

*Inquiry into Tackling Climate Change in Victorian Communities*  
*Submission by the Victorian Local Governance Association (VLGA)*

August 2019



## Introduction

The Victorian Local Governance Association (VLGA) is pleased to contribute to the *Inquiry into Tackling Climate Change in Victorian Communities*. The VLGA is a membership based, not-for-profit industry peak body representing the local government sector. We support councils and councillors in good governance by providing support, education and networking opportunities between the local government sector and its interface with other sectors such as social policy and human services. We work in partnership with government agencies and stakeholders to promote best practice in the local government sector and to ensure optimal outcomes for the community.

Local governments in Victoria (and throughout the world) are recognizing the impact of climate change. In Australia, where the climate emergency declaration mobilisation and petition was launched in May 2016, 30 jurisdictions representing roughly 3 million people and 12 per cent of the population have declared a climate emergency: 12 in New South Wales, 7 in Victoria, 3 in Western Australia, 3 in South Australia, 2 in Tasmania, 1 each in Queensland, the Northern Territory, and the Australian Capital Territory. 935 jurisdictions in 18 countries have declared a climate emergency. Populations covered by jurisdictions that have declared a climate emergency amount to 206 million citizens, with 47 million of these living in the United Kingdom. This means in Britain now roughly 64 per cent of the population lives in areas that have declared a climate emergency. In New Zealand, the percentage is 70 per cent of the population. It is 24 per cent in Switzerland, and 16 per cent in Spain<sup>1</sup>.

At national government level, the Welsh government, the First Minister of Scotland, and the Irish government have made climate emergency declarations. On 1 May 2019, the UK Labour Party got unanimous support for a non-binding motion in favour of a climate emergency declaration in the House of Commons, making Britain the first country in the world where a bipartisan parliament has declared a climate emergency. The Parliament of Portugal declared a climate emergency on 7 June 2019, and the Canadian House of Commons followed on 17 June<sup>2</sup>.

Climate change impacts communities on two levels: acute effects, such intensity and frequency of severe weather events (e.g. bushfires) and long term, chronic effects such as coastal erosion and increasing heat island effects around major population centres.

Victorian councils are responding to the effects of climate change through a variety of measures. These fall broadly into two categories: climate change adaptation and climate change mitigation. In relation to climate change adaptation, councils are implementing strategies such as increasing tree canopy coverage and using urban water sensitive design principles for their public assets. Similarly, councils are exploring a range of climate change mitigation strategies. Examples include the purchase of “green power” for council operations and diverting food and organic waste from landfill.

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<sup>1</sup> <https://climateemergencydeclaration.org/climate-emergency-declarations-cover-15-million-citizens/>

<sup>2</sup> <https://climateemergencydeclaration.org/scotland-worlds-first-government-to-declare-a-climate-emergency/>

## Barriers and limitation faced by councils in tackling climate change

Adapting and responding to risks associated with climate change is a shared responsibility between all three tiers of government. Inherent in this recognition of shared responsibility is the recognition that local government has the least amount of power and resources to tackle climate change, despite the fact that councils are at the forefront of service delivery and policy implementation, often on behalf of the State and Federal governments. This is felt most acutely in rural councils, which relies on grants from the other two tiers of government for majority of their revenue.

Councils in Victoria have legislated roles and functions as outlined in the Local Government Act (1989). The VLGA highlights the following sections of the Act for the Committee as they are relevant to the terms of reference for this inquiry.

- Council must have regard to the “social, economic and environmental viability and sustainability of the municipal district” in their decision making;
- The role of council includes “advocating the interests of the local community to other communities and governments”; and
- Functions of a council include
  - a) “advocating and promoting proposals which are in the best interests of the local community;
  - b) planning for and providing services and facilities for the local community;
  - c) providing and maintaining community infrastructure in the municipal district;
  - d) undertaking strategic and land use planning for the municipal district”<sup>3</sup>.

Various commissioned reports gave mixed views on the legal risks for councils in relation to climate change. A report commissioned by the Australian Local Government Association in 2011 stated that “from a legal perspective, climate change legislation and policies do not directly place obligations on local governments. Rather, as is demonstrated by the Victorian Climate Change Act (2010), obligations are placed on the State and its agencies when exercising their powers and functions”<sup>4</sup>.

The report further noted that “there have also been amendments to planning acts, and judicial interpretation of principles of ecologically sustainable development which guide the implementation of those acts, which identify and include climate change as a relevant consideration of decision making, however, this only affects councils indirectly. Thus, any response by councils to the risk of climate change must be based on these and other more general law obligations and there is uncertainty regarding how those laws could be applied. This has led to a grave concern amongst Councils as to what their liability may be when exercising their powers and functions in the face of potential climate change impacts”<sup>5</sup>.

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<sup>3</sup>

[http://www.legislation.vic.gov.au/domino/Web\\_Notes/LDMS/LTObject\\_Store/ltobist10.nsf/DDE300B846EED9C7CA257616000A3571/47BF7C3826A93157CA2583B40080AAA6/\\$FILE/89-11aa151%20authorised.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/LTObject_Store/ltobist10.nsf/DDE300B846EED9C7CA257616000A3571/47BF7C3826A93157CA2583B40080AAA6/$FILE/89-11aa151%20authorised.pdf)

<sup>4</sup> <https://www.environment.gov.au/system/files/resources/d9b2f9cf-d7ab-4fa0-ab0e-483036079dc7/files/alga-report.pdf>

<sup>5</sup> *ibid*

To compound this uncertainty, Noel Huntley SC issued in an opinion in 2016 that company directors who do not properly manage climate risk “could be held liable for breaching their legal duty of due care and diligence”<sup>6</sup>. This opinion was updated in 2019, which reinforced and strengthened the 2016 opinion based on five material developments in the intervening period.

The VLGA highlights two specific material developments for the Committee as they are of most relevance to councils: advances in scientific knowledge and increased litigation risks. While the Huntley opinion does not directly identify the risks posed by climate change to councils, it does highlight the current fragmented and inconsistent climate change governance framework as a key risk. The updated 2019 Huntley opinion concluded “Australia’s failure to accelerate emissions reductions and a prolonged period of policy inconsistency and uncertainty have made climate risks more significant and have increased the prospect of larger and more abrupt impacts and adjustments in future”<sup>7</sup>.

### Proposed actions in tackling climate change

Despite the significance and complexity of the challenges posed by climate change to communities, the VLGA believes that there are actions the Victorian government should consider and pursue to assist communities in tackling climate change.

In the short term, the Planning and Environment Act (1987) needs to be updated to provide clearer guidance to councils regarding how to best discharge their duties when assessing planning applications. The current Act is outdated and does not reflect contemporary challenges in tackling climate change risks. Issues such as poor design and ESD (ecologically sustainable development) ratings of buildings and development proposals should be subject to greater scrutiny than they do currently. Similarly, councils’ ability to address the long term social and environmental infrastructure needs of communities such as open green space and tree canopy coverage need to be strengthened under the Act. Events associated with climate change such as flooding and coastal erosion are occurring more frequently and with greater severity. This requires a thorough examination of relevant development guidelines and regulations and for them to be updated and/or developed as necessary.

In the medium to long term, a comprehensive climate change governance framework must be developed in consultation with all key stakeholders outlining the roles and responsibilities of the State government, local government, and state government agencies and departments.

The VLGA also strongly urges the Victorian government to continue to lobby the Federal government and other jurisdictions for a coordinated national approach in tackling climate change.

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<sup>6</sup> <https://cpd.org.au/wp-content/uploads/2016/10/Legal-Opinion-on-Climate-Change-and-Directors-Duties.pdf>

<sup>7</sup> <https://cpd.org.au/2019/03/directors-duties-2019/>