paper released by the State Government, refer Appendix B. The provision of a response to this consultation paper provides an opportunity for Knox Council to provide feedback on key proposed reforms that will inform future amendments to the MA Act.

4. ENVIRONMENTAL/AMENITY ISSUES

There are no environmental or amenity issues related to this report.

5. FINANCIAL & ECONOMIC IMPLICATIONS

There are no financial or economic implications related to this report.

Council continues to be a financial member of the MAV at a cost of \$60,898 for the 2016-17 financial year. Provisions for the membership fee have been made in the proposed 2017-18 budget.

6. SOCIAL IMPLICATIONS

There are no social implications related to this report.

7. RELEVANCE TO CITY PLAN 2013-17 (INCORPORATING THE COUNCIL PLAN)

The submission of a response to the Municipal Association Act Review Consultation Paper responds to Goal 8 – We have confidence in decision making and Strategy 8.1 – Build, strengthen and promote good governance practices across government and community organisations as defined within the Knox Community and Council Plan 2017-21.

The proposed reforms to the MA Act, outlined in the consultation paper, seeks to improve and strengthen the governance and accountability requirements of the MAV, which is supported by Knox Council.

8. CONCLUSION

The Department of Environment, Land, Water and Planning on behalf of the State Government has invited submissions from councils on the proposed reforms to the Municipal Association Act 1907. The report provides a draft submission on behalf of Knox Council and seeks Council to endorse the draft submission in Appendix A and submit it by Friday 30 June 2017.

Municipal Association Act Review

Response to the Consultation Paper – dated May 2017

Role and Powers

How will MAV's role be expressed? – Refer page 4 of consultation paper

Questions Asked:

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

Council supports the reforms proposed to define the role of the MAV and that the role is one of representing the interests of and being accountable to member Councils. This section should be enabling and not limit the future needs of Councils in a dynamic and changing operating environment.

What is MAV's legal status? – Refer page 4-5 of consultation paper

Questions Asked:

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

Council supports the proposed reforms to the MAV's powers as a body corporate. These provisions support the MAV to ensure it can meet the role as defined above and remain contemporary to the needs of members.

Who are MAV's members? – Refer page 5 of consultation paper

Questions Asked:

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

Council supports the retention and strengthening of the provision of membership and the clarification of the right to appoint a 'councillor from that council' as the representative. The right to appoint an MAV representative should be in accordance with the MAV rules that define membership is based on being a financial member.

Responsibilities

What is the governing body responsible for? – Refer page 6 of consultation paper

Questions Asked:

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

Council supports the inclusion of a section that defines the responsibilities of appointed representatives as outlined in the consultation paper.

Municipal Association Act Review - 2017

How are the rules for the management of MAV made, adopted and amended? – Refer page 6-7 of consultation paper

Questions Asked:

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

Council supports the proposed reform to provide the State Council with the power to make or amend the MAV rules. This will support the enabling nature of the legislation and provide the ability for the MAV State Council to improve its processes and governance frameworks as required and in response to emerging best practice. This also aligns to the principles that sit behind the reform currently being considered to the Local Government Act 1989.

What functions does the board of management perform? – Refer page 7 of consultation paper

Questions Asked:

Do you support setting out the functions and responsibilities of the board of management in the MAV Act?

Council supports the proposed reform in setting out the functions and responsibilities of the board of management in the MA Act. This provision would provide clarity as to the different responsibilities of the State Council compared to the board of management.

What conduct is expected of board members? – Refer page 8 of consultation paper

Questions Asked:

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

Council supports the board of management be required to operate in accordance with specific conduct provisions and that these provisions should be consistent with the Corporations Act, particularly given the MAV's legal status is as a body corporate.

On this basis, is it necessary to add conduct provisions to the MA Act, or rather require the board of management to meet the obligations of the Corporations Act?

If conduct provisions are included in the MA Act, the conduct provisions of acting in good faith in the best interests of MAV and with reasonable degree of care, diligence and skill, implies that the board is acting honestly, with integrity and in a financially responsible manner, therefore are not required to be listed separately.

One provision that has not been referred to is the misuse of information. This is also reflected in the Corporations Act, is a feature of the Local Government Act and should be reflected in the MA Act.

Municipal Association Act Review - 2017

Who has oversight over executive and CEO remuneration? – Refer page 8 of consultation paper

Questions Asked:

Do you support the requirement for a remuneration policy?

Council supports the requirement for a remuneration policy and that the reference to the Victorian Public Sector Commission's Policy on Executive Remuneration for Public Entities in the Broader Public Sector is being consistent with the proposed direction for Council's to have a CEO remuneration policy under the Local Government Act 1989.

Reporting and Accountability

How will MAV manage and report on its finances? – Refer page 9 of the consultation paper

Questions Asked:

Do you support the principles of sound financial management?

Council supports the inclusion of the principles of sound financial management in the MA Act.

What strategic planning and reporting documents will be required? – Refer to page 9-10 of the consultation paper

Questions Asked:

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

Council supports the inclusion of expected accountability to member councils and the Minister, which is also reflective of the provisions that have already been implemented by the MAV. Council would expect that these accountability requirements be met by the MAV within the current rates of membership fees and not create an additional cost burden on member councils.

How will procurement be carried out? – Refer to page 10 of the consultation paper

Questions Asked:

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

Council supports the requirement for the MAV to develop and adopt a procurement policy.

How will MAV's risk be managed? – Refer to page 10-11 of the consultation paper

Questions Asked:

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

Council supports the requirement for the MAV to establish an audit and risk committee that is independently chaired and recognises that this reflects the MAV's current practice.

Municipal Association Act Review - 2017

Insurance

How will MAV's mutual liability insurance scheme operate? – Refer page 12 of the consultation paper

Questions Asked:

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

Council supports the retention of MAV providing mutual liability insurance for the benefit of Victorian councils and the inclusion of a requirement to review the MAV's insurance functions on a five (5) yearly basis.

How will MAV's insurance activities be prudentially managed? – Refer page 12-13 of the consultation paper

Questions Asked:

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

Council supports the inclusion of a prudential supervision framework for the MAV's insurance activities in recognition of the both the risk and benefits associated with these activities.

Municipal Association Act Review

Consultation Paper

May 2017



Environment,
Land, Water
and Planning

Minister's Foreword

The Municipal Association of Victoria is a critical part of the local government infrastructure in this state which is why renewing its Act is an essential component of our government's commitment to reform the legislative framework under which councils operate.

The Government has also set out a detailed agenda for reform to the *Local Government Act 1989* through its *Act for the Future* Directions Paper. *Act for the Future* outlines a vision for councils of the future that are more democratic, innovative, collaborative and responsive to their local communities. The Government is continuing the discussion with councils and the community on strengthening the broader legislative framework.

The current Municipal Association Act, which became law in 1907, ceased to fully reflect the role and activities of the Municipal Association of Victoria (MAV) many years ago.

The MAV's role in Victoria's local government landscape is to advocate for councillors and the sector, build the capacity of Victoria's councils and be a policy leader when it comes to effective council practice. To perform its role effectively, the MAV and the councils it exists to serve, deserve a contemporary Municipal Association Act that genuinely reflects, its powers, activities and governance arrangements.

A recent Auditor-General's review of the effectiveness of support for Local Government also recommended that the Government review the MAV's functions, roles, responsibilities, powers and obligations in the context of its existing legal framework. We want to reflect this thinking in a contemporary, accurate MA Act. A critical part of this challenge is to ensure contemporary standards of governance and accountability are met, including clarity about the role, function and make-up of MAV's board.

While the Auditor General specified that this review ought to be undertaken in consultation with relevant Government Departments, it is equally vital that the MAV's clients – Victoria's councils – have their say about the legislation.

I encourage you to take the opportunity to respond to this options paper and have your say on how the Municipal Association of Victoria can best serve the councils of the next generation and, by extension, Victoria's diverse local communities.

The Hon Natalie Hutchins MP
Minister for Local Government

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Introduction

The Municipal Association Act review seeks to create contemporary legislation that delivers a governance and accountability framework for the Municipal Association of Victoria to perform its functions and represent, promote and support the interests of Victorian councils.

Why review the MA Act

The *Municipal Association Act 1907* (the MA Act) has not undergone a comprehensive review since its enactment in 1907. The result of this is an Act that often does not reflect the current activities carried out by the Municipal Association of Victoria (MAV). Some provisions of the current Act are also redundant or not in operation.

The Minister for Local Government is responsible for administering the MA Act and has committed to reviewing the MA Act as part of the broader Local Government Act review.

Context

MAV is a representative body established to promote efficient municipal government throughout the State of Victoria and promote the interests, rights and privileges of municipal corporations.

MAV was formed in 1879, and has a long history of supporting councils and councillors including:

- advocating for local government interests
- building the capacity of Victorian councils
- facilitating effective networks
- initiating policy development and advice
- supporting councillors
- promoting the role of local government
- providing governance support and services.

In 2015, the Victorian Auditor-General released a report into the effectiveness of support for Local Government (the Auditor-General's report). The Auditor-General's report recommended that the Department of Environment, Land, Water and Planning (DELWP), review and determine MAV's functions, roles, responsibilities, powers and obligations through an analysis of its existing legal framework and:

- ensure this is reflected in the MA Act

- ensure contemporary standards of governance and accountability are met, including the role, function and make-up of MAV's board (the board of management)
- consult with relevant departments to consider whether the *Public Administration Act 2004*, *Financial Management Act 1994* and *Public Records Act 1973* should apply to MAV
- assure itself, following any review, that all activities undertaken by MAV are clearly within its power.

Overview of proposed reforms

This consultation paper outlines a series of possible reforms to contemporary the MA Act and address the concerns raised by the Auditor-General's report. The paper is designed to elicit feedback from MAV's members and the wider local government sector to test levels of support for the proposed reforms.

The objectives of the proposed reforms are to:

- modernise the MA Act to reflect current standards of good governance
- clarify the roles and powers of MAV and ensure a level of independence from State Government is maintained to ensure that MAV can act as an effective advocate
- provide appropriate oversight over MAV's insurance function to ensure these activities are transparent and accountable and that councils are receiving the best outcome from MAV's services
- where possible, be consistent with the reforms to the *Local Government Act 1989* and the governance standards imposed on public entities, incorporated associations and State insurers.

Reform principles

The consultation paper has been guided by the following principles:

Principle 1	An Act that is contemporary, meets future needs and is clear and comprehensive
Principle 2	Enable good governance and corporate effectiveness
Principle 3	Ensure transparency and accountability to member councils, the community and the state
Principle 4	Ensure there is appropriate oversight over insurance activities

The first principle speaks to the need to create legislation that is contemporary, meets future needs and is clear and comprehensive. The current MA Act has been in operation since 1907 and is largely outdated. The new legislation must reflect the nature of the MAV and the range of support and services MAV provides to the local government sector.

The second principle speaks to the need to introduce a modern governance framework that meets the expectations of a statutory body and supports a culture of good conduct and accountable governance by providing:

- a clear understanding of the responsibilities of MAV's council representatives and the board of management
- systems to ensure integrity and good conduct
- effective financial management
- strategic planning and performance monitoring against desired outcomes.

The third principle speaks to the need to provide transparency over MAV's operations and greater accountability to member councils by providing an obligation to report, explain and be answerable to member councils while maintaining an appropriate level of independence from State Government to ensure that MAV can act as an effective local government advocate.

The fourth principle speaks to the need for a comprehensive regulatory framework over MAV's insurance function that includes legislation, policy and guidelines designed to ensure appropriate financial management and risk management practices and consistent financial reporting.

Structure of this paper

The consultation paper is broken down into four areas of reform:

The chapter on **roles and powers** addresses principles 1 and 2 and seeks to build a strong understanding of MAV's role, powers and membership.

The chapter on **responsibilities** addresses principles 1 and 2 and seeks to introduce good practice governance standards, including clarity around misuse of position and conflict of interest.

The chapter on **reporting and accountability** addresses principles 1 and 3 and seeks to provide greater transparency and an obligation to report, explain and be answerable to member councils.

The chapter on **insurance** addresses principles 1 and 4 and seeks to ensure that MAV insurance is prudentially managed to safeguard the interests of policy holders and claimants.

Each chapter invites your response to a series of questions to test support for the proposed reforms.

Role and powers

How will MAV's role be expressed?

The preamble to the current MA Act states that the purpose of MAV is to promote the efficient carrying out of municipal government throughout the State of Victoria and watch over and protect the interests, rights and privileges of councils and establish and conduct a Municipal Officers Fidelity Guarantee fund.

Over time MAV's functions have expanded to include:

- mutual liability insurance (LMI)
- support to councils to build their emergency management capabilities and capacities
- advocacy for the sector's economic and financial needs and greater recognition of local government's role in a range of government funding programs
- sector-wide advice on governance issues, and assistance to individual councils on a broad range of internal and external governance matters
- insurance brokerage services
- private health insurance for council employees and councillors
- procurement on behalf of councils
- policy analysis, advice and advocacy, project support and management to support councils.

REFORM OBJECTIVES

The current preamble no longer reflects the scope of the work MAV is doing in the local government sector.

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.

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.

The objective is not to limit the scope of MAV's functions but to clarify MAV's role in line with its activities.

PROPOSED REFORM

1. 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:
 - 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.

QUESTIONS

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

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

What is MAV's legal status?

Under section 2(1) of the MA Act, MAV is established as a body corporate that has perpetual succession and a common seal and is capable in law of suing and being sued.

Under section 2(3) MAV has the power to:

- compound or prove in any court of competent jurisdiction all debts or sums of money due to the Association
- purchase, take hold, sell, lease, take on lease, exchange or dispose of land or any real or personal property
- erect buildings on any land acquired by the Association, to alter buildings thereon, or to demolish buildings thereon and erect new buildings in their place whether such buildings or any part or parts thereof are intended for use or occupation by the Association or for leasing
- lease any buildings the property of the Association or any part or parts thereof on such terms and conditions as the Association thinks fit

- purchase rent hire or otherwise make provision for the use of furniture or fittings and business equipment or services
- establish and manage a mutual liability insurance scheme for the purpose of providing public liability and professional indemnity insurance
- subject to the making of sufficient provision for meeting liabilities and expenses, use any moneys under its control other than any money required to be paid into the Local Government Investment Service Fund pursuant to section 15 in purchasing or financing the purchasing of property and may borrow moneys, whether with or without security, for the purchase of any such property
- do all things necessary or convenient to be done for or in connection with the operation of the Local Government Investment Service Fund.

REFORM OBJECTIVES

MAV's powers are inconsistent with the powers of a body corporate set out in other Acts, including the *Associations Incorporation Reform Act 2012*, *Local Government Act 1989* and the *Victorian Managed Insurance Authority Act 1996*. 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.

PROPOSED REFORM

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 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.

QUESTIONS

Do you support the proposed amendments

to MAV's powers as a body corporate?

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

Who are MAV's members?

Section 2(2) of the MA Act enables councils to appoint a councillor as their representative to the MAV. These representatives constitute MAV.

Appointing a representative to the MAV is discretionary as is financial membership to the organisation.

REFORM OBJECTIVES

The proposed reform seeks to retain and strengthen the representative nature of MAV.

PROPOSED REFORMS

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

QUESTIONS

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

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

Responsibilities

What is the governing body responsible for?

MAV refers to the appointed representatives as the 'State Council' and describes it as MAV's governing body. Under the MAV Rules, the State Council is given the power to:

- determine the Rules of the Association (subject to Governor in Council approval)
- elect the president and the twelve other regionally grouped members of the board of management
- determine MAV's strategic direction
- appoint the auditor.

The MA Act does not contain any provisions relating to the role or responsibilities of the State Council.

REFORM OBJECTIVES

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.

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.

QUESTIONS

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

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

How are the rules for the management of MAV made, adopted and amended?

Section 3(2) of the MA Act enables MAV, with the approval of the Governor in Council, to make rules for the management of MAV, the regulations of its proceedings and a number of other matters.

Some of the key matters dealt with under the Rules include:

- the objectives of MAV
- the membership of the Association
- the appointment and obligations of representatives
- the management of the board and elections
- the municipal officers' fidelity guarantee fund
- amending the rules with Governor in Council approval where 60 per cent of the representatives vote in favour of the amendment.

The Auditor-General's report noted that MAV's rules provide the authority to perform and exercise functions and powers that would ordinarily be reserved for enabling legislation.

REFORM OBJECTIVES

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.

The reforms also seek to clarify that the rules are the responsibility of MAV and do not constitute a legislative instrument under the *Subordinate Legislation Act 1994*.

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.

QUESTIONS

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

If no, what alternative approval process would you propose?

What functions does the board of management perform?

The MA Act does not contain any provisions relating to the board of management.

Under the Rules, the board of management is made up of 12 representatives, grouped regionally, and a president selected through a general elections process. Members are elected for a two-year term.

The board of management's responsibilities include to:

- define the detail of policies, objectives and strategies determined by State Council
- set and evaluate directions, priorities and performance standards for MAV
- appoint the CEO and monitor his or her performance
- liaise with MAV representatives from their regions
- adopt the annual budget.

The board of management have developed and implemented a number of policy documents including:

- MAV Fraud & Corruption Framework & Plan
- MAV Fraud & Corruption Policy
- MAV Procurement Process Overview
- MAV Protected Disclosure Policy
- MAV Protected Disclosure Procedures
- MAV Sponsorship Policy
- MAV Staff Code of Conduct
- MAV Procurement Policy.

The board of management delegates its insurance functions to a separate MAV Insurance Board under a deed of establishment. The insurance board is made up of the Chief Executive Officer (CEO) of MAV, the president of MAV, a board member and three independent members (of which the Chair is one).

REFORM OBJECTIVES

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.

The proposed reforms also seek to obtain consistency with the *Public Administration Act 2004* and the *Victorian Managed Insurance Authority Act 1996*.

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
- 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.

11. Provide that the board of management must have mechanisms in place for monitoring the exercise of delegated authority.

QUESTIONS

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

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

What conduct is expected of board members?

The MA Act does not contain any provisions relating to the conduct of MAV's board members.

REFORM OBJECTIVES

The proposed reforms seek to provide a framework for good governance in the carrying out of the board of management's functions.

The proposed reforms seek to:

- 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.

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 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.

QUESTIONS

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

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

Who has oversight over executive and CEO remuneration?

The MA Act does not contain any provisions relating to the CEO of MAV.

Under the MAV Rules, the CEO is appointed by the board of management and is responsible for the day to day management and administration of MAV. The board of management annually sets performance objectives for the CEO and regularly monitors the performance of the CEO.

REFORM OBJECTIVES

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.

PROPOSED REFORM

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*.

QUESTIONS

Do you support the requirement for a remuneration policy?

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

Reporting and Accountability

How will MAV manage and report on its finances?

Section 10CD of the MA Act requires MAV to keep insurance accounts and submit an audited financial report annually to the Minister for Local Government. In turn, the Minister must table the report in both houses of Parliament.

Section 11 of the MA Act requires MAV to keep accounts of all money received and expended and ensure the separation of accounts for MAV's insurance Fidelity Guarantee Fund and MAV's accident insurance. It also requires the independent audit of those accounts.

In practice MAV combines its annual reports to cover all of its activities and submits the entire report to the Minister for tabling. Although not currently required, MAV's annual reports are prepared in accordance with Australian Accounting Standards.

MAV also reports on compliance with Australian financial services licence requirements as a business providing financial services.

REFORM OBJECTIVES

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.

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 *Financial Management Act 1994* and the *Local Government Act 1989*) and requirements to keep proper accounts and records and prepare and have audited financial statements.

The obligations to report seek to ensure that MAV is transparent to its representatives, the community and the Minister.

PROPOSED REFORM

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 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.

QUESTIONS

Do you support the principles of sound financial management?

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

What strategic planning and reporting documents will be required?

Each year MAV develops a strategic plan in consultation with the appointed representatives through a series of strategy sessions. The monitoring of the strategic plan activities occurs on a quarterly basis.

REFORM OBJECTIVES

The proposed reform seeks to achieve greater accountability to the appointed representatives in line with the responsibility of the representatives to determine the strategic direction for MAV.

PROPOSED REFORM

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.

QUESTIONS

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

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

How will procurement be carried out?

MAV Procurement provides councils access to bulk procurement contracts for goods and services.

In 2015 MAV adopted a procurement policy which contains provisions relating to contracts and procurement activities carried out on behalf of Victorian councils by MAV Procurement.

REFORM OBJECTIVES

The *Local Government Act 1989* requires councils to have a procurement policy that sets out the principles, processes and procedures that will apply to all purchases of goods, services 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.

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.

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.

QUESTIONS

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

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

How will MAV's risks be managed?

In 2004, MAV established an audit committee responsible for monitoring financial and risk controls, internal and external audit activities and organisational performance, and for advising the board of management on its governance framework. The audit committee is currently comprised of three independent members and two board members.

REFORM OBJECTIVES

The *Local Government Act 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.

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.

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.

QUESTIONS

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

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

Insurance

How will MAV's mutual liability insurance scheme operate?

Section 10CB of the MA Act states MAV must establish a mutual liability insurance scheme to provide public liability insurance and professional indemnity insurance.

This requirement was introduced in 1993 as part of a national approach to public liability insurance in response to the collapse of Mercantile Mutual and the broader market failure which led to excessive premiums for councils.

MAV operates a Liability Mutual Insurance (LMI) through a discretionary mutual trust fund (DMF) operated by Jardine Lloyd Thompson. It provides public and product liability and professional indemnity insurance to councils and associated bodies in Victoria and Tasmania. MAV holds an Australian Financial Services Licence.

Council participation in the LMI scheme is discretionary, however the LMI scheme is approved under section 76A(2) of *Local Government Act 1989* which enables councils to directly engage MAV for insurance cover without first going to tender.

Section 10CD of the MA Act requires MAV to keep separate accounts for their mutual liability insurance and provide an audited financial report to the Minister for tabling in Parliament.

REFORM OBJECTIVES

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 REFORM

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.
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.

QUESTIONS

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

functions remain appropriate?

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

How will MAV's insurance activities be prudentially managed?

The MA Act provides MAV with the power to provide a range of insurance services including municipal officers' fidelity guarantee, accident insurance and mutual liability insurance. MAV is not regulated by APRA and its insurance services are operated in accordance with the MA Act.

Municipal Officers Fidelity Guarantee Fund

Section 4 of the MA Act provides that MAV may establish a Municipal Officers Fidelity Guarantee Fund to insure against loss by reason or in consequence of the criminal dishonesty of staff.

MAV has advised that this power is not relied on to provide fidelity insurance and that these provisions are redundant in their current form.

Accident insurance

Section 10B of the MA Act allows MAV to issue an accident insurance policy to:

- a councillor
- a member of an authority under the Water Act
- a member of the Melbourne and Metropolitan Board of Works.

The insurance scheme offers protection against accidents arising in the course of performing their functions in that role.

MAV does not currently provide this insurance service and this provision is redundant.

Insurance brokerage

Section 10C of the MA Act allows MAV to do anything that a financial services licensee may do, including arranging insurance contracts and receiving commissions for such arrangements. This enables MAV to source insurance like an insurance broker.

This provision has been used to establish a number of insurance schemes including, the Commercial Crime Fund, community group insurance and local government employee health insurance.

REFORM OBJECTIVES

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:

- ensure the assets held are sufficient to fund the liabilities
- safeguard the interests of policy holders and claimants.

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:

- WorkSafe
- Transport Accident Commission
- Victorian Managed Insurance Authority.

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.

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 request information.

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.

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.

PROPOSED REFORM

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.

QUESTIONS

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

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

How to get involved

To provide your response to the questions set out in this consultation paper, send your feedback to:

Post	Municipal Association Act Review C/o Local Government Victoria PO Box 500 MELBOURNE VIC 3002
Email	local.government@delwp.vic.gov.au

For any additional information please contact Hannah Wood by phone on 03 902 75811 or by email at hannah.wood@delwp.vic.gov.au.

Feedback on the consultation paper closes on 23 June 2017 at 5pm.

