Chapter 10

Local government

10.1 The actions undertaken by local governments in response to the risks climate change present to buildings and infrastructure were of great interest to the committee. As the Northern Alliance for Greenhouse Action (NAGA)[1] observed:

> Local governments are on the frontline when dealing with the risks and impacts of climate change. The impacts of climate change are already taking their toll on local governments ability to deliver critical services to their community.[2]

10.2 NAGA argued that there is a 'strong community expectation that local governments are preparing for climate change'. Effective climate change adaptation by local governments could benefit their residents by facilitating improved health and wellbeing outcomes, lower energy bills and reductions in local government expenditure (such as lower maintenance costs). In the long-term, investments by local governments in climate change adaptation now could avoid greater expenditure in future.[3] As outlined in previous chapters, state governments have also required local governments to respond to climate change in matters such as land-use planning. However, local governments also face the risk of their planning decisions being subject to legal challenges, issues regarding rising insurance premiums, and limited resources.

Overview of strategies being pursued by local governments

10.3 An example of a local government's climate change strategy is the City of Melbourne's Climate Change Adaptation Strategy (2009), which the City of Melbourne described as 'the first of its kind in Australia'. The Strategy was updated in 2017. It supports the City's broader aim of zero net emissions by 2020.[4]

10.4 The Strategy focuses on addressing risks associated with an insufficient water supply; inundation from flooding, storm surge, sea level rise and flash flooding; heatwave impacts; and storm events.[5] Since the 2009 edition of the strategy was released, the City has pursued numerous projects to address the identified key risks. These projects include stormwater harvesting, increasing green space and canopy

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1 The NAGA is a network of nine northern Melbourne metropolitan councils.

2 Northern Alliance for Greenhouse Action, *Submission 19*, p. 1.

3 Eastern Alliance for Greenhouse Action, *Submission 13*, p. 2.

4 City of Melbourne, *Submission 43*, p. 2.

5 City of Melbourne, *Climate Change Adaptation Strategy Refresh*, 2017, www.melbourne.vic.gov.au/sitecollectiondocuments/climate-change-adaptation-strategy-refresh-2017.pdf (accessed 22 February 2018), p. 16.

cover, and enhanced biodiversity. The City has spent in excess of $50 million over five years on these projects.[6]

10.5 The City of Melbourne is also using international experience to inform its strategies and decisions. Mr Gavin Ashley from City of Melbourne advised that Melbourne is a member of the C40 Cities Climate Leadership Group, which is a global network of over 90 major cities focused on addressing climate change issues. Mr Ashley explained that membership of this group 'allows us to make city-to-city connections quite well'. Mr Ashley explained that this collaboration works:

> …because it's city based, and, as large international cities, we're facing similar challenges. In effect that collaboration, for us at least, has jumped beyond the national level in search of answers.[7]

10.6 Despite providing an overarching strategy relating to climate change, the 2017 edition of the strategy illustrates the scale of the challenge local governments face in incorporating climate change considerations into their planning and decision-making practices. The various strategies and actions the City of Melbourne is involved in regarding key climate risks are listed at Box 10.1.

Box 10.1: City of Melbourne strategies and actions relevant to climate risks

- Resilient Melbourne Strategy
- Melbourne Strategic Statement
- City of Melbourne Design Standards
- Urban Forest Strategy
- Green Infrastructure Framework
- Zero Net Emissions Strategy
- Elizabeth Street Catchment Integrated Water Cycle Management Plan
- Beyond the Safe City Strategy
- Growing Green Guide
- Open Space Strategy
- Emergency Management Planning (collaborative effort between government agencies)
- Inner Melbourne Climate Adaptation Network
- Transport Strategy
- Planning Policy 22.19: Energy, water and waste
- Planning Policy 22.23: Stormwater management
- Arts Strategy
- Total Watermark: City as a Catchment
- Tourism Action Plan
- Nature in the City Strategy
- Building Prosperity Together
- CitySwitch and 1200 Buildings
- Melbourne for all People Strategy
- Assess Management Strategy
- Heatwave and Homelessness Action Plan
- City of Melbourne Heatwave Response Plan.

Source: City of Melbourne, *Climate Change Adaptation Strategy Refresh*, 2017, p. 19.

6 City of Melbourne, *Climate Change Adaptation Strategy Refresh*, p. 24.

7 Mr Gavin Ashley, Team Leader, Climate Resilience, City of Melbourne, *Committee Hansard*, 15 March 2018, p. 37.

10.7 Other examples of local government strategies include:

- statements published by the City of Darwin regarding its approach to managing climate risk;[8] and
- the climate change risk assessment and action plan developed by the Eastern Alliance for Greenhouse Action, a group of seven councils located to the east of Melbourne.[9]

10.8 Overall, the Australian Local Government Association (ALGA) provided the following insights into the changing approach being taken by local governments to climate risks:

> In recent years, the focus of local government has turned toward boosting the capacity of the sector to support communities deal with the impacts of climate change that cannot be avoided.
>
> These include threats to valuable coastal infrastructure, such as roads, parks, harbours as well as residential and commercial land, due to the risk of increasing sea-levels and storm-surges from more powerful weather systems. As the level of government closest to communities and responsible for most local infrastructure, this is core business and fundamental due diligence.[10]

10.9 However, the committee received anecdotal evidence indicating that a significant number of local governments are not implementing strategies to address climate change risks. Mr Paul Grech from Floodplain Management Australia (FMA) advised that work he was involved in to audit planning policies and planning controls revealed that only around 20 per cent of the approximately 40 coastal councils in New South Wales had climate change-related controls. Mr Grech added that it was also 'very difficult' to identify and understand the councils' policies.[11]

Challenges local governments face responding to climate change

10.10 This section discusses some of the key challenges local governments encounter in planning for, and responding to, the implications of climate change for houses, other buildings and infrastructure.

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8 See City of Darwin, 'Climate Change', www.darwin.nt.gov.au/live/welcome-to-darwin/climate-change/reducing-impact (accessed 26 March 2018).

9 Eastern Alliance for Greenhouse Action, *Climate change adaptation roadmap for Melbourne's east: A guide for decision makers in the EAGA Councils.* Eastern Alliance for Greenhouse Action, *Submission 13*, p. 2.

10 Australian Local Government Association, *Submission 12*, p. 3.

11 Mr Paul Grech, Director, Land Use Planning, Floodplain Management Australia, *Committee Hansard*, 23 November 2017, p. 5.

Resources available to local governments

10.11 The Local Government Association of Queensland (LGAQ) argued that the resources available to local governments to build and maintain infrastructure are inadequate. A particular concern is that vertical fiscal imbalance results in local governments encountering the greatest relative disparity between public sector revenue and non-financial asset responsibilities.[12] Similarly, the Australian Coastal Councils Association (ACCA) highlighted the apparent mismatch between the amount of local government infrastructure exposed to climate change risks, and the resources that local government have to carry out effective adaptation to manage these risks. The ACCA commented:

> Responsibility for planning and managing coastal assets to minimise climate risks to a major portion of Australia's population and assets is largely left to local councils. The local government sector is the level of government with least resources available to undertake such an enormous task, both in terms of funding and a shortage of appropriate professional resources.[13]

10.12 Local governments have limited revenue-raising ability. The LGAQ explained that, under state legislation, the sources of revenue available to local governments in Queensland are 'largely limited to what the local community can bear in terms of rates and fees for services'.[14] Ms Emma Herd from the Investor Group on Climate Change (IGCC) noted that many local governments 'do not have the ability to raise rates because state governments have capped their rate raising ability'. Ms Herd commented:

> So even if they have identified the potential for measures that they can take to increase the resilience of their area, they don't have the ability to raise the capital because they are not allowed to raise rates so then it becomes a state issue, which was what we were saying before about the levels of responsibility.[15]

10.13 During the committee's public hearing in Melbourne, representatives of multiple Victorian local governments provided examples quantifying the burden of climate change-related infrastructure projects for their councils. Mr William Millard from Hobsons Bay City Council advised that, in 2017, $1.5 million out of the council's total annual capital works budget of $35 million was spent on revetment works to defend against storm surge and extreme weather events.[16]

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12 Local Government Association of Queensland, *Submission 11*, p. 9.

13 Australian Coastal Councils Association (ACCA), *Submission 61*, p. 5.

14 Local Government Association of Queensland, *Submission 11*, p. 8.

15 Ms Emma Herd, Chief Executive Officer, Investor Group on Climate Change (IGCC), *Committee Hansard*, 23 November 2017, p. 19.

16 Mr William Millard, Director, Strategic Development, Hobsons Bay City Council, *Committee Hansard*, 15 March 2018, p. 22.

10.14 Mr Millard noted that 'there is a lot more that needs to be done, of course'. He added:

> We've just invested in some research on our drainage elements and the current status of those assets. We spent $1 million just on the review of all the drains so that we have an understanding of where those hot spots are, if you like, and where we need to invest. If you take a trip along Pier Street, Altona, along the foreshore, you'll see a number of quite significant drainage works that we've done to cater for better release of floodwaters from on land. It's an ongoing and significant battle in a resourcing sense.[17]

10.15 Councillor Richard Ellis from East Gippsland Shire Council noted that the cost of repairing or upgrading a seawall that protects a town of around 7000 people in Gippsland, Victoria, ranges from $2500 to $4000 per cubic metre. Accordingly, Councillor Ellis advised that repairing two seawalls of around 30 metres and 85 metres will cost the local government 'hundreds of thousands of dollars'.[18]

10.16 Mr Brett Walters from the City of Port Phillip informed the committee that works to change drainage infrastructure to relieve flooding risks in four local government jurisdictions would cost $500 million.[19]

10.17 Councils' limited financial resources have flow-on consequences for the number of staff members who can be allocated to climate change-related issues. Mr Andrew Petersen from Sustainable Business Australia noted that often councils have one climate resilience officer at most in their planning department, and those officers can still have other responsibilities.[20] It was also noted that local governments in rural areas are at a disadvantage when considering allocating resources for sustainability officers, compared to local governments that serve more densely populated urban areas.[21]

10.18 The LGAQ reasoned that the current financial arrangements impede the timely adaptation of infrastructure to climate change. The LGAQ argued that addressing this would require the Australian Government to recognise that the tax revenue share available to local governments needs to increase relative to the value of assets for which they are responsible.[22]

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17 Mr William Millard, Hobsons Bay City Council, *Committee Hansard*, 15 March 2018, p. 22.

18 Councillor Richard Ellis, Committee Member, ACCA, *Committee Hansard*, 15 March 2018, p. 23.

19 Mr Brett Walters, Manager, Sustainability and Transport, City of Port Phillip, *Committee Hansard*, 15 March 2018, pp. 22–23.

20 Mr Andrew Petersen, Chief Executive Officer, Sustainable Business Australia, *Committee Hansard*, 23 November 2017, p.12.

21 Mr Brett Walters, City of Port Phillip; Ms Dominique La Fontaine, Executive Officer, South East Councils Climate Change Alliance (SECCCA), *Committee Hansard*, 15 March 2018, p. 37.

22 Local Government Association of Queensland, *Submission 11*, p. 9.

Comments on allocation of responsibilities

10.19 Councils also highlighted how the unclear division of responsibilities between state and local governments has implications for climate change adaptation. For example, the South East Councils Climate Change Alliance (SECCCA) advised that, in Victoria, it is not clearly defined where responsibility lies for the protection of coastal assets.[23]

10.20 In arguing for a national approach to climate change adaptation (see Chapter 9), Ms Emma Herd from the IGCC commented that local governments have used scientific research and tools to undertake planning and risk assessment work, however, after identifying the risks it often becomes evident that they 'don't have the capacity to then take the next step and respond'. Ms Herd stated:

> So I think part of that national framework is that we need to bring it all together and to have that clear line of sight of who does which part of the puzzle and then which agency or which private industry sector then picks up the next part and has the responsibility for the next part of it in a much more integrated way.[24]

10.21 Local governments also argued that they need to be involved in policy development in order to assist the policies to achieve their objectives and so that their obligations are clearly understood. The LGAQ argued that if the Australian Government decides to develop climate change adaptation legislation and policies, extensive consultation with local governments should be undertaken 'to ensure obligations on local governments are reasonable and implementable'.[25]

Concerns about exposure to liability

10.22 Local governments expressed concerns about the risk of legal liability they might face due to climate change. The LGAQ explained that local governments 'carry exposure to increased risk of legal liability should they fail to take reasonable steps to consider and mitigate the effects of climate change on their communities'.[26]

10.23 Dr Karl Mallon from Climate Risk noted that local governments could face claims for compensation based on 'injurious affection' based on changes to planning schemes. For example, Dr Mallon commented that:

> …if the council puts out a report that shows the flood plain with climate change and you are on the wrong side of that line you can sue. You can say

23 SECCCA, *Submission 30*, p. 3.

24 Ms Emma Herd, IGCC, *Committee Hansard*, 23 November 2017, p. 17.

25 Local Government Association of Queensland, *Submission 11*, p. 7.

26 Local Government Association of Queensland, *Submission 11*, p. 5.

> that your property has gone down in value and you have to pay me the difference.[27]

10.24 Dr Mallon added that a potential consequence of this is that councils could undertake work on climate change risks but refuse to release their findings to utilities to assist them with planning. Dr Mallon suggested that providing councils with clear legal protection to share information with utilities could help to protect future infrastructure and property buyers.[28]

10.25 Mr Alan Stokes from the ACCA advised that a concern shared by members of his organisation is 'the legal position faced by councils when they're addressing development applications for a building or a house that they realise might be affected and vulnerable to inundation in the future'. Mr Stokes explained that councils are 'caught in a dilemma' because:

> …if they refuse the development application then the chances are it'll be taken straight to the Land and Environment Court or the Administrative Appeals Tribunal; if they approve it, and the construction goes ahead, then there's a potential liability down the track if it is inundated. So, in a sense, they're damned if they do and they're damned if they don't.[29]

10.26 Evidence given by Mr Brett Walters from the City of Port Phillip supported this observation. Mr Walters commented:

> If local governments are required to address climate risk in that way, there's a nexus with the planning scheme. Council makes decisions on allowing a development to occur based on the requirements of the planning scheme and, if the planning scheme is silent on the ability to refuse a building application because there's a known inherent climate risk, council doesn't have the ability to rule against it because it's not in the planning scheme. It's a catch 22.[30]

10.27 Mr Stokes explained that section 733 of the *Local Government Act 1993* (NSW) can indemnify local governments that make planning decisions based on good faith relating to flood liable land, land subject to bushfire risks and land in the coastal zone. Mr Stokes advised that similar provisions do not exist in equivalent legislation in other state and territory jurisdictions.[31] Similarly, the Housing Industry Association (HIA) commented that the Australian and state governments could legislate to

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27 Dr Karl Mallon, Director, Science and Systems, Climate Risk Pty Ltd, *Committee Hansard*, 23 November 2017, p. 6.

28 Dr Karl Mallon, Climate Risk Pty Ltd, *Committee Hansard*, 23 November 2017, p. 6.

29 Mr Alan Stokes, Executive Director, ACCA, *Committee Hansard*, 15 March 2018, p. 24.

30 Mr Brett Walters, City of Port Phillip, *Committee Hansard*, 15 March 2018, p. 33.

31 Mr Alan Stokes, ACCA, *Committee Hansard*, 15 March 2018, p. 25.

'give local government comfort' about planning decisions regarding the construction of new buildings when climate change is a consideration.[32]

10.28 Representatives of the Law Institute of Victoria were questioned by the committee about the liability of government authorities to climate change issues. In response, they advised that the issue is 'complex'. Dr Leonie Kelleher explained:

> There is a difference between the corporation and the government entity in law…There's a principle of reasonableness: if one is suing a government entity, has that government entity acted reasonably? If one is suing for negligence, for example, was it a foreseeable risk, and did the authority act reasonably? There's a recent body of law…which is that, if there's a financial constraint on a government authority that applies across all government authorities, the authority may not have acted unreasonably in not doing something about it. Here in Australia, with the concerns of that body of precedent law, it would be extremely important in any new legislation to, if you like, kill that and not allow that defence to apply. Where you've got your company directors and your corporations, that issue of whether a reasonable authority constrained by financial constraints is able to do X, Y and Z does not apply, or may not apply, in that situation. But it's an increasingly problematic issue when one's seeking to take action against an authority.[33]

10.29 Dr Kelleher emphasised that when considering legal implications for local government, there is 'major distinction between a duty—the authority must do X or Y—and a power, where it may do A, B or C, depending on certain discretions'. Dr Kelleher suggested that these issues should be considered as part of comprehensive reform of Australia's environmental laws, noting that it is open to governments and parliaments to reduce complexity by creating 'crystal clear' legislation and policy settings.[34]

10.30 From the perspective of Queensland local governments, the LGAQ called for indemnity from liability under the *Local Government Act 2009* (Qld).[35] The committee was also advised that a review of local government legislation in Victoria is considering whether councils should be specifically required to have regard to mitigation and planning for climate risk.[36]

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32 Ms Kristin Brookfield, Chief Executive, Industry Policy, Housing Industry Association, *Committee Hansard*, 22 March 2018, p. 10.

33 Dr Leonie Kelleher, Member, Environmental Issues Committee, Law Institute of Victoria, *Committee Hansard*, 15 March 2018, p. 16.

34 Dr Leonie Kelleher, Law Institute of Victoria, *Committee Hansard*, 15 March 2018, p. 16.

35 Local Government Association of Queensland, *Submission 11*, p. 4.

36 Ms Dominique La Fontaine, SECCCA, *Committee Hansard*, 15 March 2018, p. 33.

10.31 Finally, the link between legal obligations and resourcing was also noted. It was suggested that if a state government imposes a statutory obligation on local governments to plan for and act on climate risk, the state government then needs to ensure that local governments are provided with adequate 'resourcing and capacity' to comply with this obligation.[37]

Other factors that might deter action

10.32 Based on his experience dealing with local governments, Mr Paul Grech from the FMA advised the committee that councils are generally hesitant to develop climate change policies for two key reasons. The first is to avoid being the 'bearer of bad news' to property owners in their jurisdiction. The second reason is due to concerns about competition between different council regions—that is, councils are disinclined to take actions that neighbouring councils are not taking if doing so could affect land values or make their region less competitive for new development. To overcome this, Mr Grech reasoned that mandatory requirements imposed by state governments are needed so that all councils are required to identify risks, develop strategies and implement actions to improve resilience to climate change.[38]

10.33 Likewise, Professor Lesley Hughes of the Climate Council of Australia commented that, without clear signals from higher levels of government, neighbouring local governments facing similar risks can respond in significantly different ways, often simply because of 'the views of the particular councillors at the time'.[39]

10.34 It was also noted that constituents of local governments might not support actions being taken by their council. Ms Kristin Brookfield from the HIA provided the following example illustrating this potential outcome:

> Lake Macquarie City Council in New South Wales invested a significant amount of time and money to map their area—obviously this week they've been subject to flooding—and then they went down the path of developing a new construction code for properties which they deemed would be affected. They implemented that for a few months and, in the end, their own constituents came back to them and said: 'No, we think you've overstepped. We think you're trying to make us do too much, too soon.' So they went back some time later and changed that code. I'm not saying whether that's right or wrong, but that's the response that was given by those constituents to that council.[40]

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37 Ms Dominique La Fontaine, SECCCA, *Committee Hansard*, 15 March 2018, p. 33.

38 Mr Paul Grech, Floodplain Management Australia, *Committee Hansard*, 23 November 2017, p. 5.

39 Professor Lesley Hughes, Councillor, Climate Council of Australia, *Committee Hansard*, 23 November 2017, p. 31.

40 Ms Kristin Brookfield, Housing Industry Association, *Committee Hansard*, 22 March 2018, p. 11.

Conclusion

10.35 This report has presented an overview of the various challenges and potential policy options relating to the current and future impacts of climate change on housing, buildings and infrastructure. The committee considers that this report, and the detailed evidence taken during this inquiry, will be a valuable resource that assists senators, policymakers and others to understand the issues at hand.

10.36 As noted in Chapter 1, members of the committee have expressed their own views in additional comments attached to this report. The committee thanks all the individuals and organisations that participated in this inquiry.

Senator Janet Rice
Chair