



Government  
Services

# Local Government Reforms Consultation Paper Feedback

May 2024

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# Executive Summary

Local Government Victoria (LGV) drafted a *Local Government Reforms 2024 Consultation Paper* to provide stakeholders with an overview of the proposed reforms.

The Consultation Paper presented three key reform areas:

- council leadership, capability, and councillor conduct
- early intervention and effective dispute resolution, and
- oversight mechanisms.

The proposed local government reforms were informed by reports and advice from integrity bodies such as the Local Government Inspectorate, the Independent Broad-based Anti-Corruption Commission and municipal monitors and based on feedback from the sector as well as other Government initiatives such as the Local Government Culture Project Insights report.

The Consultation Paper was sent to Victorian council mayors and council CEOs to share with their organisations. It was also sent to the local government sector peak body organisations.

Respondents were asked to tell us whether they support the reforms, and to provide their feedback on the impact of the proposed reforms on their roles as well as the impacts on the local government sector.

Feedback was open from Wednesday 31 January 2024 until Friday 1 March 2024.

Consultation was undertaken over four weeks, as Government consideration of reforms was required shortly after this period in order to ensure implementation of the reforms before the local government elections in October 2024.

Several councils and peak bodies provided the feedback that more time was needed for the consultation process, however this isn't the only opportunity for consultation. Following passage of the Bill, LGV will consult with the local government sector and the public on the drafting of regulations to supplement the legislative reforms, which will take place in mid-2024.

## Feedback received

### Respondents' profiles

As of 1 March 2024, Local Government Victoria received a total of 77 responses. Of these, 30 were received from councils, 16 from councillors, 11 from mayors/deputy mayor, 12 from council CEOs, 7 from sector peak organisations, and 1 undisclosed.

A further 222 campaign submissions from a sector organisation were received.

## Amendments resulting from the feedback

LGV received valuable feedback from the sector which provided useful insights into how the proposed reforms would impact councils' operations. LGV carefully considered all feedback and, where possible, amended the proposed Bill to ensure that the reforms will work for the sector.

The Local Government Amendment (Governance and Integrity) Bill 2024 was introduced into Parliament on 30 April 2024.

Below is a detailed breakdown of how feedback from respondents influenced each element of the reforms in the Bill:

### **Mandatory Ongoing Training**

The submissions provided insights into the challenges and opportunities for councils as they implement the changes. LGV heard from councils that the timing of the council elections would make it difficult for them to implement delivery of induction training within three months of the election, as the holiday period falls soon after. As such, the period for completing induction training has been extended to four months from taking the oath or affirmation of office instead of three months from commencing the role.

To ensure that councillors who are on a leave of absence are not penalised, they will have one month after they return from leave to complete the training before their allowance is withheld.

Due to feedback about the potential costs of the training, acting mayors will only need to complete the training if they are in the role for 1 month or more and have not already completed the training in the 12 months prior.

### **Model Councillor Code of Conduct**

Feedback was received that overwhelmingly supported a model councillor code of conduct to provide a consistent and uniform standard of behaviour across the State. This reform will be further developed through regulations in consultation with the sector.

### **Limiting VCAT Jurisdiction**

Feedback from the sector included that there is a need for conduct matters to proceed more efficiently and swiftly without matters unnecessarily being re-prosecuted.

Fifty-two per cent of respondents supported the proposal to remove the ability for parties affected by a Councillor Conduct Panel decision to apply to VCAT for a merits review of the decision, noting that appeal rights at the Victorian Supreme Court would remain. This reform promotes the early and effective resolution of these matters, consistent with the primary objectives of the councillor conduct framework.

### **Councils indemnifying councillors**

Internal arbitration and Councillor Conduct Panel processes are intended to be informal and to provide a timely resolution of disputes to prevent them from escalating. This is made clear by the LGA 2020 which provides that there is no right to representation in these processes. The proposed reform will not prevent a council from indemnifying a councillor in circumstances where a Councillor Conduct Panel

or arbiter considers representation is necessary to ensure the process is conducted fairly.

The proposed reform is therefore still included in the final set of reforms as it supports the councillor conduct framework to operate as intended without undue complexity.

### **Broadening the scope of sanctions imposed by an arbiter**

This proposal received a significant level of support of over 75 per cent and remains as proposed.

### **Suspending or disqualifying individual councillors**

This proposal received a level of support over 59 per cent. Many respondents flagged the need to ensure that natural justice requirements are included in the exercise of these powers. These have been built into the reforms based on this feedback.

### **Clarifying the application of privileges and statutory secrecy**

Almost 80 per cent of respondents supported this proposal with some respondents seeking more details. This detail will be communicated to the sector when the legislation is introduced.

### **Give CMI power to issue infringements**

Around 70 per cent of respondents supported this proposed amendment, with some respondents requesting that these powers be clarified and limited which has been built into the reforms.

## **Part 1. Reforms to strengthen council leadership, capability, and councillor conduct**

Overall, most respondents supported and welcomed the proposal for mandatory ongoing training for councillors and mayors. They considered it a key reform that will prepare councillors for their role, enhance their skills, and set a higher standard for governance at a consistent level across the state.

Some respondents raised concerns about the three-month timing for completion of the induction training, its accessibility for councillors with special needs, the budgeting and resourcing impacts for changes to their training modules, and the withholding of councillor allowances for non-completion of the training in the prescribed time.

As a result, the proposed Bill has been modified in three ways:

- to require councillors to complete their councillor induction training within four months of taking the oath or affirmation of office;
- to require councillors appointed as acting mayors for a month or longer to complete the mayoral training. The training required will be valid for 12 months from the date of completion to ensure councillors acting in this role for less than one month will not be required to complete the training; and
- to provide councillors on leave of absence with one month after their return to complete any training they have missed.

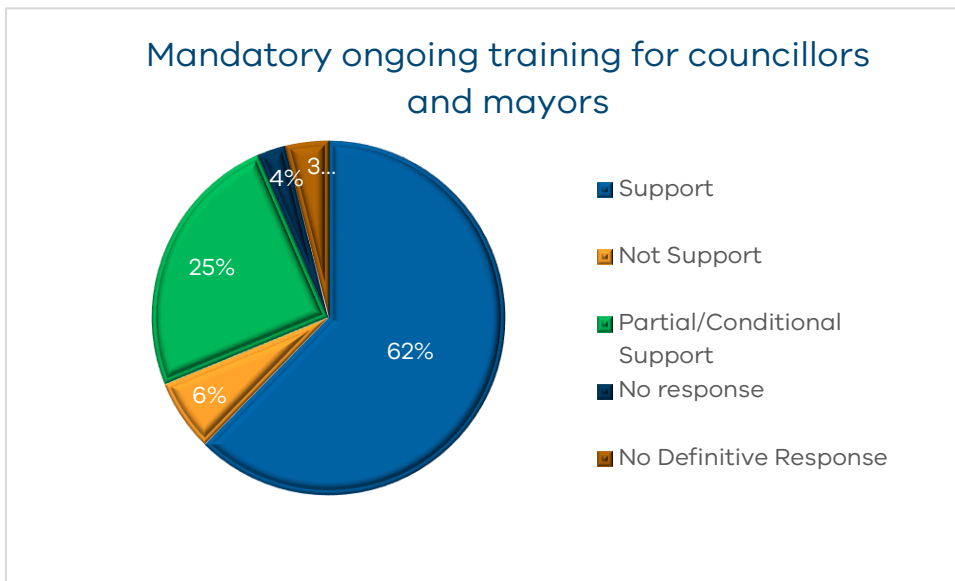
## Mandatory ongoing training for councillors and mayors

At 62 per cent, the majority of respondents supported this proposal while six per cent did not support, 25 per cent partially/conditionally supported, three per cent did not provide a categorical support or not-support response, and four per cent did not respond.

Supporters of the proposal recognised the value of consistent training that would provide elected representatives with the skills and understanding to effectively respond to new challenges, and community expectations. This is particularly relevant as councillors come from a broad range of backgrounds and some have never been exposed to formal meeting processes.

Feedback on the proposal focused on the shortened period for the completion of induction training, citing the December and January months as a period when many councils have either a formal or informal shutdown, the availability of external training providers soon after an election, and the annual repetition of the same training course after completion.

*"... this reform will aid in ensuring that Councillors possess a comprehensive and up-to-date understanding of their roles, responsibilities, and the legal and ethical frameworks within which they operate."*



*Note: Those labelled as No Definitive Response provided comments but did not indicate support or not support, and it was difficult to ascertain based on their comments.*

*"The reduction in timing from six months to three months to complete the mandatory training may be problematic given the time of year that elections are held."*

Several respondents indicated that they want more details about the withholding of allowances for non-completion of training, as well as the responsibility for the design, quality, content, and resourcing of the training.

Suggested measures for enforcing training included considering cross-regional training for mayors, deputy mayors, and acting mayors, developing standardised modules by independent providers such as TAFEs, identifying the base threshold of skills to be acquired,

having a pass or fail component in the training, and increasing the three-month requirement for completion to four months.

## Enable a model Councillor Code of Conduct and other governance matters to be prescribed in regulations

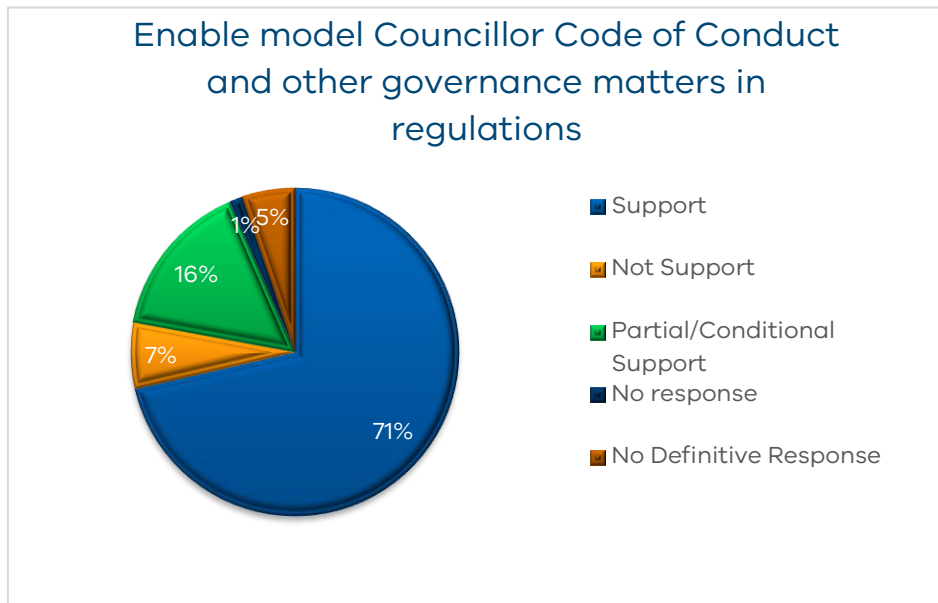
At 71 per cent, most respondents supported the proposal, while seven per cent did not support, 16 per cent partially supported, five per cent had no definite response or were undecided or neutral, and one per cent did not respond.

The main reasons cited for supporting this proposal were that a consistent and uniform standard of behaviour across the state will increase accountability, enable effective processes, and raise the professional standards across all councils.

A challenge raised was the inflexibility or inability to modify the Model Code to include the unique challenges and tailored solutions of individual councils.

It is worth noting that having a Model Code of Conduct does not preclude a council from developing other policies to reflect their council's unique circumstances and environment.

*"The proposed Model Code preserves the fundamental principles yet its forward-thinking approach, addresses potential issues proactively and incorporates measures for consistent standards and early intervention. This will help cultivate a culture of accountability and ethical governance within local councils."*



*Note: Those labelled as No Definitive Response provided comments but did not indicate support or not support, and it was difficult to ascertain based on their comments.*

A few respondents were concerned about having an overly prescriptive Model Code which can unreasonably constrain individual councillors. There were also some who were concerned about the Model Code potentially reducing a council's current standards of councillor conduct, particularly if only minimum standards were identified in the Model Code.



The Model Code will be developed in consultation with the local government sector to address these concerns.

Several respondents wanted clarification around what the 'other governance matters' are to be prescribed in the regulations and the authority of the arbiter to ensure enforcement for identified breaches.

The development of the regulations will be done in consultation with the sector to ensure that any matters that are prescribed support councils to enforce the Model Code.

To ensure councillors understand the Model Code and are committed to abide by its requirements, there were suggestions to produce a Best Practice Guideline and to make it mandatory that councillors 'sign up' to the Model Code.

While councillors will not need to 'sign up' to the Model Code, councillors will be required to commit to abide by the Model Code on taking the oath or affirmation of office and will be held accountable for breaches of the Model Code under internal arbitration processes.

## Part 2. Early intervention and dispute resolution

There was a clear indication that the respondents wanted to have a robust level of procedural fairness, as evidenced by their questions and suggestions to the proposed reforms. For example, several respondents were also concerned about the significant costs of lodging an appeal with the Supreme Court, noting that this could disadvantage councillors who do not have the monetary resources.

Several respondents throughout the consultations also suggested including a mandatory conciliation process, signifying their desire for early resolution of matters. This will be considered in the development of regulations to support the introduction of the Model Code.

### Limit the Victorian Civil and Administrative Tribunal's (VCAT) jurisdiction with respect to councillor conduct panel decisions

Most respondents supported this reform proposal, with 52 per cent fully supporting and three per cent partially supporting subject to further clarifications. Thirty-two per cent of the respondents did not support the proposal while 13 per cent did not provide a categorical support or not-support response, and three per cent left no response.

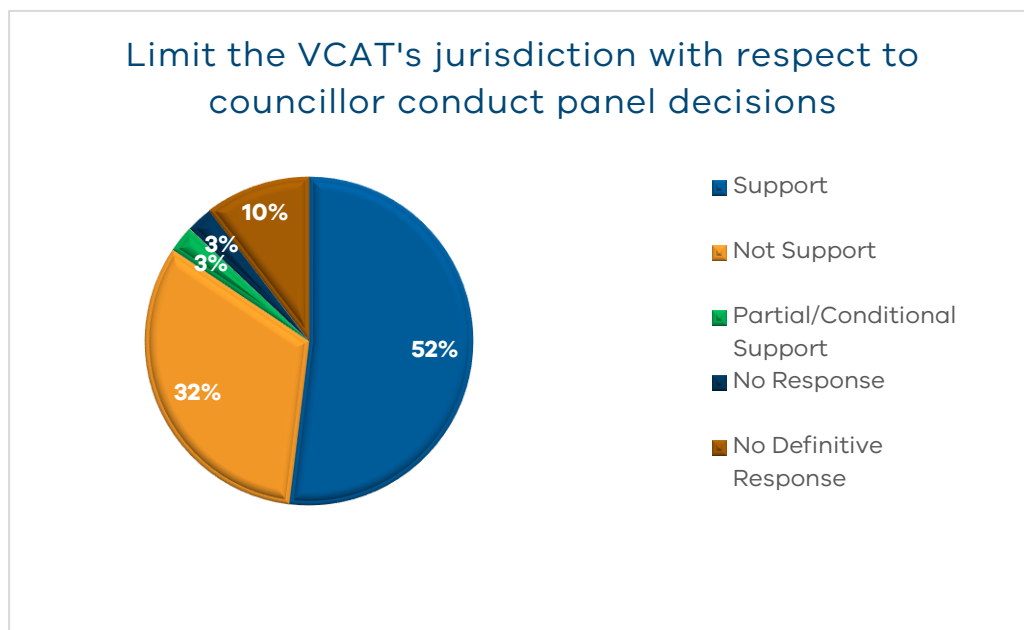
Supporters of this proposal said that this will streamline the dispute resolution process and reduce the burden on VCAT. It will also make the applicant consider seriously the available options and not use VCAT as a political instrument.

Objections to the proposal mainly focused on the cost of appealing to the Supreme Court. Respondents think this proposal would disproportionately disadvantage councillors who do not have the resources. They said that this will compromise justice, fairness, and equity for councillors unable to bear their own legal expenses.

*"It will compromise justice, fairness, and equity for councillors unable to bear their own legal expenses."*



Some respondents think that removing the opportunity for councillors to apply for a merits review of a Councillor Conduct Panel (CCP) decision, is unreasonable/unfair and gives the CCP too much power.



*Note: Those labelled as No Definitive Response provided comments but did not indicate support or not support, and it was difficult to ascertain based on their comments.*

A few respondents mentioned that they wanted to have an alternative, affordable, and efficient body to make councillor conduct panel decisions in a forum that is less formal, simple, fair, and readily available. Others proposed an independent tribunal to hear councillor conduct matters.

Currently VCAT challenges enable councillors who have had a finding of serious misconduct made against them to re-litigate the matter and have another go at defending their conduct. This renders the councillor conduct process ineffective, prolongs proceedings and places a burden on VCAT and all those involved in the matter. It also fails to recognise the independence and fairness the Councillor Conduct Panel process affords to parties at first instance.

### Councils must not indemnify councillors in relation to the internal arbitration process and the councillor conduct panel process

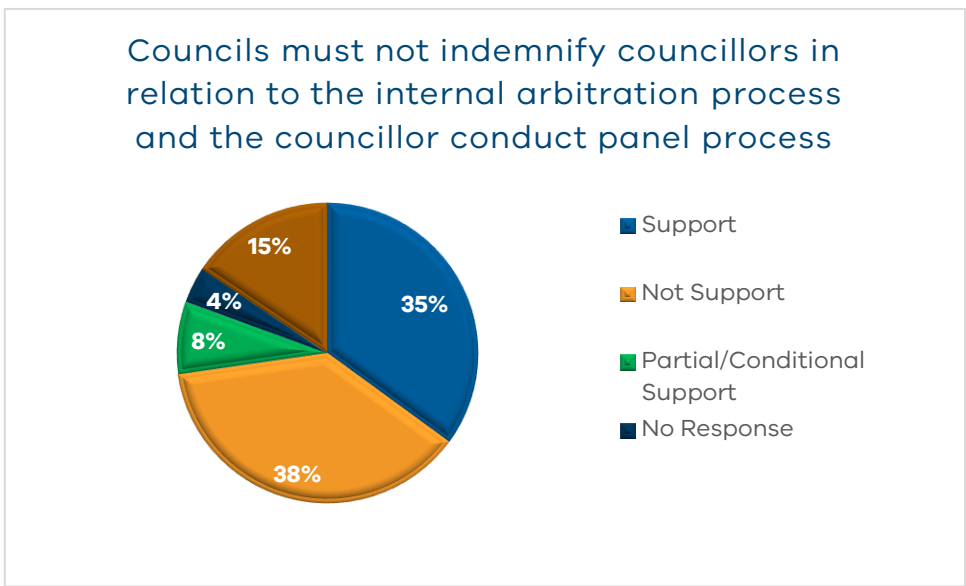
Thirty-five per cent of the respondents supported the proposal, while 38 per cent did not support the proposal, eight per cent partially supported the proposal, 15 per cent did not provide a categorical support or not-support response, and four per cent left no response. LGV notes that of all the proposed reforms, this proposal received the least categorical support.

Respondents who supported this proposal said that this reform will shorten the process and time for a final decision, ensure that these processes are not overly legalistic and reduce the cost impact to the community (via insurance premiums). They also think that it is a fair proposal as it still allows councillors to be indemnified by Council resolution or where an arbiter or councillor conduct panel considers that a party requires legal representation to ensure that the hearing is conducted fairly.

Some respondents added that if a request for legal proceedings is initiated by a councillor, it should be at council's discretion whether to pay for legal representation.

Those who did not support this proposed reform stated that this proposal may deter a councillor from raising legitimate or reasonable complaints. They also noted that it may unfairly inhibit the ability of councillors who are defending an allegation from carrying out their duties as councillors. Further, they noted the proposed reform has the potential to prolong conduct proceedings due to poorly prepared applications and supporting materials.

*"This provision acknowledges the necessity of legal representation in specific instances where fairness in the process is contingent upon it. This approach strikes a balance between ensuring due process and preventing unwarranted delays in councillor conduct proceedings."*



*Note: Those labelled as No Definitive Response provided comments but did not indicate support or not support, and it was difficult to ascertain based on their comments.*

Some respondents also raised concerns about the possibility of some councillors misusing this provision to make unsubstantiated claims, knowing that the other party cannot afford to defend themselves effectively. Others were concerned about adding more work, pressure, and expectations for informal advice from already stretched and scarce Council Governance Officers, and the cost impact on council insurance arrangements.

The suggestion to include a mandatory conciliation process to provide parties with the best chance of early resolution has been raised again in the feedback.

While this was the only reform proposal that did not get majority support, this reform addresses concerns from the sector that councillor conduct processes are costly, lengthy and overly legalistic. It also reflects the original intent of the councillor conduct framework that these proceedings be informal and provide a timely resolution of disputes.

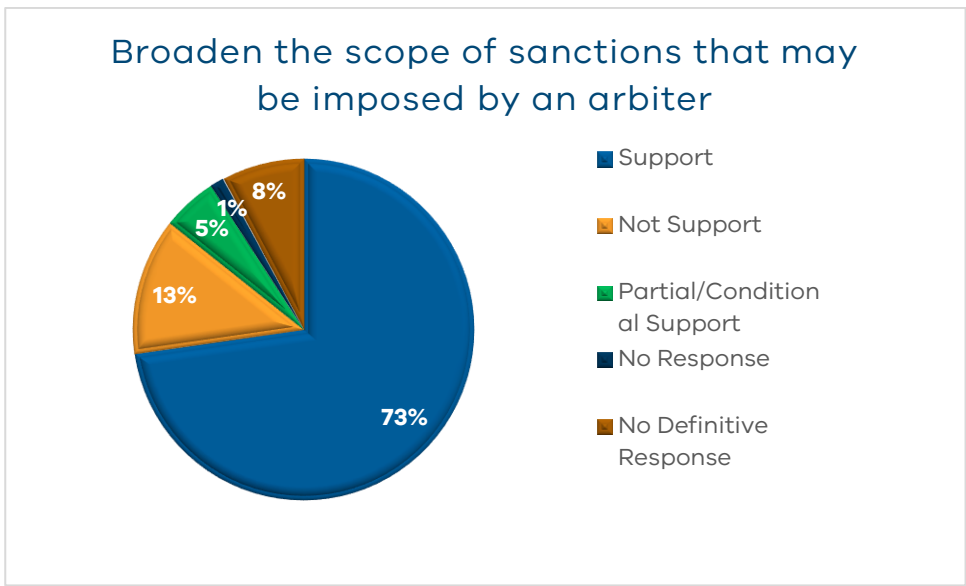
*“Councillors must remain indemnified to protect their right. It is unfair to remove the indemnity.”*

### Broaden the scope of sanctions that may be imposed by an arbiter

Over 70 per cent of the respondents supported the proposal, while 13 per cent did not support, five per cent partially supported, eight per cent had no definite response or were undecided or neutral, and one per cent did not respond.

Respondents agree that this proposed reform demonstrates a commitment to holding councillors accountable for their actions while allowing for proportionate consequences for misconduct. The reform will provide a range of sanctions to an arbiter to enable them to effectively address the issues, deter misconduct, and incentivise councillors to maintain the highest levels of integrity and good conduct. It will also improve public transparency in relation to the arbiter’s decision.

Those who do not support the proposal stated that broadening the scope of sanctions available to an arbiter is unlikely to address councillor behaviour or result in improved professional working relationships between councillors. Some also stated that the arbiter has all the power and there are multiple steps that fail to offer affordable access to justice with independent representation. One respondent said that suspension is not an appropriate outcome from an arbitration process, suggesting instead it should be confined to outcomes of a panel process with appropriate appeal rights maintained.



*Note: Those labelled as No Definitive Response provided comments but did not indicate support or not support, and it was difficult to ascertain based on their comments.*

Several respondents raised the need for guidance materials to provide clarity on the operation of the conduct framework in relation to this proposal e.g., the payment of allowances of suspended councillors, the restrictions on activities of suspended councillors, the prevention of spurious or frivolous complaints, the tabling of an arbiter's decision and its recording in council minutes.

Guidance to support councils to manage councillor conduct processes will be considered in consultation with the sector.

A few also said that consideration should be given to the impact of a potential three-month suspension on community representation and an increased workload on other councillors.

There were several suggestions to improve the enforceability of the reforms. Some respondents wanted Councillor Conduct Panels to be empowered to suspend councillors for up to three years and arbiters to have more power to issue stronger sanctions. Some suggested making arbiter findings public (including in council minutes), open, and transparent. There was also a suggestion to create an independent, state-wide Victorian Local Government Conduct Agency to perform these functions on behalf of the local government sector, with a few expressing that the mediation process should be administered independent of the Mayor/CEO.

Once again, the suggestion to make early intervention and mediation mandatory was raised.

### Part 3 Oversight Mechanisms

There was significant support for this proposal, with respondents citing that it will enable a more immediate response to offences, avoid costly legal processes, and enhance overall council transparency, integrity, and compliance.

#### Suspending or disqualifying individual councillors

At 59 per cent, the majority of respondents supported the proposal, while eight per cent did not support, 21 per cent partially supported, four per cent had no definite response or were undecided or neutral, and eight per cent did not respond.

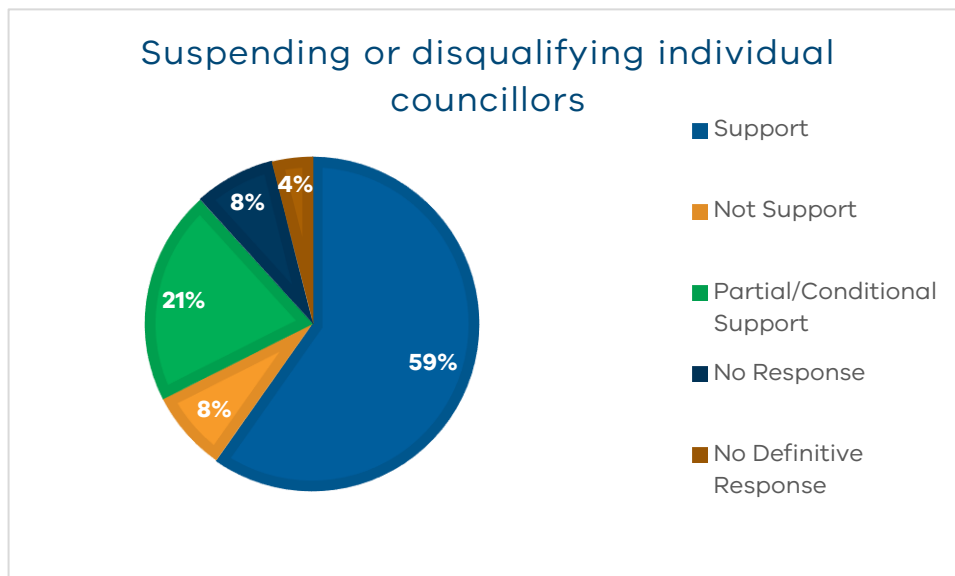
Respondents supporting this proposed reform stated that this will help promote an effective and ongoing environment that reinforces the accountability of councillors and promotes good governance. Some said that imposing individual councillor sanctions is a more effective mechanism for addressing councillor conduct issues as it would serve as a strong deterrent against misconduct. Moreover, this reform will reassure the public that there is a robust framework in place to address misconduct, thereby enhancing trust in local government.

*"We fully support the proposal...These powers would reduce the risk of an errant Councillor continuing to cause ongoing issues at a council..."*

Those who do not support the proposal were concerned that the reform may be too extreme and could undermine the democratic rights of elected representatives.

To address this, robust natural justice requirements have been built into the reforms to ensure that councillors are provided with several opportunities to address allegations raised against them.

They were also concerned that it may disenfranchise voters who elected them as it could result in a significant number of residents not being represented for the period of the suspension/disqualification.



*Note: Those labelled as No Definitive Response provided comments but did not indicate support or not support, and it was difficult to ascertain based on their comments.*

Some respondents raised the need for clarity around the definition of suspension and 'the creation of a serious risk to health and safety', and how the proposal will be operationalised, such as appeal mechanisms, eligibility to stand for upcoming elections, the powers of the Governor in Council and the Municipal Monitor, and payment of the allowances of suspended councillors.

Some respondents suggested including dereliction of duty as a criterion for suspension, considering disqualification and enabling a count back or a by-election, shortening the length of suspension, with the possibility of extension after review, and including training and other support mechanisms.

The suggestion to strengthen informal available mediation mechanisms was also raised.

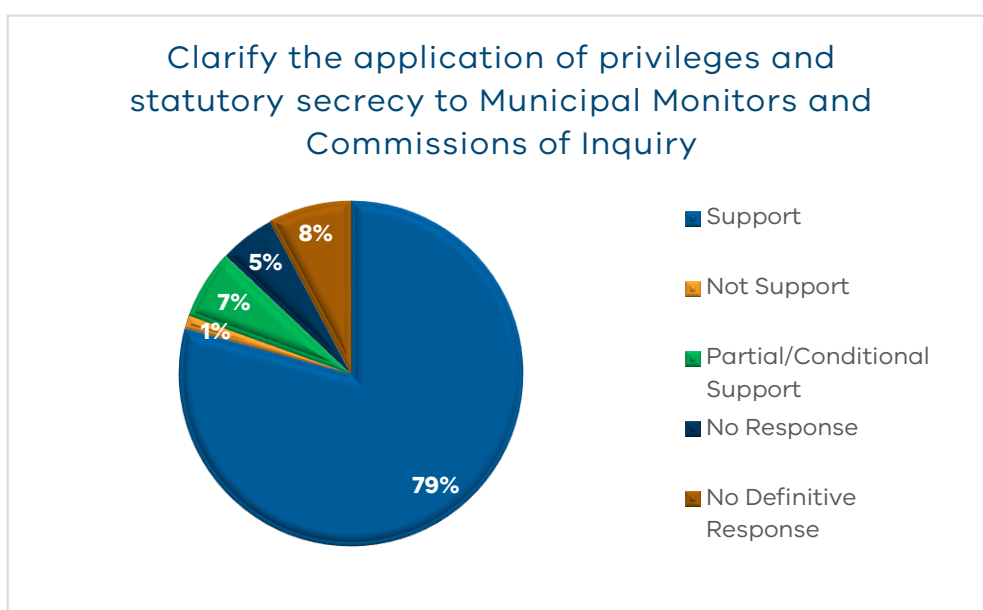
*"Prior to a Municipal Monitor or Commission of Inquiry submitting a report to the Minister recommending the suspension or disqualification of a councillor, it is critical the councillor be afforded procedural fairness to ensure they are provided an opportunity to respond to the adverse claims."*

### Clarify the application of privileges and statutory secrecy to Municipal Monitors and Commissions of Inquiry

The majority or 79 per cent of the respondents supported the proposal, while only one per cent did not support, seven per cent partially supported, eight per cent had no definite response or were undecided or neutral, and five per cent did not respond.

According to those who supported this reform proposal, allowing a Municipal Monitor or Commission of Inquiry to access pertinent information will enable these entities to conduct thorough investigations. This provides legal clarity, certainty, and protection to councils. Council officers will no longer have to be fearful of legal repercussions for handing over information inappropriately and the proposed changes can be welcomed on this basis.

Those who did not support the proposal said that legally privileged information should not be compellable. Municipal Monitors and Commissions of Inquiry should not have access to any legal advice that a council, council officers or councillors have specifically sought to assess or defend their position. This would frustrate their right to seek legal advice to clarify their position. Some respondents also think that the proposal denies councillors the right to defend themselves against allegations and undermines the presumption of innocence.



*Note: Those labelled as No Definitive Response provided comments but did not indicate support or not support, and it was difficult to ascertain based on their comments.*

Some respondents wanted clarity around definitions and scope of the proposal, including the security of confidential materials from its collection, use, and storage and the support and protection of those providing the information.

Protections for those who provide information to Municipal Monitors and Commissions of Inquiry have been included in the reforms and information will be provided to councils who have a Municipal Monitor or Commission of Inquiry appointed to it.

While there was support for this reform, the respondents still offered suggestions to ensure its fairness. Some respondents suggested that the Municipal Monitor or Commission must demonstrate that there is a legitimate need for the information being requested. Some also suggested that there must be limits and sanctions on Municipal Monitors and Commissions of Inquiry to ensure any information disclosed to them is safeguarded against inappropriate subsequent disclosure.

To address feedback around the need to protect legally privileged information provided to a Municipal Monitor, the reform will specify that this information can only be provided to the Minister or an integrity body.

## Give the Chief Municipal Inspector the power to issue infringements for certain offences

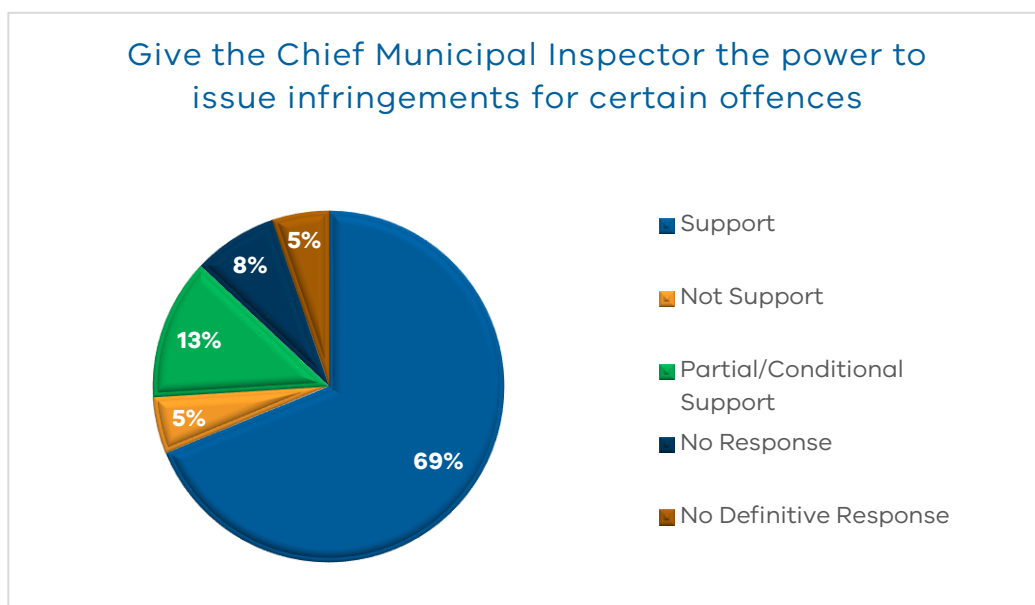
At 69 per cent, the majority of respondents supported the proposal, while five per cent did not support, 13 per cent partially supported, five per cent had no definite response or were undecided or neutral, and eight per cent did not respond.

Those who supported this proposed reform agreed that this would enable a more immediate and proportionate response to minor offences and facilitate quicker resolution. Some said that increasing the CMI's power will add to efficiency and enforceability of the current regulatory regime. Respondents also noted that the success of this reform would rely on providing the office of the Chief Municipal Inspector with additional resources to support its increased investigation and enforcement activities.

Those who did not support this proposal expressed reservations about the power of the CMI to issue infringements. Some also stated that the proposed reform fails to protect councillors' rights and signifies an unjustified overreach of state authority into local government affairs. It may also lead to infringements being issued for minor or inadvertent misdemeanours.

Some respondents said that the proposal misses the opportunity to create pathways for early intervention and conflict resolution such as mandatory mediation, or conflict resolution training for Mayors, councillors and CEOs.

The scope of the mandatory training and Model Code requirements will be developed in consultation with the sector to ensure they can strengthen councils abilities to comply with the *Local Government Act 2020*.



*Note: Those labelled as No Definitive Response provided comments but did not indicate support or not support, and it was difficult to ascertain based on their comments.*



The respondents wanted more clarity on to what ‘certain offences’ and ‘general infringement’ mean as well as the penalties that will apply; how compliance will be monitored; what happens with spurious / frivolous complaints; and what will be the role of councils.

Some respondents requested further consultation on this matter to consider its impact and effectiveness, and to ensure that the sanctions are proportionate.

The types of breaches and the penalties attached will be developed through regulations and will be developed in accordance with the Attorney-General’s Guidelines to the *Infringements Act 2006*.

Most respondents acknowledged that, for this reform to be successful, additional resources must be provided to the CMI to enable it to monitor and issue infringements in a timely manner.

There were also suggestions to include provisions for local government staff up to the chief executive officer to be able to make conduct complaints against a councillor and seek arbitration via the CMI.

## Next steps

Following the passage of legislation, LGV will start consulting with the sector and other key stakeholders on the development of regulations and supporting materials to give effect to these reforms. These will be finalised before the October 2024 elections.

