

Act for the future

Directions for a new Local Government Act



© The State of Victoria Department of Environment, Land, Water and Planning 2016



This work is licensed under a Creative Commons Attribution 4.0 International licence. You are free to re-use the work under that licence, on the condition that you credit the State of Victoria as author. The licence does not apply to any images, photographs or branding, including the Victorian Coat of Arms, the Victorian Government logo and the Department of Environment, Land, Water and Planning logo. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>

ISBN 978-1-76047-145-3 (Print)

ISBN 978-1-76047-146-0 (pdf/online)

Accessibility

If you would like to receive this publication in an alternative format, please contact the Local Government Act Review Secretariat: email local.government@delwp.vic.gov.au or phone (03) 9948 8518. This publication is also available on the internet at www.yourcouncilyourcommunity.vic.gov.au.

Disclaimer

This publication may be of assistance to you but the State of Victoria and its employees do not guarantee that the publication is without flaw of any kind or is wholly appropriate for your particular purposes and therefore disclaims all liability for any error, loss or other consequence which may arise from you relying on any information in this publication.

Act for the future

Directions for a new Local Government Act



Contents

Minister's Foreword	6	3. Democratic and Representative Councils	49
Executive Summary	7	Introduction	50
1. Introduction	25	3.1 Councillor numbers	50
1.1 A legislative framework for the future	26	Determining councillor numbers accounting for population growth	50
Why a review and what are its objectives?	26	Consistency in determining councillor numbers	51
Why an effective local government legislative framework matters	26	3.2 Simpler and more consistent electoral structures	51
Challenges with the existing legislative settings	27	3.3 Rationalising electoral representation reviews	52
Reform directions	29	3.4 Aligning ballot-counting systems and reducing informality in voting	53
A view to the future	30	3.5 Reflecting independent candidacy in filling casual vacancies	54
1.2 Reform principles	30	3.6 Streamlining organisation of electoral provisions	54
1.3 Major reform directions	31	3.7 Modernising the council franchise	55
1.4 The review to date	32	3.8 Enforcing candidate qualifications	57
1.5 Next steps	33	3.9 Achieving consistency in voting method	58
PART A: REVITALISING LOCAL DEMOCRACY	34	4. Councils Communities and Participatory Democracy	59
2. Contemporary Councils Capable of Meeting Future Challenges	35	Introduction	60
Introduction	36	4.1 Community engagement on strategic and financial plans	60
2.1 Council Role Functions and Powers	36	4.2 Transparency in public information related to council operations	64
Legal characteristics (What councils are)	36	4.3 Consistency in complaint handling	65
Councils' role (What councils do)	37	5. Strong Probity in Council Performance	67
Councils' powers	38	Introduction	68
2.2 Mayors leading councils	38	5.1 Standards of conduct – councillor conduct framework	68
Mayoral elections	38	5.2 Release of confidential information	69
Mayoral role and powers	39	5.3 Conflict of Interest	69
Mayoral allowances	41	5.4 Misuse of position	70
Local Government		5.5 Improper direction	71
Mayoral Advisory Panel	41	5.6 Chief Municipal Inspector enforcement	71
2.3 Deputy mayor	42	6. Ministerial Oversight of Councils	73
2.4 Councillors	42	Introduction	74
2.5 Chief Executive Officer	43	6.1 Structure of the sector	74
CEO role	43	6.2 Governance interventions	75
CEO remuneration and contract management	43	6.3 Commissions of Inquiry	76
2.6 Council decision making	44	6.4 Minister's power relating to CEO employment	77
Removing unnecessary prescription	44	6.5 Minister's power to set a cap on rates	77
Giving primacy to open decision-making	45	6.6 Minister's power to make regulations and issue guidelines	78
2.7 Council committees	45	6.7 Ministerial exemptions	78
Committees making delegated decisions	45		
Simplifying committee types	46		
2.8 Council staff	47		
2.9 Local Laws	47		

PART B: INNOVATIVE, COLLABORATIVE AND EFFICIENT COUNCILS	80		
7. Integrated Planning	81		
Introduction	82		
7.1 Integration of strategic plans and reports	82		
7.2 Council and community plans	83		
7.3 Longer-term financial and asset planning	84		
7.4 Improved budget guidance	85		
7.5 Strengthened role for audit and risk committees	87		
7.6 Improved accountability to the community	87		
7.7 Regional-level planning and integration with state government policy and planning	88		
8. Sustainable Finances for Innovative and Collaborative Councils	89		
Introduction	90		
8.1 New financial sustainability principles	90		
8.2 Removal of Best Value principles	91		
8.3 Streamlined procurement practices	91		
8.4 Improved investment practices	92		
8.5 Improved debt practices	92		
8.6 Streamlined sale and exchange of land provisions	93		
8.7 Streamlined insurance requirements	93		
8.8 Entrepreneurial powers integrated into new collaborative arrangements	94		
9. Fair Rates and Sustainable and Efficient Councils	95		
Introduction	96		
9.1 Improved transparency of revenue and rating systems	96		
9.2 Clearer exemptions for rateable land	97		
9.3 A consistent method of valuing land for the purpose of raising general rates	98		
9.4 Municipal charge to be fixed at a maximum of 10%	98		
9.5 Increased transparency in the levying of differential rates	99		
9.6 Streamlined service charges	100		
9.7 More transparent special charges	100		
9.8 More flexible rate payment methods	101		
		9.9 Greater autonomy in applying rebates and concessions	101
		9.10 Clearer guidance on land ceasing to be rateable	102
		9.11 Uniform process for reviewing and appealing rates and charges	102
		9.12 Inclusion of <i>Cultural and Recreational Lands Act 1963</i> rating provisions	103
		9.13 Inclusion of <i>Electricity Industry Act 2000</i> rating provisions	104
		PART C: AN EASY TO READ, ACCESSIBLE ACT	106
		10. A Rational Legislative Hierarchy	107
		Introduction	108
		10.1 Legislative hierarchy	108
		10.2 Principle-based obligations in the act	109
		10.3 Prescriptive requirements in regulations	110
		10.4 Best-practice guidelines	111
		10.5 Harmonisation of legislation	111
		Introduction	111
		Roads traffic and transport legislation	111
		Water Act 1989	112
		Requirements of other legislation	112
		City of Greater Geelong Act 1993	113
		City of Melbourne Act 2001	113
		Municipal Association Act 1907	113
		How to get involved	115
		Submissions	116
		Community forums	116
		Appendices	117
		Appendix 1: Principles for creating a new act	118
		Appendix 2: Terms of Reference	120
		Appendix 3: List of submissions	122
		Appendix 4: Technical Working Group Members	126
		Appendix 5: Dates and venues of community forums	128
		Appendix 6: Commissioned research	129
		Appendix 7: Acts and regulations assigning local government responsibilities	130
		Glossary, acronyms and initialisms	133
		Bibliography	135

Minister's Foreword



The Andrews Labor Government is determined to reform local government by reinvigorating democratic practices and helping councils serve their communities more effectively and efficiently. Realising this election commitment commenced with the introduction of the Fair Go Rates policy, was added to through the reform of councillor conduct laws and takes another step with this directions paper.

This paper identifies the challenges posed by existing legislative requirements. The Local Government Act Review provides a blueprint for a contemporary Act that will be clear, consistent and responsive to the needs of Victorians and the councils that serve them.

Victorian councils perform strongly, but also face significant challenges. They are not helped by an Act that, like a 1989 model car, was built for conditions prevailing at a different time.

Creating a new Act will facilitate modern, innovative council practices, strong governance and vibrant local democracy.

The current Act predates the Kennett Government's reforms of the 1990s. Many communities have become disconnected from their local councils, and candidate participation is low. The revolving door for mayors leaves many with the perspective that, by default, council chief executive officers—not mayors and elected councils—are left to steer councils over the longer term.

In an environment of weak democratic legitimacy, councillors are often elected on narrow platforms disconnected from the strategic governance role that is their core responsibility.

The directions outlined in this paper aim to reinvigorate and modernise local democracy through stronger electoral and engagement processes that will provide the opportunity for more councils and their residents to prosecute a shared vision for their community.

The Victorian community has shown a keen interest in this review by making public submissions, attending community forums around the state and joining in online discussions on key policy issues. Sector experts have also contributed through background papers and technical working groups. All these contributions have informed the reform proposals in this paper.

I look forward to continuing this important conversation with Victorians as we move towards developing a new Local Government Act that will serve us well for the next 20 years and more. At the end of this paper, we explain how you can involve yourself in this conversation. I invite all Victorians and all councils to have their say on these reforms. I know we can build, together, a contemporary and enduring Act to better serve a new generation of Victorians.

A handwritten signature in black ink that reads "Natalie Hutchins". The signature is written in a cursive, flowing style.

The Hon Natalie Hutchins MP
Minister for Local Government

Executive Summary

Background and context

The review of the *Local Government Act 1989* was a major election commitment of the Victorian Government. The Act is now outdated and flawed, and the sector has sought its reform for some time.

While the review provides the opportunity to address the Act's technical shortcomings and lack of coherence, this directions paper goes much further. The reforms proposed in the paper, if embraced, have the potential to revitalise local democracy, boost council innovation and efficiency and establish a clear, simple and accessible Act.

These aims—democracy; innovative, collaborative and efficient councils; and an easy-to-read Act—provide an organising framework for the paper. All of the reform directions resonate with one or more of these themes.

Each reform proposed here can also be traced back to one or more of the principles that are guiding the work. The first is that the government seeks to create 'an Act that is contemporary and meets future needs, is clear and comprehensive, and does not duplicate other legislation'. All the themes advance this principle.

The reforms seek to 'enhance democracy, diversity of representation, council transparency and responsiveness to the community and the state'. This second principle drives reforms to revitalise local democracy through more consistent electoral structures, fairer elections and the embedding of community engagement in everything that councils do. Proposals in chapters 2 to 6 express this principle most strongly.

Two additional principles informing the proposed reforms are to 'improve corporate efficiency and reduce the administrative burden' and to 'facilitate collaborative arrangements'. These principles underpin a collaborative reform agenda to support council innovation, integrated investment effort and modern business systems. They will strip away regulatory impediments to efficiency. Chapters 7 to 9 outline reforms regarding integrated planning, embedding sound financial management practice, modern collaborative procurement and establishment of simpler, fairer and more transparent rating arrangements.

The final principle driving these reforms is to 'create a systematic legislative hierarchy of legislative obligations' with a rational, principles-based Act. Processes to assist councils meet their obligations will be included in Regulations and supported by non-statutory guidelines. This approach provides a clear role for councils and a clearer and more rational legislative hierarchy for councils to navigate. It also harmonises the Act's provisions with legislation interacting with the Local Government Act. Chapters 2 and 10 propose reforms based on this principle which will achieve an easy-to-read, accessible Act.

Figure 1 shows the structure of this directions paper: its three parts, the principles, the 10 key reform options and how this content divides between chapters.

Figure 1: Structure of The Directions Paper

Aims	Part A: Revitalising local democracy	Part B: Innovative, collaborative and efficient councils	Part C: An easy-to-read, accessible Act
Principles	<p>Principle 1: An Act that is contemporary and meets future needs, is clear and comprehensive, and does not duplicate other legislation</p> <p>Principle 2: Enhance democracy, diversity of representation, council transparency and responsiveness to the community and state</p>	<p>Principle 3: Improve corporate efficiency and reduce the administrative burden</p> <p>Principle 4: Facilitate collaborative arrangements</p>	<p>Principle 5: Create a systematic hierarchy of legislative obligations:</p> <ul style="list-style-type: none"> • An Act that is principle-based • Regulations that specify the more prescriptive detail • non-statutory guidelines
Reform Directions	<p>Mayors leading councils</p> <p>A modern council franchise</p> <p>Consistent representative structures</p> <p>Deliberative community engagement</p> <p>Effective ministerial intervention</p>	<p>Strong financial management, innovation and collaborative powers</p> <p>Transparent CEO employment and performance</p> <p>An integrated strategic and reporting framework</p> <p>A modern rating system</p>	<p>Autonomous decision-making balanced by a principle-based Act</p>
	Chapter 2 Chapter 3 Chapter 4 Chapter 5 Chapter 6	Chapter 7 Chapter 8 Chapter 9	Chapter 10

While this paper identifies a large number of important reforms, there are 10 major reform directions, as set out in Table 1.

Table 1: Major Reform Directions

No	Major reform direction	Aim	Principle(s)
1	Mayors leading councils: Enable a mayor to provide greater leadership to their council by having two-year terms and extending their powers and responsibilities.	Revitalising local democracy	2
2	Consistent representative structures: Improve the consistency of council representative structures by establishing a consistent formula for determining councillor numbers and having councils be unsubdivided or consist entirely of uniform multi-member wards.	Revitalising local democracy	1, 2
3	Consistent, simpler voting arrangements: Simplify voting arrangements for council elections by using the state roll to determine eligible voters (except in the City of Melbourne), introducing partial preferential voting and having a consistent voting method for all council elections determined by the minister.	Revitalising local democracy	1, 2

No	Major reform direction	Aim	Principle(s)
4	Deliberative community engagement: Require councils to undertake a deliberative community engagement process before adopting a four-year council plan by December of the year after their election.	Revitalising local democracy	1, 2, 4
5	Integrated, strategic planning and reporting: Require councils to have an integrated strategic planning and reporting framework including (as well as the four-year council plan) a 10-year community plan, 10-year financial plan and 10-year asset plan.	Revitalising local democracy	2, 3, 4
6	Effective ministerial intervention: Strengthen the minister's powers to deal with individual councillors who are contributing to or causing serious governance failures at a council.	Revitalising local democracy	2, 3
7	Transparent CEO employment and performance: Require all councils to have a CEO remuneration policy and to have an independent advisory mechanism to guide recruitment, contractual arrangements and performance monitoring of CEOs.	Innovative, collaborative and efficient councils	3
8	Power to innovate and collaborate: Improve the financial sustainability of councils and strengthen their capacity to be innovative and to undertake collaborative activities.	Innovative, collaborative and efficient councils	3, 4
9	A consistent rating system: Establish a single method for valuing land for rates, modernise exemptions from rates and increase transparency in the levying of differential rates.	Innovative, collaborative and efficient councils	1, 3
10	Autonomous decision-making balanced by a principle-based Act: Extend autonomy to councils by deregulating council decision-making processes and replacing them with high-level principles requiring transparency and accountability.	Innovative, collaborative and efficient councils; An easy-to-read, accessible Act	3, 4, 5

Structure of this paper

This directions paper comprises 10 chapters:

- Chapter 1 provides an introduction to the report
- Chapter 2 explores the roles of councils, mayors and council administration
- Chapter 3 looks at council representative structures and how councils are elected
- Chapter 4 proposes ways to embed participatory democracy in councils
- Chapter 5 examines probity and standards of conduct
- Chapter 6 strengthens ministerial oversight of councils
- Chapter 7 creates an integrated planning framework for councils
- Chapter 8 supports councils to be innovative, collaborative and financially sound
- Chapter 9 provides for fairer and simpler rating
- Chapter 10 creates the architecture for rational legislative arrangements.

Chapter 1. Introduction

The introduction deals with the reasons why this review has been undertaken and the challenges posed by existing legislative settings. It foreshadows the proposed reform directions and highlights some of the headline reforms proposed in the paper. This chapter also outlines the consultation and method that has been adopted to reach the directions.

Chapter 2. Contemporary councils capable of meeting future challenges

Chapter 2 begins by looking at what councils are and what they do, setting out a basis for a clear articulation of the future role of councils. It goes on to explore ways in which a stronger role may be created for mayors and a clearer and more complementary set of relationships established between mayors, chief executive officers (CEOs) and councillors. This chapter also examines the decision-making role of councils, including their committee structures. It rounds out with an exploration of provisions regarding council administration.

PROPOSED DIRECTIONS

1. Require councils to take the following principles into account when performing their functions and exercising their powers:
 - the need for transparency and accountability
 - the need for deliberative community engagement processes
 - the principles of sound financial management
 - the economic, social and environmental sustainability of the municipality
 - the potential to cooperate with other councils, tiers of government and organisations
 - plans and policies about the municipality, region, state and nation
 - the need for innovation and continuous improvement
 - any other requirements under the Act or other state or federal legislation.
2. Provide that the role of a council is to:
 - plan for and ensure the delivery of services, infrastructure and amenity for its municipality, informed by deliberative community engagement
 - collaborate with other councils, tiers of government and organisations
 - act as an advocate for its local community
 - perform functions required under the Act and any other legislation.
3. Provide that councils have the powers described in the Act and in other legislation.

4. Make the following reforms to the election of mayors:
 - elect all mayors for two-year terms
 - retain election of the mayor by their fellow councillors for most councils
 - provide the minister with power to approve the direct election of mayors for councils where:
 - the size of the council is sufficient to support the additional costs of direct election
 - the significance of the council in its own terms or in terms of the region in which it is situated supports a directly elected mayor
 - community consultation provides evidence of strong support for a directly elected mayor, recognising the additional costs to the community.
5. Expand the role of the mayor to include the following powers and responsibilities:
 - to lead engagement with the community on the development, and the reporting to the community at least annually about the implementation, of the council plan
 - to require the CEO to report to the council about the implementation of council decisions
 - to appoint chairs of council committees and appoint councillors to external committees that seek council representation
 - to support councillors—and promote their good behaviour—to understand the separation of responsibilities between the elected and administrative arms of the council
 - to remove a councillor from a meeting if the councillor disrupts the meeting
 - to mutually set council meeting agendas with the CEO
 - to be informed by the CEO before the CEO undertakes any significant organisational restructuring that affects the council plan
 - to lead and report to council on oversight of the CEO's performance
 - to be a spokesperson for the council and represent it in the conduct of civic duties.
6. Review the formula for setting mayoral allowances in light of the proposed expanded role of mayors.
7. Formalise the status of the Local Government Mayoral Advisory Panel (LGMAP) by making it a statutory advisory board to the minister under the Local Government Act.
8. Require all councils to appoint a deputy mayor elected in a manner consistent with the mayor. That is:
 - where councillors elect their mayor, councillors elect the deputy mayor for the same two-year period
 - where the mayor is directly elected, a deputy mayor is jointly elected with the mayor on the same ticket.
9. Consider deputy mayoral allowances in light of the expanded role of deputy mayors.
10. Require councillors to actively participate in engagement processes mandated by the Act.
11. Require councillors to recognise and support the role of the mayor specified in the Act.
12. Provide that councillors are entitled to all relevant entitlements consistent with other significant public offices (such as for disability support, maternity leave and childcare).
13. Require the CEO to provide support to the mayor by:
 - consulting the mayor when setting council agendas
 - keeping the mayor informed about progress implementing significant council decisions, including reporting on implementation when asked to do so
 - providing information the mayor requires to meet the responsibilities of the role
 - informing the mayor before making significant organisation changes that affect the council plan
 - supporting the mayor in their leadership role (such as by ensuring adequate council resources and access to staff for the proper conduct of council meetings and for civic engagements).

14. Require all councils to have a CEO remuneration policy that broadly aligns with the Remuneration Principles of the Victorian Public Sector Commission's *Policy on Executive Remuneration for Public Entities in the Broader Public Sector*.¹
15. Require the audit and risk committee to monitor and report on a council's performance against the remuneration policy.
16. Require the mayor to get independent advice in overseeing CEO recruitment, contractual arrangements and performance monitoring. (Note also direction 52 on transparency of CEO remuneration policy.)
17. Remove detailed prescription about council decision-making processes from the Act.
18. Include high-level principles about council decision-making processes: namely, that they be open and accountable.
19. Require councils to adopt rules about internal council processes that are consistent with the high-level principles in the Act.
20. Include in the new Act that a council may determine that information is confidential if:
 - it affects the security of the council, councillors or council staff
 - it would prejudice enforcement of the law
 - it would be privileged from production in legal proceedings
 - it would involve unreasonable disclosure of a person's personal affairs
 - it relates to trade secrets or would disadvantage a commercial undertaking.
21. Require a committee to which a council may delegate any of its powers to be known as a special committee and require it to include at least two members who are councillors.
22. Allow councils to establish administrative committees to manage halls and reserves, with limited delegated powers including limits on expenditure and procurement; and for councils to approve annually committee rules that specify the roles and obligations of administrative committee members.
23. Apply legislative provisions exclusively to special committees that have delegated council powers and to administrative committees (as described in the proposed direction above).
24. Remove from the Act provisions regulating assemblies of councillors, leaving councils to deal with issues of public transparency about these or any other advisory committees as part of the council's internal rules.
25. Remove matters about employing council staff from the Act.
26. Require the CEO to establish a workforce plan that describes the council's staffing structure including future needs; that the plan include a requirement that it can only be changed in consultation with staff; and that the plan be available to the mayor and to staff.
27. Require a council CEO to consult the staff if there is a major organisational restructure.
28. Require a community consultation process before making or varying a local law.
29. Include in the Act principles that local laws must meet² and require that a council, after receiving advice from an appropriately qualified person, certify that the local law meets these principles.
30. Retain the power of the Governor in Council, on the recommendation of the minister, to revoke a local law that is inconsistent with the principles.

¹ <http://vpssc.vic.gov.au/resources/policy-on-executive-remuneration-for-public-entities-in-the-broader-public-sector/>

² These are as set out in the current schedule 8 which provides, among other things, that a local law must be within power, clear and unambiguous, and not inconsistent with the principles of justice and fairness. This is similar or equivalent to the requirements under section 13 of the Subordinate Legislation Act 1994 for making regulations.

31. Note that model local laws may be issued as guidelines on various matters to achieve greater quality, consistency and scrutiny. These would be based on best-practice local laws.
32. Consult to determine the appropriate value of a penalty unit for local laws and whether the value should be indexed annually.
33. Remove the requirement to submit local laws to the minister.

Chapter 3. Democratic and representative councils

Chapter 3 shifts the focus to representative structures and democratic elections. Councils derive their mandate and their legitimacy from genuinely representative structures, high levels of participation in democratic processes and community confidence in the integrity of electoral systems and processes. This chapter proposes ways to rationalise, simplify and make more consistent the representative structures, voting rules and conduct of council general elections.

PROPOSED DIRECTIONS

34. Extend the band (currently 5–12) for the number of councillors per council to 5–15 and provide the minister with the power to increase the number of councillors per council within this band after receiving advice of the Victorian Electoral Commission (VEC).
35. Include in Regulations a formula for determining councillor numbers and require that the VEC consistently apply it. Base the formula on the ratio of councillors to residents, mediated by the geographic scale of the local government area, loading councillor numbers by one, two or three for geographically vast local government areas.
36. Allow for one of two representative structures—unsubdivided or entirely uniform multi-member wards—to be applied in each municipality.³ **(Option 1)** or
 Allow for one of three representative structures—unsubdivided, entirely uniform multi-member wards or entirely single-member wards—to be applied in each municipality. **(Option 2)**
 Initially this would require the VEC to conduct representation reviews to arrive at new council structures for the first council elections after the Act is enacted.
37. Subject to fixing councillor numbers by formula and reducing the range of representative structures, conduct future electoral representation reviews by exception when the minister directs the VEC to conduct a review on the basis of:
 - evidence of a marked increase in population in a municipality
 - a request to the minister from a council or members of the community supported by evidence of the need for a review
 - in response to a recommendation from the VEC
 - on any grounds determined by the minister published in the government gazette.
38. Introduce partial preferential voting, consistent with Victorian Legislative Council elections, for multi-member wards and unsubdivided elections, such that the voter is only required to mark the ballot paper with the number of consecutive preferences for which there are vacancies to be filled.
39. Implement a countback method to fill casual vacancies between general elections by which all valid votes cast at the general election would be counted, not just those of the vacating councillor (excluding the votes that made up the quotas of the continuing councillors).
40. Consolidate all electoral provisions in a schedule to the Act, arranged according to the model provided by the *Electoral Act 2002*; retain most provisions in the current electoral regulations; and retain procedural matters (such as prescribing forms and setting fees) in Regulations.

³ This is also the model New South Wales uses for council elections.

41. Make the entitlement to vote in a council election to be on the register of electors for the Victorian Legislative Assembly (the state roll) for an address in their municipality. Grandfather the voting entitlement of existing property-franchise voters in that municipality.⁴ Institute compulsory voting for all enrolled voters. **(Option 1)** or
 Maintain the existing franchise but cease automatic enrolment of property owners and require these voters to apply to enrol for future council elections if they choose to do so. Institute compulsory voting for all enrolled voters. **(Option 2)**
42. Require the VEC to revise the candidate's nomination form to require candidates to explicitly state that no disqualification conditions apply to them.
43. Require a council CEO to complete a police check and a check of the Australian Securities & Investments Commission (ASIC) register of persons disqualified under the Corporations Act 2001 for elected candidates within three months after the general election. **(Option 1)**
 or Require each candidate to submit a completed ASIC and police check when nominating. **(Option 2)**
44. Require adoption of a uniform voting method for council elections as determined by the minister after receiving advice from the VEC. Have the minister publish the method to be used in the government gazette 12 months before the general elections.⁵

Chapter 4. Councils, communities and participatory democracy

Chapter 4 proposes ways to provide for stronger citizen engagement in shaping councils' directions and developing council plans. It also outlines ways for councils to ensure that they are transparent and accountable in their governance and to ensure they have a rigorous approach to responding to community complaints. Together, the proposals outlined here have the potential to embed a continuous improvement culture in council practice.

PROPOSED DIRECTIONS

45. Include deliberative community engagement as a principle in the Act and include in the role of a councillor the requirement to participate in deliberative community engagement, leaving the method to be determined by each council.
46. Require a council to prepare a community consultation and engagement policy early in its term to inform the four-year council plan and ten-year community plan.⁶
47. Require a council to conduct a deliberative community engagement process to prepare its council plan and to demonstrate how the plan reflects the outcomes of the community engagement process.
48. Include in regulations that an engagement strategy must ensure:
 - the community informs the engagement process
 - the community is given adequate information to participate
 - the scope/remit of the consultation and areas subject to influence are clear
 - those engaged are representative of the council's demographic profile.
49. Require a council to complete its council plan by 31 December in the second year of its term, recognising the time required to conduct a deliberative community engagement process.

⁴ The unique City of Melbourne franchise would remain unchanged.

⁵ This may be attendance voting or postal voting or, as it becomes technologically feasible, electronic voting or any other voting method.

⁶ A council plan outlines the services, infrastructure and amenity a council will prioritise over its term. A community plan includes actions that the council, the community, businesses, non-government organisations and others will take to deliver the community's collective vision for the municipality.

50. Require the mayor to report to the community each year about how the council plan has implemented the community's priorities as directed through the deliberative community engagement process.
51. Require a council to publish on its website all documents and registers currently required to be kept on council premises and ensure this information is accessible to the public.
52. Require a council to publish its CEO remuneration policy on its website.
53. Regulate for minimum standards and include in guidelines best-practice processes for ensuring transparency and accountability in council operations and administration, basing the guidelines on current Melbourne City Council practices.
54. Include in the Act a definition of a customer complaint consistent with the Ombudsman's recommendation of as it an 'expression of dissatisfaction with the quality of an action taken, decision made or service provided by a council or its contractor or a delay or failure in providing a service, taking an action or making a decision by a council or its contractor'⁷, but with the addition that the customer has been directly affected by the action.
55. Require a council to develop a policy about customer complaints that includes a process for dealing with customer complaints, and that the process contain an avenue for independent review that is clearly accessible to the public. Policy and statutory decisions of the council would not be subject to the complaints policy.

Chapter 5. Strong probity in council performance

Chapter 5 addresses probity in council performance. A number of reforms have recently been made to reinforce standards of councillor conduct and proposals in this chapter build on these. In particular, proposals are made to improve how offences relating to the release of confidential information, conflict of interest, misuse of position and improper direction are dealt with. All the reform directions in this chapter are underpinned by the current enforcement role, functions and powers of the Chief Municipal Inspector (CMI).

PROPOSED DIRECTIONS

56. Incorporate the current councillor conduct framework largely unamended in the Act, including:
 - the definitions
 - the principal requirements imposed on councils and councillors, relevant statutory officers, principal councillor conduct registrars
 - the role and powers of the minister and ministerial monitors and the Chief Municipal Inspector (CMI).
57. Include in Regulations all the processes specified in the current councillor conduct framework.
58. Extend the offence of release of confidential information to council staff who unlawfully disclose confidential information.
59. This will make councillors and council staff liable to criminal prosecution for more serious disclosures and liable to disciplinary action—councillors for serious misconduct through the councillor conduct panel process and council staff under their contract of employment—for less serious breaches.
60. Provide that a conflict of interest exists where:
 - the councillor or a person with whom they are closely associated stands to gain a benefit or suffer a loss depending on the outcome of the decision (a 'material conflict of interest')
 - the councillor has, or could reasonably be taken to have, a conflict between their personal interests and the public interest that could result in a decision contrary to the public interest.⁸

⁷ Victorian Ombudsman's submission to the *Local Government Act 1989* Review (2015), p. 7.

⁸ These conflict-of-interest provisions are based on Queensland and South Australian legislation.

61. Make a breach of conflict of interest subject to disciplinary action for serious misconduct through a councillor conduct panel, at the discretion of the CMI. The maximum penalty a councillor conduct panel can impose for serious misconduct is six month suspension from office and loss of a councillor allowance for that period.
62. Retain the capacity to prosecute a person in court for a conflict-of-interest breach when it involves failure to disclose a 'material conflict-of-interest'. This is a criminal offence with a maximum fine of 120 penalty units and an associated disqualification from being a councillor for eight years.
63. Retain the current legislative provision on misuse of position.
64. Retain the current legislative provisions on improper direction, noting they will be supported by the further legislative measures to clarify the roles and responsibilities of councillors, mayors and CEOs set out in Chapter 2 of this paper.
65. Retain the current enforcement role, functions and powers of the CMI and the inspectorate.

Chapter 6. Ministerial oversight of councils

Chapter 6 considers the powers of the minister in overseeing the system of local government in Victoria to ensure it operates effectively in the interests of citizens and the state. In particular, this chapter examines conditions required for consideration by the minister of the creation of a new municipality, the nature of governance interventions (for example, to dismiss a council or suspend or stand down a councillor). The proposals rationalise the power of the minister to conduct inquiries into councils into a single power to appoint a commission of inquiry. They also propose removing the requirement for councils to seek exemptions from the minister on a wide range of matters.

PROPOSED DIRECTIONS

66. Include in the Act principles to apply to a proposal to create a new municipality, that:
 - each new municipality shall be viable and sustainable in its own right
 - the allocation of revenues and expenditures between municipalities being separated shall be equitable for the residents of each municipality
 - the views of the communities affected by the restructuring shall be taken into consideration
 - each new municipality shall have sufficient financial capacity to provide its community with a comprehensive range of municipal services and to undertake necessary infrastructure investment and renewal.
67. Other than the proposed direction above, retain the current provisions (in Part 10A) about altering external municipal boundaries.
68. Retain the power of the minister to:
 - appoint a municipal monitor in a manner and with the role and powers as currently set out in the Act
 - issue a governance direction to a council, noting that other powers of the minister to direct councils (such as the power to direct a council to submit financial statements under section 135) be included in this general power
 - stand down a councillor as currently set out in the Act.
69. Empower the minister to recommend that a councillor be suspended by an order in council where the councillor is contributing to or causing serious governance failures at a council. This power to only be exercisable in exceptional circumstances in that:
 - the councillor has caused or substantially contributed to a breach of the Act or Regulations by the council or to a failure by the council to deliver good government and
 - a council (by resolution), a municipal monitor, the CMI, the Ombudsman or the Independent Broad-based Anti-corruption Commission have recommended that the minister suspend the councillor on these grounds and

- the council, the municipal monitor, the CMI, the Ombudsman or the Independent Broad-based Anti-corruption Commission have satisfied the minister that the councillor has been provided with detailed reasons for the recommendation and was given an opportunity to respond to their recommendation and
 - the minister is satisfied that if the councillor is not suspended that there is an unreasonable risk that the council will continue to breach the Act or continue to be unable to provide good government for its constituents.
70. Retain the provisions in the Act about the suspension and dismissal of a council in their current form, including the provisions allowing appointment of administrators.
 71. Streamline the minister's power to conduct inquiries into councils into a single power to appoint commissions of inquiry consisting of one or more commissioners to inquire into and make recommendations to the minister about any matter as requested by the minister. This will include, but not be limited to:
 - governance issues
 - financial probity issues
 - disputes between councils and between councils and other parties.
 72. Retain the existing power to forbid a council from employing a new CEO or entering into a new contract with an existing CEO but amend the power to provide that it can only be exercised on the recommendation of a municipal monitor or the CMI.
 73. Remove the power relating to senior officers from the new Act as all staff employment matters should be dealt with by relevant employment laws.
 74. Bring all provisions (and all other elements) of the Fair Go Rates System into the new Act consistent with the legislative hierarchy in Chapter 10.
 75. Retain the general power for the minister to recommend regulations to give effect to the Act and empower the minister to relieve a council of requirements to follow processes set out in Regulations.
 76. Empower the minister to issue non-regulatory guidelines on any matter under the Act.
 77. Remove the requirement to request ministerial exemption from public tenders, as explained in Chapter 8.
 78. Remove the power requiring a contract for a senior officer: all employment matters for council staff will now be subject to employment law.
 79. Explore an alternative method for handling instances of a majority of councillors having a conflict of interest preventing them voting on a planning scheme amendment.

Chapter 7. Integrated planning

Chapter 7 presents proposals to integrate the planning and reporting framework within which councils operate. These reforms make the council plan the central strategic policy instrument of a council. A new rigour in financial and asset planning requiring a long-term (10-year) financial plan and asset plan is proposed, as well as a long-term (10-year) community plan which is already one of the planning tools used by many councils. This chapter also proposes better integration of local, regional and statewide planning and removes some regulatory obligations on councils which no longer serve the objectives of councils or the community.

PROPOSED DIRECTIONS

80. Include an integrated strategic planning and reporting framework in the Act that identifies the four-year council plan as a council's central strategic planning instrument, and also requires long-term (10 year) plans—being a community plan, financial plan and asset plan—and short-term (1 year) reporting documents—being the budget and annual report (containing all performance reporting).

81. Include in Regulations and guidelines details about the information a council will include in each plan.
82. Require:
 - a council to prepare and adopt a four-year council plan by 31 December of the second year after a general election
 - preparation of the council plan to be informed by the deliberative community engagement process described in Chapter 4
 - the council plan to include information about services, infrastructure and amenity priorities for the council term.
83. Remove the requirement to submit a copy of the council plan to the minister and replace it with a requirement to publish it on the council website and to have the mayor report annually to the community on the achievement of the council plan.
84. Require a council to prepare and adopt a rolling community plan of at least 10 years by 31 December of the second year after a general election to guide strategic planning and inform the preparation of the council plan. Require preparation of the community plan to be informed by the deliberative community engagement process that also underpins the council plan.
85. Set out in Regulations and guidelines what is to be included in the community plan, including a community vision statement.
86. Require all councils to prepare and adopt a rolling financial plan of at least ten years by 31 December of the second year after a general election, in accordance with the principles of sound financial management, and for council to review and approve this plan annually.
87. Remove the requirement for a council to prepare a strategic resource plan.
88. Require the financial plan to:
 - guide financial planning and inform the council plan
 - provide the community with prescribed information about the human resource and capital works assumptions and decision-making underlying financial forecasts
 - be informed by the deliberative community engagement process.
89. Require all councils to prepare and adopt a rolling asset plan of at least ten years by 31 December of the second year after a general election, in accordance with the principles of sound financial management, and for a council to review and approve this plan annually. This plan will guide asset planning and inform the council plan.
90. Require the asset plan to include information about new assets, asset retirement, maintenance and renewal requirements for each class of infrastructure assets and to be informed by the deliberative community engagement process.
91. Set out requirements for what is to be included in the financial and asset plans in Regulations and guidelines.
92. Require a council to prepare a budget annually and to review it mid-cycle at 31 December each year. Require the CEO to report the results and to explain material budget variations, including whether a revised budget is required, to council.
93. Include in the Act a clearer definition of material variation in order to clarify when a revised council budget must be struck.
94. Remove the requirement to submit a copy of the adopted budget to the minister.
95. Require all councils to establish an audit and risk committee with an expanded oversight of:
 - the integrated strategic planning and reporting framework and all associated documents
 - financial management and sustainability
 - financial and performance reporting

- risk management and fraud prevention
 - internal and external audit
 - compliance with council policies and legislation
 - service reviews and continuous improvement
 - collaborative arrangements
 - the internal control environment.
96. Require the audit and risk committee to include a majority of independent members and include councillors, but not council staff.
 97. Require the audit and risk committee to report to the council biannually and require each council to table the biannual audit and risk committee report at a council meeting.
 98. Continue to require a council to include information in its annual report of operations about achievements against its council plan, community plan, financial plan, asset plan and budget.
 99. Remove the requirement for a council to submit a copy of its annual report to the minister.
 100. Require a council to present its annual report at an annual general meeting at which the mayor must report progress on implementing the council plan.
 101. Require that in developing its council plan, a council take account of relevant aspects of regional and state plans that affect the municipality.

Chapter 8. Sustainable finances for innovative and collaborative councils

Chapter 8 explores ways in which to put sound financial management principles at the heart of all council strategic planning (the council plan, community plan, financial plan and asset plan). It proposes that provisions which impede collaboration and innovation, including those requiring elaborate corporate structures for simple service-sharing arrangements between councils, be removed. The aim of these reform directions is to strengthen opportunities for shared facilities and for aggregation in the purchase of shared services and infrastructure. These proposals also seek to modernise commercial approaches of councils in areas such as investment, debt management and procurement. The focus of these proposed reforms is on innovation and collaboration within a rigorous framework of sound financial management and review, including stronger oversight by independent audit and risk committees.

PROPOSED DIRECTIONS

102. Require a council to embed the principles of sound financial management in its council plan, community plan, financial plan and asset plan.
103. Include in the Act the following principles of sound financial management:
 - manage financial risks prudently, having regard to economic circumstances
 - align income and expenditure policies with strategic planning documents
 - undertake responsible spending and investment for the benefit of the community to achieve financial, social and environmental sustainability over the long term
 - provide value-for-money services and infrastructure which are accessible and responsive to the community's needs
 - ensure that decisions are made and actions are taken having regard to their financial effects on future generations
 - ensure full, accurate and timely disclosure of financial information about the council
 - undertake regular stress testing and evaluation of financial risk management.
104. Remove the current best value provisions, as value for money is included in the new principles of sound financial management.

105. Require a council at the start of the council term to develop and adopt a procurement policy that is consistent with the principles of sound financial management and require that all council procurement practices and contracts comply with this policy.
106. Specify in Regulations what must be included in a procurement policy, including when council will go to tender for the provision of goods and services (including thresholds), the process for going to tender and what collaborative arrangements have been explored to deliver value for money for the council.
107. Require the audit and risk committee to review compliance with the procurement policy and require a council to report in its annual report any non-compliance with its procurement policy.
108. Require a council to make its procurement policy available on its website.
109. Remove the requirement for an annual review of the procurement policy and the requirement to obtain ministerial exemptions for failure to go to tender in certain circumstances.
110. Provide councils with automatic access to state purchase contracts, whole-of-Victorian-Government contracts and the *Construction Suppliers Register* to save time, strengthen standards and improve efficiency.
111. Require councils to develop and adopt an investment policy in accordance with the principles of sound financial management and require all council investment decisions to be made in accordance with that policy.
112. Require the audit and risk committee to review compliance with the investment policy and require a council to report any non-compliance with its investment policy in its annual report.
113. Require a council to develop and adopt a debt policy in accordance with the principles of sound financial management and only enter into debt in accordance with that policy.
114. Require the audit and risk committee to review compliance with the debt policy and require a council to report any non-compliance with its debt policy in its annual report.
115. Remove the overdraft provisions and remove the requirement for the minister to approve the repayment of an overdraft from its borrowings.
116. Require councils to expressly describe in their budgets any intention to sell, exchange or lease land. This will enable consultation with the community during the budget process.
117. Remove the requirement for a council to allow a person to make a submission under the Act in relation to the sale, exchange or lease of land where the matter has been considered as part of the budget consultation.
118. Remove from the Act any role for the minister in determining or approving the kinds of insurance schemes councils may wish to participate in and remove from the Act the requirement for councils to have public liability and professional liability insurance. As a body corporate and organisation with a number of roles and responsibilities to the community and its staff, it is expected as a matter of course that councils take out appropriate insurance policies consistent with effective risk management as well as with the sound financial management principles in the Act.
119. Remove the entrepreneurial powers in the Act and include revised powers to allow councils to participate in the formation and operation of an entity (such as a corporation, trust, partnership or other body) in collaboration with other councils, organisations or in their own right for the delivery of any activity consistent with the revised role of a council under the Act.

Chapter 9. Fair rates and sustainable and efficient councils

Chapter 9 addresses revenue and rating by councils and proposes that councils adopt a revenue and rating strategy which aligns with their financial plan. Another reform direction proposed is to require all councils to apply capital improved value as the single uniform valuation system for raising general rates. Other proposals would modernise rates exemptions and the ways in which people can pay their rates, and provide councils with greater autonomy in applying rebates and concessions. This chapter also proposes ways to streamline service charges, make special charges more transparent and provide a uniform process and timeline for people wanting to review or appeal rates and charges decisions.

PROPOSED DIRECTIONS

120. Require a council to prepare a revenue and rating strategy that:
 - is for at least four years
 - outlines its pricing policy for services
 - outlines the amount it will raise through rates and charges
 - outlines the rating structure it will use to allocate the rate burden to properties.
121. Require a council to align the strategy to its financial plan and to review and adopt it after each general revaluation of properties.
122. Define all land as rateable except for the following four categories of land that would be exempt:
 - land of the Crown, public body or public trustee that is unoccupied or used exclusively for a public or municipal purpose (to be defined to mean to perform public functions for the common good)
 - land vested or held in trust for any charitable not-for-profit organisation and used exclusively for a charitable purpose (to be defined to mean the relief of poverty, the advancement of education, the advancement of religion or for other purposes beneficial to the community and the environment)
 - land vested or held in trust for any religious not-for-profit body and used exclusively as a residence of a minister of religion or place of worship or for the education to be a minister of religion
 - land held in trust and used exclusively as a not-for-profit club for persons who performed service duties under the *Veterans Act 2005*. **(Option 1)** or

Include land subject to a lease, sublease, licence or sublicense that is used for the purposes in Option 1, provided the lease, sublease, licence or sublicense is for a nominal amount (that is, the lease or rental amount is very small compared with the actual market lease or rental amount: commonly called a peppercorn rent).

Make land rateable that is:

 - owned by a for-profit organisation but leased to a charitable organisation
 - used exclusively for mining purposes. **(Option 2)**
123. Retain the capacity for councils to grant rebates and concessions and apportion rates based on separate occupancies or activities.
124. Require councils to apply capital improved value as the single uniform valuation system for raising general rates. The City of Melbourne would be exempt from this provision.
125. Fix the municipal charge at a maximum of 10% of the total revenue from municipal rates and general rates in the financial year, divided equally among all rateable properties.
126. Retain differential rates in their current form. Continue through ministerial guidelines to advise that farm land and retirement villages are appropriate for the purposes of levying differential rates at the discretion of councils.

127. Require councils to clearly specify how the use of differential rating contributes to the equitable and efficient conduct of council functions compared to the use of uniform rates (including specification of the objective of and justification for the level of each differential rate having regard to the principles of taxation, council plans and strategies and the effect on the community).
128. Retain the requirement that the highest differential rate must be no more than four times the lowest differential rate.
129. Retain service rates and charges, renamed 'service charges' but remove their application to the provision of water supply and sewage services.
130. As part of these changes, provide the minister with the power to prescribe the setting of other service charges in Regulations.
131. Retain special rates and charges, but provide clearer guidance in the Act about the purpose of special rates and charges, and about the criteria councils should use when declaring them and determining the benefit ratio.
132. Allow councils to offer ratepayers the ability to pay by lump sum or more frequent instalments on a date or dates determined by a council, provided all ratepayers have the option to pay in four quarterly instalments. Penalty interest when it is charged is to be charged on any late payment from the respective instalment due date.
133. Allow a council to use rebates and concessions to support the achievement of their council plan's strategic objectives, provided that the purpose is consistent with their role.
134. Clarify in the Act that, where a ratepayer successfully challenges the rateability of land, a refund of rates may only be backdated to the date of most recent ownership.
135. Establish a uniform process and timeline for people wanting a review or to appeal a rates or charges decision.
136. Incorporate the municipal council rating provisions in the *Cultural and Recreational Lands Act 1963* in the Local Government Act. Require in the Act that councils disclose the rates that are struck for cultural and recreational lands.
137. Incorporate the municipal council rating provisions in the *Electricity Industry Act 2000* in the Act.

Chapter 10. A rational legislative hierarchy

Chapter 10 examines the organising framework for a new Act and the harmonisation of provisions in the Local Government Act with other legislation that imposes obligations on councils. It outlines an organising framework for an easy-to-read, accessible Act. This will be a principles-based Act which provides greater autonomy to councils, paired with effective ministerial oversight. This framework will see the Act work in concert with regulations which prescribe the minimum requirements for achieving the outcomes required by the Act. In addition, best-practice, non-statutory guidelines will be available to support compliance with the Act.

PROPOSED DIRECTIONS

138. Create a systematic legislative hierarchy comprising new principle-based provisions in the Act and new Regulations setting out the processes required to meet the obligations set out in the Act, and with the capacity for the minister to issue ongoing non-statutory sector guidance as required about any aspect of the Act.
139. Include an overarching statement of the Act's objectives, intended outcomes⁹ and a plan of the remaining provisions in the Act.
140. Include high-level statements to frame the structure, language and content of the remainder of the Act, including new sections setting out the roles and functions and powers of councils.

⁹ The Western Australian legislation (Local Government Act 1995) provides an example of such a statement.

141. Include a general power for the minister to make Regulations setting out the requirements councils must meet when exercising their powers or discharging their responsibilities under the Act (for example, requirements about the conduct of elections and mandated obligations under the councillor code of conduct framework). Include in this power capacity for other relevant subordinate legislation (such as legislative instruments like ministerial orders and governor-in-council orders) with the subordinate legislation only relating to matters permitted by the Act.
142. Empower the minister to release a council from the processes set out in Regulations if the council can show it is successfully discharging its obligations under the Act using different processes.
143. Include a general power for the minister to make guidelines to supplement Regulations on any issue related to the Act (such as best-practice versions of documents councils must adopt like councillor codes of conduct, budget documents, meeting procedures and councillor briefing processes). The presumption would be that, by adopting these best-practice documents, a council would comply with the Act and Regulations.
144. Empower the minister through the ministerial directions power to require a council to adopt these best-practice policies and procedures where there have been governance failures.
145. Require councils to take the following principles into account when performing their functions and exercising their powers:
 - the need for transparency and accountability
 - the need for deliberative community engagement
 - the principles of sound financial management
 - the economic, social and environmental sustainability of the municipality
 - the potential for cooperation with other councils, tiers of government or other organisations
 - plans and policies in relation to the municipality, region, state and nation
146. Retain the current power of the minister to intervene where a council does not comply with the obligations set out in the Act or regulations by imposing a municipal monitor or by issuing a ministerial governance direction.
147. Include a general power for the minister to make Regulations setting out the detailed requirements of councils when exercising their powers or discharging their responsibilities under the Act (such as requirements about the conduct of elections and mandated obligations under the councillor code of conduct framework). Include in this power other relevant subordinate legislation.
148. Empower the minister to release a council from the processes set out in Regulations if the council can show it is successfully discharging its obligations under the Act using different processes.
149. Provide guidance to the sector in relation to governance, compliance and best practice. This guidance will be in the form of guidelines and formal and informal advice to the sector.
150. Create best-practice versions of essential documents that councils are required to adopt. Adoption of these best-practice documents will constitute compliance.
151. The minister will have a power under the new Act to require the council to adopt best-practice policies and procedures as part of a governance order where governance issues have been identified.
152. Incorporate relevant sections of Part 9, Division 2 and schedules 10 and 11 of the current Act into the *Road Management Act 2004* (or other relevant legislation), to better consolidate the legislation dealing with road management.

153. Clarify the role of councils in local drainage, waterways and flood management. Consult about whether these are included in the new Act or in the *Water Act 1989*.
154. List all Acts that impose obligations on councils in a schedule in the new Act, to be updated as new legislation is enacted.
155. Repeal the *City of Greater Geelong Act 1993* and include relevant provisions in the new Act.
156. Retain the *City of Melbourne Act 2001* as a separate Act with the City of Melbourne retaining its distinct electoral provisions. Consider ways to modernise the Act and remove redundant or outdated provisions.
157. Consider matters relating to the *Municipal Association Act 1907* independently of this directions paper in consultation with the Municipal Association of Victoria.

Next steps

The review so far has focused on identifying the issues. This directions paper marks the beginning of the review's reform directions phase. The government will now consult about the proposed directions and options in this paper. This will include submissions and community forums, and discussions with peak organisations, ratepayers, councillors and council staff. Table 2 shows the review timeline.

Table 2: Review Timeline

Phase	Year
Issues identification	2015-16
Consultation	
Reform directions	2016
Consultation	
Exposure draft bill	2017
Consultation	
Bill	2017
Act	2018

1. Introduction





1. Introduction

1.1 A legislative framework for the future

Why a review and what are its objectives?

A comprehensive review of the *Local Government Act 1989* was a key election commitment of the Andrews Government. All local government peak organisations endorsed the need for a review, for the reasons set out in the discussion paper released in September 2015.

A new Act will provide a framework to revitalise participatory local democracy and reflect the diversity of contemporary Victorian community values and ideas in the vital decisions councils make. The Act's renewal will enable councils to adopt modern business practices and engage in stronger partnerships to deliver real public value in the interests of all Victorians.

The government's intent is that the review will lead to a new Act that is contemporary, clear and comprehensive and which supports councils as they meet future challenges. The government has three overriding objectives for the new Act that will shape our local councils for decades to come.

The first is that the new Act revitalises local democracy in Victoria. The directions in this paper aim to achieve this objective by articulating a clear role for councils and councillors, a strengthened leadership role for mayors and active engagement by councils with their communities. Fair, consistent and transparent election processes and structures help strengthen democracy. Councillors and council administrators also need to adhere to strong probity standards that are appropriately oversighted by the responsible minister.

The second is that the new Act will support councils to be innovative and collaborative and to drive increased efficiency and better outcomes for communities. The directions in this paper seek to remove unnecessary legislative prescription about how councils manage their internal processes, decision-making, finances and rating systems. Detailed requirements are replaced, as far as possible, by high-level principles about transparency in decision-making and community accountability, alongside measures to ensure consistency and fairness.

The third is that the Act is easy to read and understand. This will help candidates and elected councillors understand what is expected of them and the rules they must follow. This is also important for people knowing what their council does and how they do it and, importantly, how people can interact with their council.

Why an effective local government legislative framework matters

Councils matter to Victorians. Melbourne is often called the cultural capital of Australia and ranks as one of the world's most liveable cities. It is a city of suburbs and is surrounded by thriving regional centres and hundreds of townships. All these places have their own communities and local features that their councils have shaped and now reflect, and they will continue to do so.

While all these communities are desirable places to live, populations in some areas are increasing rapidly. By 2018, some 400,000 more people will live in Victoria than did so in 2014. How our cities, towns and suburbs are governed will affect their capacity to be financially sustainable and inclusive, while adapting to changing circumstances. Councils are essential for Victoria's future prosperity.

Council responsibilities are complex and dynamic. Councils deliver infrastructure and services to meet a diverse range of planning, health and community services, economic development, waste and environmental management and emergency service needs. They also deliver local amenity: the public spaces and activities that make an area a community, not just a geographic place.

These responsibilities have expanded as communities' needs and people's expectations have increased. Responsibilities with other levels of government are sometimes contested. This means the legislative framework in which councils operate must be clear. Local government is an essential partner with the state government to improve the wellbeing and prosperity of Victorians. Strengthening this partnership to increase the delivery of public value has never been more important, and legislation should support it.

The changing nature of the role of councils creates current and emerging challenges. While their functions have evolved to reflect some of these challenges, the Act needs to support councils to embrace modern business systems and information and communications technologies.

Local government is a significant contributor to the Victorian economy, employing over 50,000 people, spending around \$7 billion on service delivery and \$2 billion on infrastructure annually, and managing over \$70 billion in public assets. The public dividend from this contribution will be extended by an Act that enables longer-term strategic planning supported by local communities, stronger collaboration, more innovative procurement and more strategic investment.

Councils are expressions of local democracy. Victoria's constitution requires the state to ensure there are 'democratically elected councils having the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district'. An Act that supports participation and reinforces the integrity and consistency of representative structures and electoral processes strengthens the democratic legitimacy of councils.

Another way to strengthen democratic integrity is to ensure the Act clearly sets out the role of councils, councillors and council administrators and ensures they act in line with the highest standards of probity.

While Victorian councils are among the most professional and effective in Australia, it is timely to modernise the Act to ensure Victorian councils can face their many future challenges.

Challenges with the existing legislative settings

Local communities expect their councils to be high-performing entities that represent their constituents, and to be professionally managed and capable of meeting current and future challenges. However, people individually and collectively have little shared understanding of what councils are for, and limited appreciation of the scale of their activities. This leads to reductive debate about whether councils should be limited to core roles, expressed colloquially as 'roads, rates and rubbish'.

Lack of clarity about their role undermines councils' political legitimacy and contributes to low voter turnout and candidate participation for council elections and impairs community acceptance of council decisions. Without a clear role and strong engagement by the community in setting council priorities, support for council activities is also often lacking. This may also weaken support for the choices councils make in response to more disciplined rating policies. The need to clearly articulate the role of councils has become urgent.

There is also a need to clarify the role of councillors: many struggle with the distinction between strategic issues and operational responsibilities. Councillors' ability to shape their council's strategic directions is crucial to addressing future challenges.

The capacity of mayors to provide leadership will also become more important. Mayoral responsibilities are narrowly circumscribed and are sometimes described as being the first among equals. This does not reflect the community view that mayors lead their councils.

The brevity of the common term of office—one year—also undermines mayoral leadership. One year is not long enough for a person to fully learn and settle into the role. This also results in a lack of sustained and consistent leadership from the elected body. Without such leadership, responsibility for formulating and delivering strategic planning (including the all-important council plan) often reverts to the CEO. This can compromise the democratic legitimacy of a council and the respect with which it is held by its community. Giving mayors explicit leadership powers and longer terms is one way of clarifying councils' authority and accountability.

'...the majority of Victorians (64%) do not know who their mayor is (higher in metropolitan Melbourne 73%).'

QDOS RESEARCH LOCAL GOVERNMENT ACT 1989 REVIEW COMMUNITY ATTITUDES RESEARCH (MAY 2016)

CEOs ensure council policies are implemented effectively. For this reason, the appointment of the CEO is one of the most important decisions councillors make. Many community submissions to the review expressed concern about the perceived ability of CEOs to set their own salaries and conditions. This fuels (arguably unreasonable) hostility to the role and functions of CEOs in some communities. Real or not, there is a perception that CEO contractual arrangements—including remuneration, conditions, performance oversight and contract renewal rights—are not in line with community expectations. More transparency and greater consistency in CEO remuneration policies may assist.

Nothing is more important for the political legitimacy of the sector than for councils to have a strong democratic mandate. The multiplicity of internal representative structures in Victoria confuses constituents. Structures differ from council to council and there is no agreed legislative basis for determining the number of councillors. The Victorian Electoral Commission (VEC) regularly reviews electoral representation, professionally and with extensive community consultation. However, the range of structures and the weight the reviews give to existing council preferences (which overwhelmingly support their existing structures) combine with the lack of legislative clarity to fuel community perceptions of arbitrariness in representative structures.

Different voting rules for state and council elections can increase the percentage of informal votes at both levels of government. Complications also arise when councillors with an interest in the result determine their council's voting method. While most councils have moved to postal voting (which has resulted in higher levels of participation and more formal votes), six currently retain attendance voting. This compounds voter confusion. Nor is there any capacity under the current Act to move to electronic voting, when it becomes reliable and feasible.

'A new Act would establish a franchise that is consistent and clearly understandable. This would help support awareness by those with an entitlement and boost participation...Automatic enrolment would only occur for those with an entitlement on the state roll...'

VICTORIAN LOCAL GOVERNANCE ASSOCIATION

Council franchises confer additional voting rights on property owners, which is unusual in western democracies. The Legislative Assembly and Legislative Council discontinued this practice in 1857 and 1950 respectively. Having non-resident voters creates complexity which contributes to inaccuracies in council rolls, with duplicate enrolments and eligible voters being excluded. Many property owners do not exercise their right to vote which in turn drags down the participation rate for general elections, further compromising councils' mandates.

Low levels of engagement by a council with its community can reduce support for council activities. Community satisfaction surveys indicate continued scope for councils to improve their performance in community engagement and advocacy and increase support for their direction. Councils that have adopted innovative, deliberative engagement processes have shown high levels of participation and, in several instances, better scores for these surveys.

The current Act does not say how councils should handle complaints. This is a serious omission that must be addressed as councils account for one-third of complaints to the Ombudsman. The Ombudsman has recommended that all councils adopt complaint-handling policies that consistently define 'a complaint'. This would improve accountability, more promptly resolve legitimate complaints and reduce the drain on council resources by vexatious complainants.

There is evidence that innovative and collaborative arrangements deliver tangible benefits for councils. Many have already joined forces on projects like libraries, road building, waste management and rates administration. These partnerships drive down costs to ratepayers and can raise the quality of services. Many councils would do more but current legislative provisions put up barriers to such opportunities for microeconomic reforms.

Ratepayers want to better understand how their rates are calculated and applied. Existing rating policies and methodologies are anachronistic and inconsistent. The Act provides for three different methods for valuing land: this reduces transparency and makes it harder to evaluate rating effort. Ratepayers also want more information in rates notices and access to modern, convenient payment methods.

Community confidence in councils is built on clear probity requirements and effective compliance mechanisms. Current conflict-of-interest provisions run to 17 pages and are so complex and confusing that councillors often remove themselves from decision-making on the basis of a perceived conflict, even when there is none.

Councillor conduct provisions have recently been reformed but can now be reframed to be consistent with the structure of a new Act. In the past—without strong ministerial powers to remove councillors who are not acting consistently with their role—it has been necessary to dismiss entire councils. The minister needs stronger powers to deal with individual councillors whose conduct may place the entire council at risk.

The current Act has accumulated several ways for the minister to inquire into council practices: boards of inquiry, local government panels and commissions of inquiry. All these have the same basic structure—which is to advise the minister—but no decision-making power. While not changing this approach, these different mechanisms would be more transparent if they were rationalised.

Other issues that need to be addressed include duplication of provisions in the *Road Management Act 2004* and the *Road Safety Act 1986* that create unnecessary confusion; provisions requiring councils to seek exemptions from the minister to procure services; and several provisions about employment matters that should be dealt with by employment laws.

Reform directions

This directions paper identifies possible solutions to the shortcomings of existing arrangements that the discussion paper identified. Where there is a single solution that clearly addresses a shortcoming, a single reform direction is proposed. In some instances, several reform directions are listed as options.

The following provides an overview of the proposed reforms.

Revitalising local democracy

The role of councils will be made clearer. They will be charged with planning for and ensuring the delivery of services, infrastructure and amenity for their municipality, collaborating with other levels of government and advocating for their communities.

Mayors will be put in charge of councils by giving them longer terms and by expanding their role to lead councillors in developing strategic directions. The mayor will lead an in-depth deliberative community engagement process to shape a four-year council plan, lead the monitoring of its implementation and report back annually to the community on progress. Mayors will be expected to exercise visible, sustained and accountable leadership.

Council structures and election processes will be simplified and made more consistent and representative. They will reinforce municipality-wide governance. Voting rules will be aligned with state elections to reduce confusion and informal voting. The franchise will be modernised to reinforce the integrity of the council roll and improve voter participation; and candidates will compete on a level playing field, with equal quotas.

The state government, through the minister, will have the tools to intervene to ensure the integrity of the sector as a whole and to address governance issues in individual councils early and effectively, minimising the need to suspend or dismiss entire councils.

Innovative, collaborative and efficient councils

Innovation and collaboration with other councils, levels of government and organisations will be the rule and not the exception. Existing hurdles to collaboration between councils and others will be removed.

The new Act will support councils to embrace new technological opportunities as they emerge. It will be flexible enough to enable councils to embrace a new information age based around ever-increasing individual choice and globalisation via social media and whatever replaces the current platforms that have emerged over the past decade.

A stronger legislative framework will support sound financial management, sustainable rating policies and modern, integrated strategic planning. Long-term asset management and financial management plans will be required, and these will be integrated with the four-year council plan which will become the primary policy instrument of all councils. In an increasingly data-rich society, sharing information in these plans can unleash sustained citizen participation and co-production capacity.

Unnecessary red-tape requirements will be removed from the Act. The focus will move to delivery of required outcomes, consistently prescribed and monitored. So long as councils demonstrate they comply with principles of good governance and sound financial management, the business of how they achieve outcomes will be left largely in their hands.

Easy to read, accessible act

The Act will set out the principles by which councils are to achieve outcomes, which will be clearly expressed in the Act. Regulations will specify the processes required to achieve these outcomes. The minister will be empowered to exempt a council from the requirements if it can show it is achieving the outcomes required by the Act in other ways. The minister will have the power to issue non-legislative guidelines on any matter in the Act.

A view to the future

As explained above, the Victorian Government is seeking three overriding outcomes for a new Local Government Act:

- Victorians will better understand and value the role of councils as democratically elected bodies that represent their interests; participate more as candidates, voters and citizens in council activities; and contribute to council strategic visions and plans.
- councils will drive reform across the state by being more autonomous and outcome-oriented and by embracing innovative and collaborative arrangements that increase organisational efficiency and public value for residents
- the Act will be a living document that tells people clearly what councils do and how to get involved, and that provides a sound framework for the sector to understand roles and processes.

1.2 Reform principles

Five Principles have guided the development of reforms to make a new act.

- the first two principles focus on the drive to make Victorian local government contemporary, democratic and representative
- the second two principles underline the government's determination for councils to innovate, collaborate and drive efficient reform in the sector
- the final principle deals with the architecture for a new Act.

Appendix 1 details the ways in which the Principles inform the reform directions.

Table 3: Principles

Principle 1	An Act that is contemporary and meets future needs, is clear and comprehensive, and does not duplicate other legislation
Principle 2	Enhance democracy, diversity of representation, council transparency and responsiveness to the community and the state
Principle 3	Improve corporate efficiency and reduce the administrative burden
Principle 4	Facilitate collaborative arrangements
Principle 5	Create a systematic hierarchy of legislative obligations: <ul style="list-style-type: none">• an Act that is principle-based, providing greater autonomy to councils, balanced with effective ministerial intervention• Regulations that specify the more prescriptive detail• non-statutory guidelines.

1.3 Major reform directions

Table 4 lists the 10 major proposed reform directions in this paper. The Executive summary has a comprehensive overview of the directions.

Table 4: Major Reform Directions

No	Major reform direction
1	Mayors leading councils: Enable a mayor to provide greater leadership to their council by having two-year terms and extending their powers and responsibilities.
2	Consistent representative structures: Improve the consistency of council representative structures by establishing a consistent formula for determining councillor numbers and having councils be unsubdivided or consist entirely of uniform multi-member wards.
3	Consistent, simpler voting arrangements: Simplify voting arrangements for council elections by using the state roll to determine eligible voters (except in the City of Melbourne), introducing partial preferential voting and having a consistent voting method for all council elections determined by the minister.
4	Deliberative community engagement: Require councils to undertake a deliberative community engagement process before adopting a four-year council plan by December of the year after their election.
5	Integrated, strategic planning and reporting: Require councils to have an integrated strategic planning and reporting framework including (as well as the four-year council plan) a 10-year community plan, 10-year financial plan and 10-year asset plan.
6	Effective ministerial intervention: Strengthen the minister's powers to deal with individual councillors who are contributing to or causing serious governance failures at a council.
7	Transparent CEO employment and performance: Require all councils to have a CEO remuneration policy and to have an independent advisory mechanism to guide recruitment, contractual arrangements and performance monitoring of CEOs.
8	Power to innovate and collaborate: Improve the financial sustainability of councils and strengthen their capacity to be innovative and to undertake collaborative activities.
9	A consistent rating system: Establish a single method for valuing land for rates, modernise exemptions from rates and increase transparency in the levying of differential rates.
10	Autonomous decision-making balanced by a principle-based Act: Extend autonomy to councils by deregulating council decision-making processes and replacing them with high-level principles requiring transparency and accountability.



1.4 The review to date

In September 2015, the Minister for Local Government, the Hon Natalie Hutchins MP, announced terms of reference for the review of the *Local Government Act 1989*. She also released a discussion paper that described and asked questions about current arrangements and issues with the Act. The discussion paper is available at <http://www.yourcouncilyourcommunity.vic.gov.au/discussion-paper>. Appendix 2 in this directions paper has the terms of reference.

The minister appointed a Review Advisory Committee to provide high-level advice about all aspects of the review. The committee is chaired by Ms Ros Spence MP. Its members include former council CEOs Kay Rundle, Kathy Alexander (who resigned on 23 February 2016 due to other commitments) and Peter Brown; current councillors Cr Mary Delahunty (City of Glen Eira), Cr David Clark (Pyrenees Shire Council) and Cr Colleen Furlanetto (Strathbogie Shire Council); and academics Associate Professor Nicholas Reece (University of Melbourne) and Associate Professor the Hon Dr Ken Coghill (Monash University). The committee has met seven times to date. Its members also participated in community forums seeking community views about the Act review.

Also in September 2015, the minister established a website—<http://www.yourcouncilyourcommunity.vic.gov.au>—to support community and stakeholder participation in the review. The website has provided a forum for ongoing dialogue between the community and the government during an extended phase of issue identification and debate.

The government received more than 300 written submissions about issues and questions in the discussion paper. These are published on the website. The submissions provided a rich source of information, opinion and evidence for this directions paper. Appendix 3 has a list of individuals and organisations who made submissions.

Local Government Victoria also established a series of technical working groups comprising professional experts on a wide range of aspects of the Act. The groups provided invaluable input about matters including council operations, council finances, community consultation, strategic planning, governance and probity issues. Appendix 4 has a list of the technical working groups and their members.

After examining the written submissions, the review team conducted consultations across the state on issues and ideas emerging from the submissions. They held meetings with mayors, councillors, CEOs, council staff, citizens and ratepayers groups. They also held forums in Wangaratta, Swan Hill, Shepparton, Sale, Dandenong, Warrnambool, Horsham, the Melbourne central business district, Sunshine and Maryborough. Appendix 5 has more information about these forums.

To complement the submission process, the government commissioned expert background papers about aspects of the Act. Like the submissions, these papers contributed many ideas to inform the directions in this paper. Appendix 6 has details of the background papers, which are available on the website.

1.5 Next steps

The review so far has focused on identifying the issues. This directions paper marks the beginning of the review's reform directions phase. The government will now consult about the proposed directions and options in this paper. This will include submissions and community forums, and discussions with peak organisations, ratepayers, councillors and council staff. Table 5 shows the review timeline.

Table 5: Review Timeline

Phase	Year
Issues identification	2015-16
Consultation	
Reform directions	2016
Consultation	
Exposure draft bill	2017
Consultation	
Bill	2017
Act	2018

After consulting about the proposed directions, the review will move on to developing a new Act with a view to taking it to the Parliament in late 2017.

There will be a transitional period for implementing a new Act after Parliament passes it. During this period, the local government sector will be consulted about processes to be included in regulations, model rules, best-practice approaches and the non-statutory guidelines.

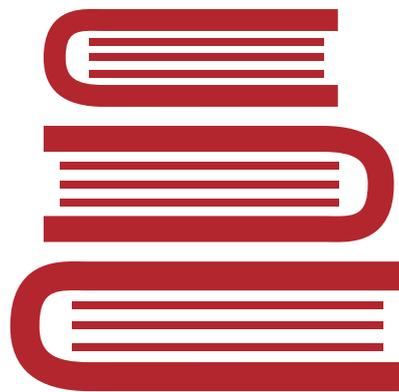
The 'How to get involved' section at the end of this paper has more details about how you can get involved in the review.

Part A: Revitalising Local Democracy

Part A explores reform directions designed to:

- Strengthen the term, power and leadership authority vested in the office of mayor
- Improve the consistency and integrity of council representative structures
- Build greater integrity and participation in the systems which underpin local democracy
- Extend community participation beyond elections through deliberative community engagement which shapes council plans.

2. Contemporary Councils Capable of Meeting Future Challenges





2. Contemporary Councils Capable of Meeting Future Challenges

Introduction

This chapter addresses councils' role, functions and powers, the roles of mayors and councillors and of the elected council's responsibilities relative to those of the administrative arm of the council led by the CEO. Reform directions are proposed to strengthen the position of mayors, support effective working relationships within councils and remove constraints on modern administrative and business practices of councils. The reforms are all designed to improve transparency in decision making and accountability to communities.

2.1 Council Role Functions and Powers

Legal characteristics (What councils are)

ISSUES

While the Victorian Constitution provides that local government exists as a tier of government, it does not create councils as such. Instead, it provides for the state to legislate to constitute councils. Without additional legislation, individual councils would not exist as legal entities.

The new Act, like the current Act, will therefore have the effect of providing the legislative basis for councils as legal entities, specifically as bodies corporate. The breadth of the general power to act which is given to bodies corporate, coupled with the special legislative powers that are given to councils, mean that it is important to ensure that there are appropriate limitations on the general exercise of councils' powers.

There are two ways to do this. One is to rely on the prescriptive processes in other parts of the Act and Regulations to articulate overarching limitations on council actions (for example, that they cannot engage in profit seeking and cannot violate competitive-neutrality policies). The other is for the new Act to articulate some overarching principles (for example, transparency or economic sustainability) that the council must take into account when making decisions.

The current Act creates a primary objective that councils must seek to achieve, followed by a list of facilitating objectives that councils must have regard to when seeking to achieve the primary objective. However, as the Act is currently written, it is unclear how directly these objectives are intended to affect council decisions or the exercise of council powers. An example of how this issue could be addressed is how the South Australian Local Government Act 1999 addresses it: by including principles councils must 'uphold and promote' in the performance of their roles and functions.

Clearly articulating overarching principles will balance the need to provide councils with greater autonomy with the need to ensure they meet the objectives the state and the community expect them to meet when exercising their powers.

PROPOSED DIRECTION

1. Require councils to take the following overarching principles into account when performing their functions and exercising their powers:

- the need for transparency and accountability
- the need for deliberative community engagement processes
- the principles of sound financial management
- the economic, social and environmental sustainability of the municipality
- the potential to cooperate with other councils, tiers of government and organisations
- plans and policies about the municipality, region, state and nation
- the need for innovation and continuous improvement
- any other requirements under the Act or other state or federal legislation.

These principles, which also appear in Chapter 10, will underpin more specific requirements to be set out in the Act. Regulations and guidelines will set out processes to ensure that councils take the principles into account when meeting the specific requirements.

Councils' role (What councils do)

ISSUES

The new Act will contain a high-level statement that clearly sets out what councils are intended to do. In the current Act, there are two sections which seek to address what councils are supposed to be: a section setting out the role of councils and another section setting out their functions. This duplication reduces clarity.

Also, neither section solely addresses what councils do: the roles section has considerations that councils must take into account when doing certain things and the functions section has powers set out in other parts of the Act and other legislation.

This lack of clarity about the actual activities councils undertake has created some confusion about what councils must do, as distinct from what they are allowed to do. This confusion can lead to a restricted understanding of what councils are for, leading to attacks on their democratic legitimacy and unhelpful debates at both the statewide and municipal levels about what councils must deliver (for example, rubbish collection) and what they are not allowed to allocate funding to (for example, political campaigns or civic art).

Clearly setting out in the new Act the role of councils will help the community understand and support that role. It will also help the sector advocate for the important work that councils do throughout the state.

PROPOSED DIRECTION

2. Provide that the role of a council is to:

- plan for and ensure the delivery of services, infrastructure and amenity for its municipality, informed by deliberative community engagement
- collaborate with other councils, tiers of government and organisations
- act as an advocate for its local community
- perform functions required under the Act and any other legislation.

This will allow councils the flexibility to determine the priorities and types of services, infrastructure and amenity they deliver, after undertaking deliberative community engagement processes.

A council's commitments will be included in its four-year council plan. Councils will be required to report back to their communities annually on the delivery of these plans.

Councils' powers

ISSUES

The current Act contains a non-exhaustive list of council functions which includes the roles, responsibilities and actions they currently undertake. The list of functions also has a catch-all provision which specifies that the function of councils includes 'any other function relating to the peace, order or good governance of the municipal district'. This mixture of the specific and the general results in confusion and a lack of clear guidance about both roles and functions. And it does not clearly indicate what special legislative powers councils are given under the Act.

PROPOSED DIRECTION

3. Provide that councils have the powers described in the Act and in other legislation.

2.2 Mayors leading councils

The role of mayors is not properly understood by the community. Many councillors argue that mayors are 'first among equals' and that the role is merely ceremonial—such as representing council at public functions like citizenship ceremonies—as well as chairing council meetings. Out in the community, people often have a completely different view: that the mayor has an important leadership role in council; that they are responsible for holding councillors to account for their actions and have the power to do so; and that they also have broader responsibilities for how the council, including its administration, fulfils its role.

The legislation can help resolve these misalignments in roles, responsibilities, powers and perceptions by recognising that a mayor does hold the key leadership position in their council. This means more than taking the lead in meetings and speaking for the council.

In looking to strengthen the leadership of mayors, it is important to consider how they are elected and for how long, and their role and powers.

Mayoral elections

With the current exceptions of the Melbourne City Council and the Greater Geelong City Council, mayors in Victoria are elected by the councillors. Mayors may be elected for one or two-year terms. The overwhelming majority are currently elected for a one-year term.

Practices vary considerably in other jurisdictions. Mayors are elected by councillors in most New South Wales councils and in some Western Australian, South Australian and Northern Territory councils. Mayors are directly elected by voters in all councils in Queensland and Tasmania and in some councils in other states. Mayoral terms in other states are mostly either annual or four-yearly. Directly elected mayors are most often elected for four years, while councillor-elected mayors usually serve shorter terms.

'What's the point of having the mayor change every year when the councillors don't change every year?'

QDOS RESEARCH FOCUS GROUP PARTICIPANT

ISSUES

Some submissions to the review argued that mayors should be directly elected by residents. In Australia, government leaders at the state and federal levels are elected via representative democracy: that is, they are elected to represent their electorate by voters and then elected to leadership by members of their own party. However, at the time of the general election people know who will be the premier or prime minister if the party they vote for wins a parliamentary election. This is not the case in council elections, where voters elect councillors who then choose one of their number to be mayor.

Unlike at other levels of government, mayors do not lead a ministry comprised of ministers who exercise executive powers, so they do not have substantially more power than other councillors. This means the expectations voters may have about what a directly elected mayor will achieve in office may not be realised if the mayor does not have the support of other councillors.

A mayor directly elected by voters may consider they have a mandate to implement certain policies, and this is certainly the view of people who voted for them. However, the mayor may not have the support of councillors to implement those policies. Conversely, a councillor-elected mayor may have the support of other councillors but may not have a profile with or mandate from the community. Further, clarity about a mandate may be weakened if councillors do deals about policy with other councillors to win votes in the mayoral contest.

A longer term of office can reinforce a mayor's ability to develop, improve and exercise effective leadership. An established mayor will also have greater public standing as advocate for the council and community. Reducing the frequency of mayoral elections is likely to promote stability as it will reduce manoeuvring among councillors to secure the mayoral role.

Given the cost of conducting a direct election for mayor, it is common for their terms to be for the full term of the council. That is four years. For councillor-elected mayors it has been argued that a one-year term is simply too short to get the experience needed to fully perform the role. Alternatively, a four-year term is seen as imposing unreasonable demands on people who may wish to be mayor but not for the full term of office. People also point to the danger of having a mayor who does not have the skills for the role in the role for the whole term. A reasonable compromise may be to make the mayoral term two years with the option of re-election.

While not a critical factor when considering the leadership capacity of a mayor, considerations of how a mayor can be replaced if a vacancy occurs are important. Filling a mayoral vacancy requires arrangements that reasonably reflect the way the mayor was elected to office. For a councillor-elected mayor, a vacancy can be filled quickly and easily by a new internal election. For a directly elected mayor, the process is more complex. It requires a public election, which is costly and takes time. It also requires a councillor to undertake the role in the interim. However, once a community has the right to directly elect a mayor, they expect to be able to elect his or her successor should they leave office early.

PROPOSED DIRECTION

4. Make the following reforms to the election of mayors:

- elect all mayors for two-year terms
- retain election of the mayor by their fellow councillors for most councils
- provide the minister with power to approve the direct election of mayors for councils where:
 - the size of the council is sufficient to support the additional costs of direct election
 - the significance of the council in its own terms or in terms of the region in which it is situated supports a directly elected mayor
 - community consultation provides evidence of strong support for a directly elected mayor, recognising the additional costs to the community.

Should the minister approve direct election of a mayor for a municipality, the City of Melbourne model will apply. This is that the mayor and deputy mayor are jointly elected by voters, and councillors are elected at-large to represent the entire municipality.

Mayoral role and powers

Traditionally, the role of a mayor has been to chair council meetings and perform certain civic and ceremonial duties. Councils have changed markedly since the current Act was enacted in 1989. Councils now undertake many more activities. Following the reforms of the 1990s, councils' administrations have become more corporate in their management practices. Those reforms have been characterised as making Victorian councils akin to corporate boards of management with the council CEO fully responsible for administration and the mayor being the equivalent of a board chair. Many submissions argued that under this model the CEO has become the leader of the council, both inside the council and externally in the community.

This review provides an opportunity to recalibrate the relationship between elected councillors and council administrations. While there needs to be a clear delineation between the strategic role of councillors and the advice and implementation role of administrations, it is clear that councillors need a way to be more informed about management decisions that affect their strategic role. This is best achieved by strengthening the role of the mayor. Their role as elected leader of their council should be reflected in the new Act. They should also have rights in relation to the CEO role that go above and beyond the current non-legislated need for a strong working relationship.



'There was a tendency to think that the CEO was functionally in charge of the council and that the mayor was more of a figurehead!'

QDOS RESEARCH, 2016, LOCAL GOVERNMENT ACT REVIEW COMMUNITY ATTITUDES RESEARCH

ISSUES

The mayor is the leader of the elected council and the CEO is the leader of the council organisation and staff. For a council to be effective, these two leaders must work together in a complementary way, providing mutual support and ensuring productive interaction between the elected council and its administration.

'In successful councils, the mayor and the CEO support each other's leadership and do so visibly so that staff at all levels and the community can have trust in their good working relationship and mutual respect for the organisation that supports them and the council as a whole. When leadership fractures, staff lose confidence and focus on the jobs that they are there to perform and the services they are meant to deliver.'

COMMISSION OF INQUIRY INTO GREATER GEELONG CITY COUNCIL

The core responsibility of elected councils is to make decisions on behalf of the community. Currently, the role of the mayor is to chair meetings and where necessary exercise a casting vote to reach a decision. There is scope for the mayor to play a greater leadership role in decision-making, explicitly leading development of the council plan, setting the council agenda and monitoring the implementation of council decisions.

The Lord Mayor of Melbourne and the Mayor of Greater Geelong have additional responsibilities in decision-making processes. The *City of Melbourne Act 2001* allows the council to delegate certain powers to the lord mayor, including the power to appoint committee chairs and to appoint councillors as council representatives to external bodies. The *City of Greater Geelong Act 1993* was amended in 2012 to allow the mayor to exercise similar responsibilities for committee chairs and representatives at his or her discretion.

While the *Local Government Amendment (Improved Governance) Act 2015* added a responsibility for mayors to provide guidance to councillors and support their good working relationships, there is scope to build further on the role. This could be done by giving mayors specific powers to control misconduct in particular situations (such as during council meetings). This power is currently provided by many council local laws and is a customary power for a chair in most organisations. A mayor could also be recognised as an important point of contact between the elected and administrative arms of the council, with specific rights to information.

In any new Act, it is clear that a mayor should not be expected to have powers that negate the democratic responsibilities of other councillors for decision-making. Equally, for the council administration to function effectively, there should be a clear line of authority and accountability for implementing council decisions, providing advice and for conducting the operational business of council services. While the CEO should retain leadership of the management and the operational line of authority, it would support the mayoral office if the CEO was required to engage with the mayor before making certain types of major decisions about the organisation. Similarly, it is important that elected councillors oversee the effectiveness of the CEO in performing their role. This is best achieved through the oversight of the mayor.

PROPOSED DIRECTION

5. Expand the role of the mayor to include the following powers and responsibilities:

- to lead engagement with the community on the development, and the reporting to the community at least annually about the implementation, of the council plan
- to require the CEO to report to the council about the implementation of council decisions
- to appoint chairs of council committees and appoint councillors to external committees that seek council representation
- to support councillors—and promote their good behaviour—to understand the separation of responsibilities between the elected and administrative arms of the council
- to remove a councillor from a meeting if the councillor disrupts the meeting
- to mutually set council meeting agendas with the CEO
- to be informed by the CEO before the CEO undertakes any significant organisational restructuring that affects the council plan
- to lead and report to council on oversight of the CEO's performance
- to be a spokesperson for the council and represent it in the conduct of civic duties.

Mayoral allowances

ISSUES

Mayors may require more support—both for them individually and for the mayoral office—to undertake an expanded role.

Excluding the Lord Mayor of Melbourne and the Mayor of Greater Geelong, the maximum annual allowance for a mayor is \$57,812, \$74,655 or \$92,333, depending on the size of their council. These amounts may if they result in a reduction in a person's income be an impediment to attracting able and motivated candidates for the position of mayor.

Some people argue that other support is more important. This includes access to suitably qualified staff, access to an office and facilities and recognition by council staff of the mayor's leadership of the council. (see page 43 on the role of the CEO).

PROPOSED DIRECTION

6. Review the formula for setting mayoral allowances in light of the proposed expanded role of mayors.

Local Government Mayoral Advisory Panel

ISSUE

The Local Government Mayoral Advisory Panel (LGMAP) has been an effective vehicle for productive dialogue between the Minister for Local Government and sector leaders about legislative, regulatory, strategic and policy matters which affect councils.

The LGMAP is a non-statutory advisory committee reestablished annually. There is a strong case to make it a statutory advisory board to the minister that derives its authority from the Local Government Act.

The minister will continue to chair the LGMAP and may also invite other ministers to attend LGMAP meetings as appropriate. The LGMAP will consist of at least five mayors appointed as members by the minister in their individual capacity.

PROPOSED DIRECTION

7. Formalise the status of the Local Government Mayoral Advisory Panel (LGMAP) by making it a statutory advisory board to the minister under the Local Government Act.

2.3 Deputy mayor

The current Act does not provide for deputy mayors in Victorian councils and in some ways obstructs councils establishing the position. Despite this, many councils choose to elect a deputy mayor.

ISSUE

It may sometimes be useful for the mayor to have a designated deputy, including when the mayor:

- takes leave (such as annual or extended sick leave)
- is absent from a council meeting
- needs to excuse him or herself because of a conflict of interest
- cannot attend civic functions involving ceremonial duties (such as citizenship ceremonies)
- resigns or is disqualified from the office of councillor.

The deputy mayor role can also be a useful learning experience for prospective mayors.

PROPOSED DIRECTIONS

8. Require all councils to appoint a deputy mayor elected in a manner consistent with the mayor. That is:

- where councillors elect their mayor, councillors elect the deputy mayor for the same two-year period
- where the mayor is directly elected, a deputy mayor is jointly elected with the mayor on the same ticket.

9. Consider deputy mayoral allowances in light of the expanded role of deputy mayors.

2.4 Councillors

In 2015, a new provision was inserted in the Act to describe the role of a councillor. It says the primary role of a councillor is to be a community representative when making council decisions. In doing so, councillors should consider the diversity of community interests, act with integrity and assist effective communication between the council and the community. Fundamentally, in accepting election to the office of councillor a citizen becomes a custodian of the public trust, agreeing to place the public interest above their private interests.

ISSUES

Councillors have a dual role: they represent the community when council makes decisions and they report back to the community about those decisions and resulting actions.

While communities expect councillors to engage with them and to be accessible, constituents commonly complain about councillors' lack of accessibility. The Act could provide councillors with direction on these matters, either by noting the importance of deliberative community engagement in council decision-making (particularly in developing the council plan) or by having the mayor as leader of the council actively support councillors in their role.

The current Act recognises that councillors also work as part of an organisation by assigning them a role to contribute to the strategic direction of the council, participate in the allocation of council resources and observe principles of good governance. To do these things, they need information and support, including the kinds of supports common to other senior public offices (such as childcare, maternity leave and disability support). Equally, councillors need to accept the mayor's role as elected leader of the council.

PROPOSED DIRECTIONS

10. Require councillors to actively participate in engagement processes mandated by the Act.

11. Require councillors to recognise and support the role of the mayor specified in the Act.

12. Provide that councillors are entitled to all relevant entitlements consistent with other significant public offices (such as for disability support, maternity leave and childcare).

2.5 Chief Executive Officer

A council's chief executive officer (CEO) ensures the effective operation of a council so that council's strategic directions are implemented. However, this role is predicated on the role of councillors in setting those strategic directions and the CEO plays an important part in ensuring they can do so. While councillors have no role in administration, many administrative decisions have implications for a council's strategic directions. The CEO remains responsible for all employment decisions and council administration and it is appropriate that all employment matters be regulated by relevant employment laws.

CEO role

The current Act describes the responsibilities of the CEO. These include a range of duties about the effective operation of the organisation, including responsibility for the organisational structure and staffing. The CEO must also ensure that the council receives timely and reliable advice and that the council's decisions are implemented. The new Act will retain these responsibilities.

ISSUE

Amendments made in 2015 required the CEO to support the mayor in the performance of their role. Consistent with the proposed direction to have mayors take greater responsibility for working with CEOs and for monitoring the implementation of council strategic decisions, the new Act should upgrade the CEO's role in supporting the mayor.

PROPOSED DIRECTION

13. Require the CEO to provide support to the mayor by:

- consulting the mayor when setting council agendas
- keeping the mayor informed about progress implementing significant council decisions, including reporting on implementation when asked to do so
- providing information the mayor requires to meet the responsibilities of the role
- informing the mayor before making significant organisation changes that affect the council plan
- supporting the mayor in their leadership role (such as by ensuring adequate council resources and access to staff for the proper conduct of council meetings and for civic engagements).

...there needs to be much clearer legislative specification of the respective accountabilities of the CEO and the mayor!

COMMISSION OF INQUIRY INTO GREATER GEELONG CITY COUNCIL

CEO remuneration and contract management

ISSUES

The current Act has prescriptive provisions about CEO employment. These include limits on a CEO's contract terms, timelines for renewing a CEO's contract and requirements for councils to monitor their CEO's performance. These provisions reflect the interest of local communities about what is an important public office.

The existing provisions fall short in two important respects. First, they attempt to regulate for responsible employment practices in a prescriptive way, rather than by specifying high-level objectives. This promotes a compliance culture, where councils and CEOs can seek to achieve the outcomes they want by ticking the necessary statutory boxes.

Second, while councils are responsible for employing and monitoring their CEO's performance, councillors sometimes do not have the expertise to do so (for example, expertise to set appropriate remuneration and contractual conditions and to conduct effective and timely performance monitoring). Some submissions expressed concern that CEOs have a disproportionate advantage in negotiating their own contractual conditions and that there is insufficient oversight of their performance.

PROPOSED DIRECTIONS

14. Require all councils to have a CEO remuneration policy that broadly aligns with the Remuneration Principles of the Victorian Public Sector Commission's *Policy on Executive Remuneration for Public Entities in the Broader Public Sector*¹⁰.
15. Require the audit and risk committee to monitor and report on a council's performance against the remuneration policy.
16. Require the mayor to get independent advice in overseeing CEO recruitment, contractual arrangements and performance monitoring. (Note also direction 52 on transparency of CEO remuneration policy.)

2.6 Council decision making

Councils are elected by a community to make decisions on behalf of that community and to provide it with services.

A council's legal authority to make decisions derives from the Local Government Act and other Acts (including subordinate legislation) passed by the Victorian Parliament. However, the public legitimacy for the decisions a council makes depends in large part on the extent to which it engages with its community when making decisions. People do not accept that the mere election of councillors every four years is sufficient to provide ongoing political legitimacy of the decisions their council makes. This is why the Act contains detailed provisions about how a council should make decisions (such as how it holds meetings and invites public submissions).

Removing unnecessary prescription

ISSUES

The Act and Regulations prescribe many details about how councils make decisions, including about public consultation processes, notice of meetings, meeting rules and the information made available to the public. The Act also requires a council to adopt a meetings local law which is in turn subject to legislated processes.

The highly prescriptive nature of these arrangements is unnecessary for modern councils. It also impedes their ability to manage their affairs in a responsible and organised way and limits their ability to innovate and to improve how they engage with their communities and conduct meetings.

A recent example of how these overly prescriptive provisions inhibit effective decision-making was when a council anticipated public disruption of a meeting to stop it making a controversial decision. The Act required the meeting to be open to the public; in this instance, that was not only impractical but potentially dangerous for councillors and members of the public.

Prescriptive provisions tend to be relevant at the time they are made but can quickly date as technology and practices move on. The current provisions about council public consultation processes are outdated: much more dynamic and effective models for deliberative community engagement are now available. For example, social media can reach many more people, much more quickly; and citizens' juries and similar mechanisms can achieve much deeper engagement. These two examples highlight the shortcomings of the passive engagement approach in the current Act.

PROPOSED DIRECTIONS

17. Remove detailed prescription about council decision-making processes from the Act.
18. Include high-level principles about council decision-making processes: namely, that they be open and accountable.
19. Require councils to adopt a set of rules concerning internal council processes that are consistent with the high level principles in the Act.

¹⁰ <http://vpvc.vic.gov.au/resources/policy-on-executive-remuneration-for-public-entities-in-the-broader-public-sector/>

Giving primacy to open decision-making

ISSUES

The Act currently empowers a council to determine that a matter is confidential if it deals with information that meets specific criteria, mostly defined by subject area such as personnel, contracts or council security. There is also one open-ended criterion that allows a council to close a meeting to address a matter that a council considers may prejudice the council or any person.

When council determines a matter to be confidential:

- it considers the matter in a part of a council meeting closed to the public
- it records its deliberations in separate, confidential minutes
- councillors who disclose confidential information can be prosecuted or referred to a councillor conduct panel.

As elected organisations serving the public, councils should avoid dealing with matters in confidence unless exceptional circumstances absolutely require confidentiality. A survey of 2014–15 council minutes for this review showed that the average council made about 15% of its substantive decisions in meetings closed to the public. The most common reasons for considering matters in confidence were that they were contractual matters (59%) and that the council considered they could prejudice the council or a person (34%).¹¹

Councils must have adequate grounds to keep information confidential: namely, the release of information would harm someone or the information is the property of another person or organisation.

Some states have adopted the types of reasons given in Part 4 of Victoria's *Freedom of Information Act 1982* as a guide to properly exempt information from release.

There is more information about transparency in governance in Chapter 5.

PROPOSED DIRECTION

20. Include in the new Act that a council may determine that information is confidential if:

- it affects the security of the council, councillors or council staff
- it would prejudice enforcement of the law
- it would be privileged from production in legal proceedings
- it would involve unreasonable disclosure of a person's personal affairs
- it relates to trade secrets or would disadvantage a commercial undertaking

2.7 Council committees

Councils establish committees for a range of purposes and many of these committees are currently subject to requirements under the Act. These requirements appear to have increased over the years to cover the different sorts of committees that councils have established from time to time. There appears to be no reason why the Act should concern itself with the different types of forums a council establishes, apart from being clear about who has delegated authority to make decisions that the council would otherwise make.

Committees making delegated decisions

ISSUE

The Act currently allows a council to delegate a wide range of decisions to committees that may be made up of any combination of councillors, council staff or members of the public. The current Act calls them special committees. A council cannot delegate to such a committee the power to declare a rate or charge, to borrow money or to enter into a contract above a specified value. Nor under the *Planning and Environment Act 1987* can it delegate its powers to approve planning scheme amendments.

¹¹ Gifford, J 2016, *Council Governance and Transparency: A survey report on Victorian local government*, (unpublished), p. 35.

In practice, many special committees are either committees of councillors dealing with significant matters (such as funding decisions and planning permit applications) or they are small community committees that manage local halls and reserves.

There are inherent risks where a council delegates its powers to a committee that has limited accountability to the council: the risks that the committee will act contrary to council policy or practice, and that decisions made in the council's name will not be adequately transparent.

Community committees of management exemplify this problem. They tend to operate remotely from councils and frequently with little direct involvement of councillors or council officers. Information about their meetings or decisions is not generally available to the public. Also, members of these committees often find it hard to understand their obligations under the Act, including their obligation to disclose a conflict of interest.

Some states restrict the membership of delegated committees to councillors or council staff, or they require these committees to include some councillors or staff. Company boards of directors are allowed to delegate their powers to committees under corporations legislation but those committees must be comprised of directors.

PROPOSED DIRECTIONS

21. Require a committee to which a council may delegate any of its powers to be known as a special committee and require it to include at least two members who are councillors.
22. Allow councils to establish administrative committees to manage halls and reserves, with limited delegated powers including limits on expenditure and procurement; and for councils to approve annually committee rules that specify the roles and obligations of administrative committee members.

Simplifying committee types

ISSUES

The current Act defines two types of committees: special committees and advisory committees. It also defines certain types of meetings to be assemblies of councillors, including advisory committees with councillors on them. There are also other types of meetings involving councillors only.

Multiple definitions for different types of council committees is a source of confusion, which is exacerbated by the different roles and processes imposed on different types of committees. The requirements for assemblies of councillors are particularly complicated. They include rules about disclosing conflicts of interest, keeping records and tabling records at council meetings. They impose more controls on meetings with no decision-making powers than there are on delegated committees.

PROPOSED DIRECTIONS

23. Apply legislative provisions exclusively to special committees that have delegated council powers and to administrative committees (as described in the proposed direction above).
24. Remove from the Act provisions regulating assemblies of councillors, leaving councils to deal with issues of public transparency about these or any other advisory committees as part of the council's internal rules.



2.8 Council staff

A CEO has sole responsibility for council staff, who undertake functions according to their terms of employment. Staff may also be required to undertake the roles of authorised officers under council local laws and statutory duties under various other Acts. It is important they undertake their duties in a professional and responsive manner. The CEO is responsible for ensuring they do so. Councillors cannot direct or supervise council staff.

ISSUE

The current Act has detailed provisions about the employment of council staff, particularly for senior staff employed on contracts. It also has an entire schedule on implementing equal opportunity. Many of the provisions are unnecessary because they duplicate other legislation or are standard employment practice. Nevertheless, councils are major employers and, in many regions, the major employer in their area. As such, they have a responsibility to model good employment practices. Workplace planning and workplace change affects council staff, the local economy and the capacity of councils to implement their strategic directions. The Act should provide for these considerations.

PROPOSED DIRECTIONS

25. Remove matters about employing council staff from the Act.
26. Require the CEO to establish a workforce plan that describes the council's staffing structure including future needs; that the plan include a requirement that it can only be changed in consultation with staff; and that the plan be available to the mayor and to staff.
27. Require a council CEO to consult the staff if there is a major organisational restructure.

2.9 Local Laws

ISSUES

The local-lawmaking powers of the current Act have only had minor amendment since their enactment. The intention of the current provisions is for councils to have sufficient autonomy to make local laws in the interests of their community, provided the local laws fall within the council's statutory functions and powers and are not inconsistent with any Commonwealth or state Act or Regulations or planning scheme in force.

In the past, there has been some criticism of the limited level of scrutiny of local laws, especially given that a local law is not a legislative instrument for the purposes of the *Subordinate Legislation Act 1994*, notwithstanding they are subordinate instruments. This means local laws are not subject to review by the Scrutiny of Acts and Regulations Committee of Parliament. Also, it is not mandatory to prepare a cost-benefit analysis (such as a regulatory impact statement) for local laws.

A local law, as with all legislation, is made to implement policy determined by the lawmaker. Issues arise about how effectively and efficiently local laws do so. The extent to which a local law does so largely depends on its quality, including whether it is drafted in a way that expresses rights and obligations clearly, operates consistently with other laws and meets the standards that apply to legislation generally.

Inconsistency of local laws is an ongoing concern, with differences between councils with regard to content, as well as regarding mechanisms and practices to enforce them. Inconsistencies arise from the variety of matters covered by local laws under various state Acts including about building site management, planning, animal welfare, environment protection, amenities and food outlets. Inconsistencies and different approaches by councils may constitute a burden for businesses and the community generally.

Under the current Act, councils can make local laws about council meeting proceedings. The proposed direction is for a simpler, more agile system to regulate meeting procedures. Rather than using local laws, councils would be able to regulate their meeting procedures using council internal rules—similar to a company's internal rules or constitution—which they adopt only after community consultation.

Currently, penalty units for local laws are fixed at \$100 under the *Sentencing Act 1991*. There are grounds for considering indexation of penalty units if breaches of local laws are to be rigorously enforced.

PROPOSED DIRECTIONS

28. Require a community consultation process before making or varying a local law.
29. Include in the Act principles that local laws must meet¹² and require that a council, after receiving advice from an appropriately qualified person, certify that the local law meets these principles.
30. Retain the power of the Governor in Council, on the recommendation of the minister, to revoke a local law that is inconsistent with the principles.
31. Note that model local laws may be issued as guidelines on various matters to achieve greater quality, consistency and scrutiny. These would be based on best-practice local laws.
32. Consult to determine the appropriate value of a penalty unit for local laws and whether the value should be indexed annually.
33. Remove the requirement to submit local laws to the minister.

¹² These are as set out in the current schedule 8 which provides, among other things, that a local law must be within power, clear and unambiguous, and not inconsistent with the principles of justice and fairness. This is similar or equivalent to the requirements under section 13 of the Subordinate Legislation Act 1994 for making regulations.

3. Democratic and Representative Councils





3. Democratic and Representative Councils

Introduction

Reform directions in this chapter aim to improve the democratic legitimacy, transparency, accountability, collaborative capacity and public value delivered by councils.

The directions outlined here seek to:

- achieve greater consistency and integrity in the formation of elected councils including through simpler and fairer representative structures and a modern and equitable electoral franchise
- help the community to better understand and value the role of councils as democratically elected bodies that represent their interests and deliver for them through visible, accountable leadership
- ensure that more Victorians respect, understand and support their elected councillors and believe they have participated as voters in an informed way in council elections.

Decisions about the reform directions proposed in Chapter 3 will not apply for the 2016 council general elections.

3.1 Councillor numbers

Determining councillor numbers accounting for population growth

ISSUE

Rapid and sustained population growth in some local government areas raises the question of whether to increase the band (currently 5–12) for the number of councillors per council. By 2031, councils such as Greater Geelong, Melton, Wyndham, Whittlesea, Hume and Casey will each have an estimated 250,000 to 430,000 residents. Most other Australian jurisdictions allow for 5–15 or 5–16 councillors per council. To maintain the current ratio of councillors to residents, it will be necessary to extend the band in Victoria.

PROPOSED DIRECTION

34. Extend the band (currently 5–12) for the number of councillors per council to 5–15 and provide the minister with the power to increase the number of councillors per council within this band after receiving advice of the VEC.

'MAV submits that the current band does not adequately provide for the future growth in council population numbers. It is considered that better representational ratios could be achieved in the future for growth councils if the band was between five and 15 councillors.'

MUNICIPAL ASSOCIATION OF VICTORIA

Consistency in determining councillor numbers

A related issue is the method of determining the number of councillors per council within the allowable band. Councillor numbers have implications for governance as well as for representation. Currently, councillor numbers are determined through electoral representation reviews conducted by the VEC which focus (as the name indicates) on representation. These reviews make recommendations to the minister based on a commission guide to councillor numbers.

An alternative would be to include a formula in Regulations for determining councillor numbers. Such a formula would simplify the commission's electoral representation reviews by removing a key variable for such reviews (the others being whether to establish wards, the number of councillors per ward and where to place ward boundaries). The formula could be calculated on the basis of the local government area's number of residents and geographic scale.

PROPOSED DIRECTION

35. Include in Regulations a formula for determining councillor numbers and require that the VEC consistently apply it. Base the formula on the ratio of councillors to residents, mediated by the geographic scale of the local government area, loading councillor numbers by one, two or three for geographically vast local government areas.

'For efficiency, a schedule should set out the number of councillors for each municipality based on the population and area of that municipality.'

CHRIS CURTIS

3.2 Simpler and more consistent electoral structures

ISSUES

Victorian councils may be constituted in one of five structural models:

- unsubdivided
- divided into single-member wards
- divided into uniform multi-member wards (equal numbers in each ward)
- divided into non-uniform multi-member wards (different numbers of councillors in different wards)
- an amalgam of single and multi-member wards.

No other Australian state has so many possible electoral structures for councils. The Act provides little guidance about which structure is most appropriate. In the absence of guidance, the VEC essentially determines the structure through its representation review recommendations to the minister.

The strength of this range of possible structures is that it allows them to be adapted to suit local circumstances and to account for communities of interest.

The weaknesses of this range of structures include that:

- inconsistencies can lead to community perceptions of arbitrariness
- councils with both single- and multi-member wards require two different ballot-counting systems for the same election, which can contribute to a community perception that votes are treated inconsistently.

The consequence of municipalities having wards with different numbers of councillors (mixed single- and multi-member ward structures or non-uniform multi-member ward structures) is that councillors require different quotas and different numbers of votes¹³ to secure office in the same election. This compounds a perception that votes are being treated inconsistently.

¹³ For example, in the 2012 Latrobe City Council general election, a candidate in East Ward required 1,113 (or 44%) more votes to secure election than a candidate in South Ward.

The literature on council electoral structures is inconclusive about the models that best support representative democracy and sound corporate governance, notwithstanding assertions that unsubdivided structures are better suited to corporate governance and single-member wards to accountable representation. However, some submissions argued for greater simplicity and consistency in structures and for greater assurance that the one-vote-one-value principle is protected.

PROPOSED DIRECTION

36. Allow for one of two representative structures—unsubdivided or entirely uniform multi-member wards—to be applied in each municipality.¹⁴ **(Option 1)** or

Allow for one of three representative structures—unsubdivided, entirely uniform multi-member wards or entirely single-member wards—to be applied in each municipality. **(Option 2)**

Initially this would require the VEC to conduct representation reviews to arrive at new council structures for the first council elections after the Act is enacted.

'Councils should not be constituted by wards with different numbers of councillors in different wards. The reasons for this include inequality, as councillors require different quotas used to be elected in the same council election...'

EASTERN REGION GROUP

3.3 Rationalising electoral representation reviews

ISSUES

Since 2003, the VEC has conducted representation reviews, on the basis of which it makes recommendations to the minister. Each council is reviewed every 12 years. These reviews determine the number of councillors, whether the council is divided into wards, the number of councillors assigned to each ward and where internal boundaries should be drawn if a council is divided into wards. The need for reviews and the frequency with which they are conducted has been raised as an issue. If councillor numbers were set by a formula (as proposed) and the range of allowable electoral structures rationalised from five to two or three (as proposed), VEC representation reviews would be simplified and required less frequently. Policy set by Regulations rather than VEC determinations would have greater influence in determining councillor numbers and representative structures.

Subdivision reviews have far narrower terms of reference than electoral representation reviews. They are conducted solely to ensure that the number of voters represented by each councillor per ward is within 10% of the average number of voters per councillor for the municipality as a whole (at the time of the review or on the entitlement date for the next general election). Subdivision reviews are currently conducted when the VEC notifies the minister that a deviation beyond the 10% mark is likely, at which point the minister instructs the VEC to conduct a subdivision review. Subdivision reviews are only required for municipalities with wards. They are required more frequently when fast or uneven population growth occurs (such as in growth corridors and the inner city). Any reduction in representation reviews will not influence the need for subdivision reviews. However, subdivision reviews could be required less frequently if entirely single wards (and to a lesser extent non-uniform multi-member wards and mixed single and multi-member wards) are discontinued.

¹⁴ This is also the model New South Wales uses for council elections.

PROPOSED DIRECTION

37. Subject to fixing councillor numbers by formula and reducing the range of representative structures, conduct future electoral representation reviews by exception when the minister directs the VEC to conduct a review on the basis of:

- evidence of a marked increase in population in a municipality
- a request to the minister from a council or members of the community supported by evidence of the need for a review
- in response to a recommendation from the VEC
- on any grounds determined by the minister published in the government gazette.

3.4 Aligning ballot-counting systems and reducing informality in voting

ISSUES

While the process for the voter is identical, ballot-counting systems differ for different ward structures at Victorian council elections. Elections in single-member wards use preferential voting. Elections in multi-member wards and unsubdivided councils use proportional representation. Should future elections be for only unsubdivided and uniform multi-member wards, a single ballot-counting system would be possible.

Some have advocated the introduction of partial preferential voting for elections in multi-member wards and unsubdivided councils to bring council elections in line with Victorian Legislative Council elections. In Legislative Council elections, the voter only needs to mark the ballot paper with five consecutive preferences (the number of vacancies to be filled) below the line for the vote to be valid.

The introduction of partial preferential voting for council elections would require voters to consecutively number only the squares on the ballot paper for which vacancies exist. This would have four advantages:

- it would harmonise council voting rules with those that apply for state elections for multi-vacancy elections and reduce the risk of voter confusion at both council and state elections
- it would increase voter formality, particularly at elections with large fields of candidates which currently have high rates of informality
- it would allow for the more extensive application of unsubdivided municipalities without the risk of high informality rates, no longer requiring voters to complete an unworkably large number of squares on the ballot paper
- it could further blunt the influence of candidates who run with the sole purpose of garnering votes for another candidate.

PROPOSED DIRECTION

38. Introduce partial preferential voting, consistent with Victorian Legislative Council elections, for multi-member wards and unsubdivided elections, such that the voter is only required to mark the ballot paper with the number of consecutive preferences for which there are vacancies to be filled.

'Under the full preferential voting system, where voters are required to mark a preference for every candidate listed on the ballot paper, elections with a large number of candidates show a marked increase in informality. Other voting systems may reduce this risk, such as partial preferential voting where voters are required to mark candidates for at least as many candidates as there are vacancies in the election.'

VICTORIAN ELECTORAL COMMISSION

3.5 Reflecting independent candidacy in filling casual vacancies

Under existing arrangements, casual vacancies in single-member wards must be filled at a by-election. Casual vacancies in multi-member wards and unsubdivided councils are filled by a countback of votes from the original election.

An argument exists to reform the countback arrangements for multi-member wards and unsubdivided councils to reflect the fact that parties do not generally endorse candidates who contest council elections.

In parliamentary democracy, countbacks are designed to maintain the proportionality of representation reached at the general election and allow casual vacancies to be filled rapidly and economically.

Under current arrangements for council countbacks in Victoria, only the ballots that elected the vacating councillor are counted. These votes are redistributed to the unsuccessful candidates who remain eligible, according to the voters' preferences. The candidates in the countback have no votes at the beginning of the count. Any votes they received in the original election are not counted. A candidate must receive more than 50% of the vote preferences of the vacating councillor to fill the vacancy. If no candidate receives more than 50% of the vote preferences, the candidate with the least votes is excluded and their votes are redistributed. This process continues until a candidate achieves more than 50% of the vote.

This means that the number of votes required to be elected as a replacement for a departing councillor is only half of the number of votes required to be elected at the original election. An alternative system, where all unused votes are included in the vote along with the votes of the vacating councillor, would mean that a replacement councillor would still require a quota to be elected.

Sector representatives have questioned for some time why only the votes for the vacating councillor are considered in a countback for a casual vacancy. The MAV and others have argued that, in a countback for a council election in which all candidates run as independents, valid votes cast by all voters in the relevant election—not just those of the vacating councillor—should be counted to identify the next preferred candidate.

The proposed change to the method of conducting countbacks addresses the concern that the current process—by depending exclusively on the preferences of the vacating councillor—often denies the election of another candidate preferred by the rest of the electorate and on the cusp of being elected at the general election. It achieves the efficiency of the current countback arrangement and better reflects the independence of candidates in council elections.

PROPOSED DIRECTION

39. Implement a countback method to fill casual vacancies between general elections by which all valid votes cast at the general election would be counted, not just those of the vacating councillor (excluding the votes that made up the quotas of the continuing councillors).

3.6 Streamlining organisation of electoral provisions

ISSUES

The current Act sets out the framework for the conduct of council elections, including the voter franchise, councillor qualifications and disqualifications, method of election (attendance or postal voting), electoral offences, disputes to the Municipal Electoral Tribunal, filling extraordinary vacancies and counting of votes. Some other election arrangements are covered in Local Government (Electoral) Regulations.

The structure of the existing electoral provisions—scattered throughout the front of the Act, in a number of schedules at the back of the Act and in separate Regulations—makes it difficult to follow for candidates, voters, councillors and councils.

An opportunity exists to consolidate local government electoral arrangements in a single location, making them easier to follow and logically structured. A suitable model would be the *Victorian Electoral Act 2002* which covers all arrangements for the conduct of Victorian state elections.

PROPOSED DIRECTION

40. Consolidate all electoral provisions in a schedule to the Act, arranged according to the model provided by the *Electoral Act 2002*; retain most provisions in the current electoral regulations; and retain procedural matters (such as prescribing forms and setting fees) in Regulations.

3.7 Modernising the council franchise

ISSUES

Most elections in most nations at most levels of government originally provided an entitlement to vote only to men of property and wealth. This was also the case in Victoria. When Britain passed the Victoria Constitution Act 1855, it created a Parliament with two houses which applied significant property qualifications.¹⁵

However, over time owning property or wealth ceased to be a condition of democratic participation in almost all developed countries. Property qualifications for the Legislative Assembly and Legislative Council were discontinued in 1857 and 1950 respectively.

In the 1980s, non-property owners were for the first time conferred the right to vote in Victorian council elections, recognising that councils which once provided services exclusively for property had evolved to provide services for all people. However, the anomaly of additional voting rights for property owners persists in the current Local Government Act. The complex franchise that has resulted is poorly understood by voters and has contributed to inaccuracies in council rolls. Existing voting entitlements and requirements are summarised in Table 6.

Table 6: Voting Entitlements and Requirements for Victorian Councils (Other than the City of Melbourne)¹⁶

	How enrolled	Is voting compulsory?
Voters who live in the municipality who are on the state roll for that municipality		
Voters on the register of electors for the Victorian Legislative Assembly (state roll) for an address within the municipality	Automatically	Yes unless aged 70 and over
People who own or pay rates on a property within the municipality but who are not on the state roll for that municipality		
Up to two owners of rateable property not resident in the municipality, for example the first two named non-resident owners listed on council's rate records or	Automatically	No
Up to two resident owners of rateable property other than the above who are not on the state roll (non-Australian citizens) or	On application	No
Up to two occupiers who are ratepayers for a property (such as shop tenants) and	On application – enrolled in place of the owner	No
One representative (director or secretary) of a corporation owning or occupying a rateable property	On application – if occupier, enrolled in place of owner	No

15 Legislative Assembly (lower house): own freehold property to the value of £50 (or £5 per year); or pay £10 rent per year; or have an income of £100 per year; or have paid for the right to occupy 'any portion of the waste lands of the Crown' for twelve months or more.

Legislative Council (upper house): own freehold property to the value of £1000 (or £100 per year); or pay £100 rent per year; or have a professional qualification (such as ministers of religion, officers of the armed forces or university graduates).

Kerr, B (undated), *The State Franchise in Victoria, 1842–2005*, pp 10–12.

16 This table is modified from that which appeared in the DTPLI *Local Government Electoral Review Stage 1 Report (2013)*, p. 23.

The 2013–14 local government electoral review found that many categories of people with an entitlement to vote fail to enroll.¹⁷ For example, fewer than 1% of business tenants—many of whom have an entitlement—were enrolled for the 2012 election. Many others who are automatically enrolled fail to vote. People who own property in places where they do not live are frequently surprised to find that they have a voting entitlement and only around half (54.5%) of enrolled property-franchise voters participate. This makes participation rates for council elections more than 20% lower than for parliamentary elections.

Inexplicably, while eligible owners of property who do not live in the municipality are enrolled automatically, eligible owners of property who live in the municipality who are not on the state roll must apply to be enrolled.

Further confusion has been created by making voting compulsory for state-roll voters and voluntary for property-franchise voters. Even when people are aware that they are entitled to vote, many are understandably confused about whether they must vote.

The complex nature of the franchise and the requirement to integrate the 'CEO list' of property-franchise voters and the state roll has led to significant inaccuracies in council rolls: the possibility for multiple enrolments and exclusions of voters with entitlements persist. Inaccuracies in the council roll undermine the integrity of council elections.

Most other Australian states also have council rolls that combine property-franchise voters with state-roll voters. Queensland is the exception: only state-roll voters have an entitlement. Whereas non-residential ratepaying owners have an automatic entitlement in Victoria, in all other states they, along with all other categories of property-franchise voters, must apply to vote.¹⁸ In Victoria, non-Australian citizens who pay rates may be enrolled, but Queensland, New South Wales and Western Australia do not permit inclusion of non-Australian citizens on the council roll.

Table 7: Who May be Enrolled for Council Elections in Australian States Other than Victoria

Who may be on the Council Roll?	New South Wales	Queensland	South Australia	Western Australia	Tasmania
State-roll voters automatically	Yes	Yes	Yes	Yes	Yes
Owners on application	Yes	No	Yes	Yes	Yes
Occupiers on application	Yes	No	Yes	Yes	Yes
Corporation nominees on application	Yes	No	Yes	Yes	Yes

Voting is optional in South Australia, Western Australia and Tasmania for council elections. Voting is compulsory in Queensland. Voting is compulsory for voters on the state roll in New South Wales.

Some submissions to the review argued for the state roll to be adopted as the basis for the local government franchise. This would remove property ownership as a qualification for voting and simply align voting entitlement in council elections with state electoral law. Compulsory voting would apply to all.

This reform would restore integrity to the council roll and dramatically reduce the time taken in roll preparation and therefore the cost of council elections. It would bring council elections into line with state elections, which have long since dispensed with the ownership of property as a condition for voting. It would also reflect most Victorians' existing understanding of the franchise. In a state government survey conducted in 2013, only 17% of respondents thought that ratepayers had an entitlement to vote.¹⁹

17 Department of Transport Planning and Local Infrastructure Victoria 2014, *Local Government Electoral Review Stage 1 Report*, pp 25–26.

18 Less than half of 1% of voters on Victorian council roles are applicant voters (business owners, corporation nominees and resident owners not on the state roll).

19 Department of Transport Planning and Local Infrastructure Victoria 2013, *Community Opinion Survey on the Local Government Electoral System*, cited in DTPLI Local Government Electoral Review Stage 1 Report (2014)



This reform would mean that property owners who are not also enrolled for state elections (non-Australian citizens) would no longer be eligible to vote. It would also mean that people owning multiple properties (such as investment properties and holiday homes) would no longer be able to vote in multiple council elections. This would reflect arrangements for state elections in which owners of properties and businesses in non-resident states are not able to vote in multiple state elections.

Some existing property-franchise voters may be reluctant to relinquish their voting entitlement. The transition may be managed by establishing the state roll as the basis for future council voting entitlement but grandfathering existing entitlements.

A further option would be to maintain existing property franchise voting entitlements but end automatic enrolment, so that all would be conferred a vote on application as occurs in some other states. This would maintain a property-based franchise but have the advantage of achieving a more accurate council roll.

PROPOSED DIRECTION

41. Make the entitlement to vote in a council election to be on the register of electors for the Victorian Legislative Assembly (the state roll) for an address in their municipality. Grandfather the voting entitlement of existing property-franchise voters in that municipality.²⁰ Institute compulsory voting for all enrolled voters. **(Option 1)** or

Maintain the existing franchise but cease automatic enrolment of property owners and require these voters to apply to enrol for future council elections if they choose to do so. Institute compulsory voting for all enrolled voters. **(Option 2)**

'Councillors support the principle of "one vote one value" and think that the entitlement to vote should only include those on the state roll; property ownership should not confer additional voting rights.'

FRANKSTON CITY COUNCIL

3.8 Enforcing candidate qualifications

ISSUES

Recent amendments through the *Local Government (Amendment) Improved Governance Act 2015*, which gave returning officers powers to remove from the ballot candidates who were known by the returning officer to be ineligible, partially addressed weakness in the Act's provisions to prevent ineligible candidates from taking office should they be elected.

²⁰ The unique City of Melbourne franchise would remain unchanged.

Arguably, these weaknesses could be further addressed by two measures. The first would be to require all candidates, through Regulations, to declare when completing the candidate nomination form that none of the disqualification conditions apply to them. This would be achieved by ticking a box for each condition and signing a declaration.

The second measure would be to require the council administration to complete a police check and a check of the Australian Securities & Investments Commission (ASIC) register of persons disqualified under the *Corporations Act 2001* within three months of the general election, or for candidates to provide proof of such checks at nomination.

These measures would further reduce the risk of disqualified candidates nominating and, in instances of false nomination, of holding office. Neither measure would delay the swearing-in of the new council.

PROPOSED DIRECTIONS

42. Require the VEC to revise the candidate's nomination form to require candidates to explicitly state that no disqualification conditions apply to them.

43. Require a council CEO to complete a police check and a check of the Australian Securities & Investments Commission (ASIC) register of persons disqualified under the *Corporations Act 2001* for elected candidates within three months after the general election. **(Option 1)** or

Require each candidate to submit a completed ASIC and police check when nominating. **(Option 2)**

3.9 Achieving consistency in voting method

ISSUES

Current council electoral arrangements provide that councillors who have a direct interest in the outcome of the election determine the voting method (attendance or postal) for the general election.

The method of voting is increasingly an issue as technology evolves and electronic voting comes closer to being a viable, secure option for Australian elections.

All but six of Victoria's 78 councils holding general elections in 2016 will conduct theirs entirely by post. Victorian council elections conducted entirely by post:

- consistently deliver higher rates of participation (almost 9% higher in 2012) than attendance voting
- consistently deliver higher formal voting (between 5–6% higher in 2012) than attendance voting
- are less costly for councils (42% less costly in 2012) than attendance voting.

If all Victorian council elections were conducted by a single and consistent method, the VEC could run a clearer, simpler and more compelling voter information campaign with a straightforward message about how to lodge an eligible vote, and have a single deadline for lodgement.

Uniform postal voting systems would also support a transition to electronic voting should it become technically viable to do so, while preserving the integrity of the election.

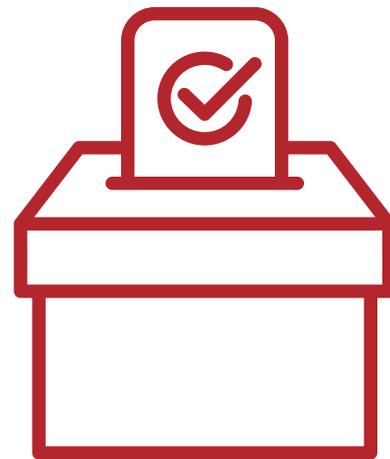
There is a strong case for greater consistency in voting method and for flexibility in the Act to allow for the evolution of voting technology. To achieve both consistency and flexibility, the minister could prescribe the voting method, with advice from the VEC. This would also remove the decision from councillors, who have a conflict of interest in determining the method by which they may be re-elected. And it would enable the latest technological advances in voting systems, including advances not yet contemplated, to be adopted.

PROPOSED DIRECTION

44. Require adoption of a uniform voting method for council elections as determined by the minister after receiving advice from the VEC. Have the minister publish the method to be used in the government gazette 12 months before the general elections.²¹

²¹ This may be attendance voting or postal voting or, as it becomes technologically feasible, electronic voting or any other voting method.

4. Councils, Communities and Participatory Democracy





4. Councils, Communities and Participatory Democracy

Introduction

The proposed directions in this chapter aim to improve the transparency, responsiveness and collaborative capacity of councils, and to reinforce participatory democracy as a guiding tenet of council practice.

The directions aim to achieve a council culture in which:

- more Victorians understand and support the strategic priorities in their council's strategic plan because they have had the opportunity to shape it
- innovation and collaboration characterise council-community efforts to articulate and deliver an inclusive community vision.

4.1 Community engagement on strategic and financial plans

ISSUES

Two review principles emphasise the importance of councils engaging their communities in shaping strategic and financial policy through their council plan. The principles are:

- Enhance democracy, diversity of representation, council transparency and responsiveness to the community and the state (principle 2)
- Facilitate collaborative arrangements (principle 4).

'In the knowledge economy, networks displace hierarchies, power is dispersed and people trust peer-to-peer engagement more than they trust top-down authority mediated through institutions. Collaboration is emerging as a powerful disruptor of traditional ways of doing things – from exercising political power to sharing a car ride.'

BUILDING THE LUCKY COUNTRY: THE PURPOSE OF PLACE RECONSIDERED

As the level of government closest to the people, councils have both the opportunity and arguably the responsibility to enable participatory democracy. Many citizens now want a stronger voice in shaping their community's vision and council plan. Almost all (92% of) respondents to community-based research commissioned as part of the review supported the idea that their council should consult with the community about the four-year plan. The desire to be consulted is only likely to intensify in coming years as technological advances allow people more tools with which to be engaged.

The current Act provides limited submission rights to members of the public about specific activities such as council plans and budgets. For example, a council must make its proposed council plan (including its strategic resource plan) available for public consultation for 28 days, as well as submissions received, before adopting the plan. Before adopting its budget, a council must give the public notice and invite public submissions, and a member of the public may ask to be heard in relation to their submission. Sections 163A and 163B require a council to receive public submissions about and objections to the imposition of special rates and charges, and section 197 provides for councils to receive submissions from the public about entering into regional libraries agreements. However, as these examples underline, all the current consultation requirements of the Act are relatively passive: they are about informing the community or seeking comment on a position already largely determined.

The Act also imposes a reliance on old technologies and media. Councils are not required by the Act to involve, collaborate with or empower their communities in shaping council directions.

Average community satisfaction (as measured by the 2014 annual survey) generally rates councils in the 50s for community consultation and engagement (57% approval), advocacy for the community (56%) and overall council direction (53%).²² However, some councils that have undertaken extensive deliberative community engagement processes have improved their scores for these measures and there is a large gap between the highest- and lowest-performing councils on these measures.

Leading councils are undertaking deliberative community engagement processes which allow their communities to shape policy and resource allocation (through council plans, asset plans and budgets) from the outset. Often, this involves developing ten-year community plans through deep, deliberative engagement with the local community using processes such as citizens' juries to shape a vision for the future. Many Victorian councils are ahead of the Act in this regard and are pointing a way to the future.

In its 2015 report *Building the Lucky Country: The Purpose of Place Reconsidered*, Deloitte emphasised the importance of local leadership for maintaining prosperity for Australian communities. Local governance and collaboration is fundamental, and is essentially about identifying and releasing local strengths and leveraging them to build social cohesion, sustainability and prosperity. The report's authors argued that 'reconsidering the purpose of place is a call to all actors—individuals, businesses, communities and governments—to collaborate. They each have something to contribute and collectively much to gain from flourishing places.'

The report identified four drivers of prosperity: people, community, technology and governance. Councils should be at the centre of effective local governance, to provide strategic leadership by facilitating collaboration between key actors to achieve a vision for the future to which all members of its community can subscribe.

'Consultation provisions are too prescriptive and apply to a bunch of random items...the suggestion in the discussion paper that citizens' juries be formalised in the Act is too prescriptive, but this could be included in best-practice guidelines.'

MOUNT ALEXANDER SHIRE COUNCIL

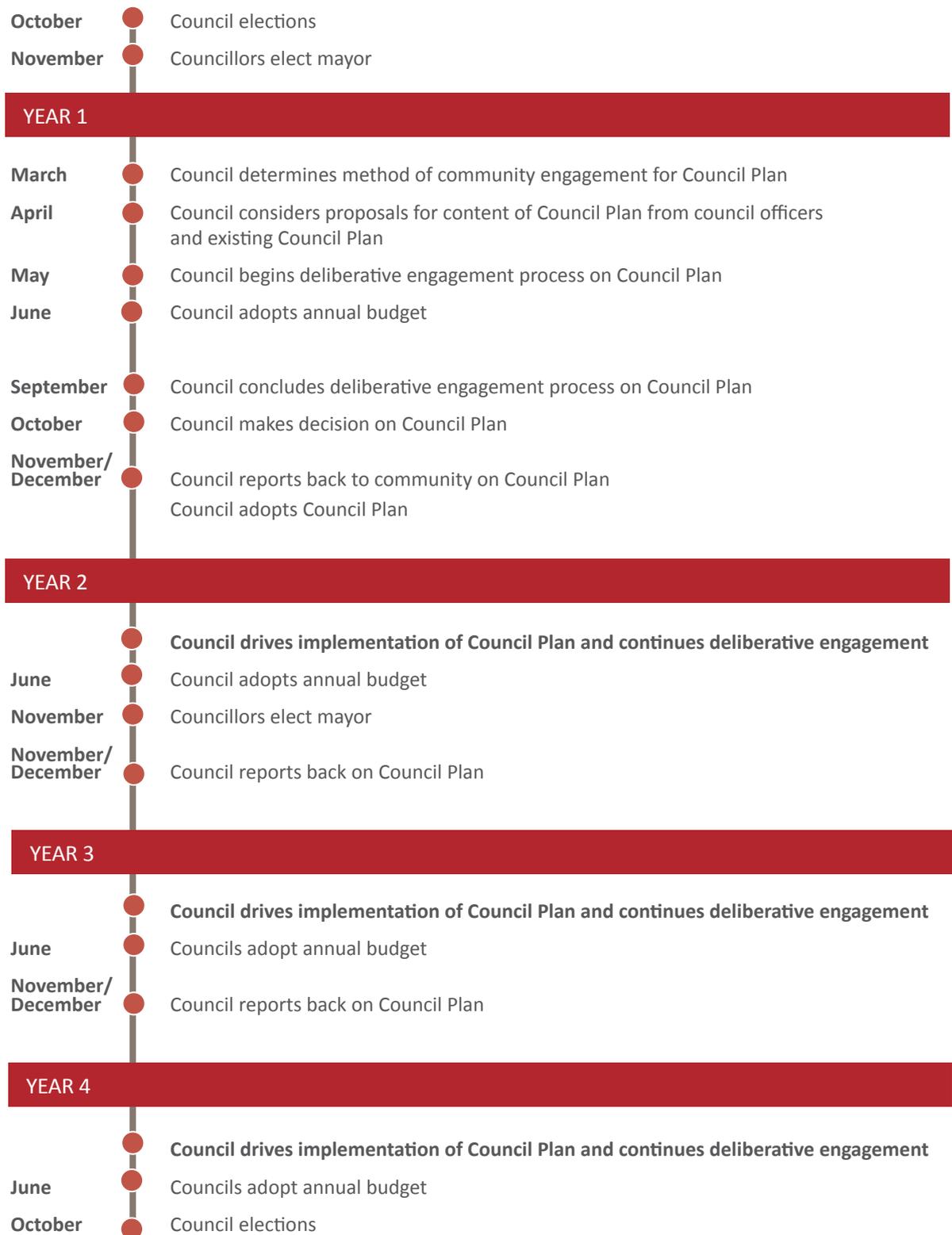
PROPOSED DIRECTIONS

45. Include deliberative community engagement as a principle in the Act and include in the role of a councillor the requirement to participate in deliberative community engagement, leaving the method to be determined by each council.
46. Require a council to prepare a community consultation and engagement policy early in its term to inform the four-year council plan and ten-year community plan.²³
47. Require a council to conduct a deliberative community engagement process to prepare its council plan and to demonstrate how the plan reflects the outcomes of the community engagement process.
48. Include in regulations that an engagement strategy must ensure:
 - the community informs the engagement process
 - the community is given adequate information to participate
 - the scope/remit of the consultation and areas subject to influence are clear
 - those engaged are representative of the council's demographic profile.
49. Require a council to complete its council plan by 31 December in the second year of its term, recognising the time required to conduct a deliberative community engagement process.
50. Require the mayor to report to the community each year about how the council plan has implemented the community's priorities as directed through the deliberative community engagement process.

²² Department of Transport Planning and Local Infrastructure Victoria 2014, *Community Satisfaction Survey 2014*

²³ A council plan outlines the services, infrastructure and amenity a council will prioritise over its term. A community plan includes a vision and actions that the council, the community, businesses, non-government organisations and others will take to deliver the community's collective vision for the municipality.

Figure 2: Four Year Council Plan – Indicative Timeline



Case Study: Wollondilly Shire Council Citizens' Jury

“A citizens' jury, called a “community panel”, was convened by the Wollondilly Shire Council, and organised by Twyford Consulting, to develop a social plan to describe the local community, summarise the key issues facing the community, and recommend strategies to address identified needs.

'After advertisements were placed in local newspapers, residents interested in participating as jurors or presenters were provided with an information kit. Those who then lodged a formal application to participate were selected according to demographic criteria to achieve representativeness. Participants were reimbursed for their travel and child care costs.

'Presenters were asked to prepare handouts with their main points. They were briefed in advance as to the key questions which were to be addressed, and tips on presenting including allowing time for questions and using anecdotes to explain complex or new ideas to jurors.

'Jurors were briefed as to the procedures involved and order of events, told that they would be given time to ask questions of presenters, and provided with the key questions to be addressed.

'The key lessons from the jury were that greater lead time was needed to involve Indigenous community representatives, jurors' capacity to absorb information was high and they felt they had learnt a great deal from their involvement, and this increased knowledge was due in part to the provision of good briefing materials and clear frameworks for discussion. It was also noted that the commissioning body was committed to respond to the jurors' report, which ensured the outcomes did not disappear but were acted on. This enhanced the importance of the process.

'Costs were lower than anticipated because Council contributed resources free of charge. The consultancy fee was less than \$10,000.’’

Source: Lyn Carson & Kath Gelber (2001) *Ideas for Community Consultation: A discussion on principles and procedures for making consultation work, A report prepared for the NSW Department of Urban Affairs and Planning*

'There is a fundamental missing objective: to ensure that the broader community (non-councillors) are provided with a platform to communicate opinions for consideration by council on a regular basis.'

NEWTON GATOFF

4.2 Transparency in public information related to council operations

Currently, various sections of the Act and the Regulations specify transparency and consultation requirements including about:

- the timing and location of council meeting notices
- council websites and the information a council must publish on them
- documents a council must make available for public inspection
- processes for community consultation on some specific matters
- meeting procedures in local laws.

Councils operate under various Acts, and other Acts also include specific public notice or consultation requirements for councils. These include, for example, notices about planning permits under the *Planning and Environment Act 1987* and notices of road discontinuance under the *Road Management Act 2004*.

ISSUES

The use of prescription as the basis for a council's disclosure and engagement with their community has significant disadvantages. It encourages a compliance approach, where a council might think that it is sufficient to tick the legal boxes before making a decision.

Sometimes, compliance-based rules can also encourage an attitude of avoidance, particularly if decision-makers see the rules as an obstacle or nuisance. For example, they might unreasonably defer a necessary change to a local law to a later time when reviewing the full local law, to avoid having to conduct two consultation processes.

It's a slow process to pass Acts and make Regulations and prescription generally lags developments in technology and administrative practices. For example, the Act requires a council to list information it holds but does not require it to publish the information on its website. Such prescription therefore undermines council communication and community involvement.

Councils usually have a good understanding of their communities and are often best able to identify the most appropriate and effective means of public communication, which may be quite different from the prescribed practices. Take the availability of council minutes, for example. Councils have, until recently, been required to make council minutes available for public inspection at the council office; however, all Victorian councils also publish their minutes on the internet.

The City of Melbourne is a leader in transparency in council governance, making the registers and lists of information required under the local government Regulations available on its website. This has improved administrative efficiency, transparency and customer service. The City of Melbourne also:

- lists authorised officers under section 188 of the *Planning and Environment Act 1987*
- lists expenditure of \$500,000 or more per quarter
- lists assets valued over \$2.5 million
- registers people visiting, for whose travel council paid
- discloses senior executive contractual arrangements in its annual report and makes regular online disclosures of councillors' expense claims
- makes audio recordings of council available online alongside the council minutes
- has established and maintained an online register of conflict-of-interest declarations by councillors.

PROPOSED DIRECTIONS

51. Require a council to publish on its website all documents and registers currently required to be kept on council premises and ensure this information is accessible to the public.
52. Require a council to publish its CEO remuneration policy on its website.
53. Regulate for minimum standards and include in guidelines best-practice processes for ensuring transparency and accountability in council operations and administration, basing the guidelines on current Melbourne City Council practices.



4.3 Consistency in complaint handling

ISSUES

Many submissions to the review highlighted community frustration with a perceived lack of responsiveness to complaints made to councils about administrative (operational) decisions or non-statutory administrative decisions. One-third of all complaints to the Ombudsman relate to councils, although this may partly be explained by the large number of councils and the wide reach of their activities: the average customer service satisfaction rating of councils was solid at 72% in 2014²⁴.

The Ombudsman has prepared a report on council handling of complaints and has made several suggestions, including that all councils should have a complaints-handling policy.

Improved complaint-handling procedures can help establish and strengthen complaint analysis and a continuous improvement culture in a council's administrative arm. They can also strengthen a council's capacity to deal more effectively and promptly with both legitimate and vexatious complaints.

Small councils in a region could pool their resources to establish a shared policy and process for reviewing complaints to any one of the councils.

PROPOSED DIRECTIONS

54. Include in the Act a definition of a customer complaint consistent with the Ombudsman's recommendation of as it an 'expression of dissatisfaction with the quality of an action taken, decision made or service provided by a council or its contractor or a delay or failure in providing a service, taking an action or making a decision by a council or its contractor²⁵, but with the addition that the customer has been directly affected by the action.
55. Require a council to develop a policy about customer complaints that includes a process for dealing with customer complaints, and that the process contain an avenue for independent review that is clearly accessible to the public. Policy and statutory decisions of the council would not be subject to the complaints policy.

'In its current form, the Act only deals with complaint handling in the context of complaints about the CEO of a council. This is not sufficient. The main subject matter of complaints about councils to my office continues to be the manner in which councils handle complaints.'

VICTORIAN OMBUDSMAN

²⁴ Department of Transport, Planning and Local Infrastructure 2014, *Community Satisfaction Survey 2014*.

²⁵ Victorian Ombudsman's submission to the *Local Government Act 1989 Review* (2015), p. 7.



5. Strong Probity in Council Performance





5. Strong Probity in Council Performance

Introduction

The community's confidence in councils demands that councils act with probity and that non-compliance is checked.

Arguably, the most-often scrutinised sections of the current Act are the provisions that regulate the conduct of councillors and specify the governance requirements of councils. This scrutiny is by councillors who want to know and understand their obligations, and by council officers who want to provide sound advice to councillors about their obligations. It is also by residents who want to be satisfied that councillors and councils are doing the right thing, in terms of probity and governance.

The *Local Government Amendment (Improved Governance) Act 2015* created a new framework for councillor conduct. The new framework resulted from extensive consultation with the community and the sector.

Some probity provisions remain opaque. For example, conflict-of-interest provisions in the current Act run to 17 pages and are so complex and confusing that councillors frequently remove themselves from decision-making on the basis of a perceived conflict, even when none exists.

Reform directions proposed in this chapter seek to:

- incorporate the current councillor conduct framework in the legislative hierarchy in the new Act
- extend appropriate probity measures (disclosure of confidential information) to council staff
- clarify conflict-of-interest provisions to make them understandable for councillors and the community and enforceable by regulatory authorities.

5.1 Standards of conduct – councillor conduct framework

ISSUE

The current councillor conduct framework largely came into effect on 1 March 2016 and at the time of writing had not applied for long enough to assess its effectiveness or determine if some aspects could be improved. However, the review of the Act provides the opportunity to reconfigure the framework to accord with the proposed legislative hierarchy outlined in Chapter 10.

PROPOSED DIRECTIONS

56. Incorporate the current councillor conduct framework largely unamended in the Act, including:

- the definitions
- the principal requirements imposed on councils and councillors, relevant statutory officers, principal councillor conduct registrars
- the role and powers of the minister and ministerial monitors and the Chief Municipal Inspector (CMI).

57. Include in Regulations all the processes specified in the current councillor conduct framework.

5.2 Release of confidential information

ISSUES

The review's discussion paper identified several issues with the confidential information provisions.

The *Local Government Amendment (Improved Governance) Act 2015* reforms²⁶ amended section 77(1) to make it an offence for councillors to disclose confidential information. This provides flexibility: more serious disclosures of confidential information can now be prosecuted as criminal offences in the Magistrates' Court by the Local Government Investigations and Compliance Inspectorate, and less serious disclosures can be treated as serious misconduct and dealt with by councillor conduct panels. It also means that unlawful disclosure of information can now be dealt with according to whether the information was released to gain a personal benefit or to inflict detriment on the council. Previously, these additional matters needed to be established to enable a prosecution to be brought under section 76D for misuse of position.

The discussion paper also identified that section 77(1) does not apply to council staff unless they become privy to confidential information as a member of a special committee. It is appropriate to widen the reach of this provision to include council staff: whatever the source, the harm or detriment suffered when confidential information is released is generally the same.

The discussion paper also considered the grounds on which a council can determine that information is confidential and the uncertainty that can exist as to whether information is in fact confidential. There is a proposal to limit the grounds on which a council may determine that information is confidential in Chapter 2 of this paper.

PROPOSED DIRECTIONS

58. Extend the offence of release of confidential information to council staff who unlawfully disclose confidential information.
59. This will make councillors and council staff liable to criminal prosecution for more serious disclosures and liable to disciplinary action—councillors for serious misconduct through the councillor conduct panel process and council staff under their contract of employment—for less serious breaches.

5.3 Conflict of Interest

ISSUES

It is a fundamental principle of good governance that those who hold public office avoid situations where their actions are perceived to be influenced by their private interests. This requirement exists irrespective of whether or not a person's actions are actually influenced by a private interest.

The challenges in dealing properly with potential conflicts of interest are considerable in local government, not the least because councillors are usually quite active in their local communities and therefore more likely to have private interests in matters that come before them for decision.

There were major changes to the conflict-of-interest rules in the Act in 2008 in response to a report by the Victorian Ombudsman and in an effort to achieve comprehensiveness. However, the definitions adopted at that time have proven to be complex and confusing for councillors. These definitions sought to define the circumstances applying to seven different types of interests, each subject to specific definitional issues and exceptions.

The consequences for a breach of the conflict-of-interest provisions were not altered in 2008 and the provisions do not provide adequate means to address a breach. Breaches of the provisions remain a criminal matter to be determined by a court and the maximum penalty is a substantial fine. A person convicted of a breach of the provisions is prohibited from being a councillor for several years. However, some breaches of the provisions are simply procedural or are unintentional and without criminal intent. In such cases, criminal action is arguably excessive, which has been reflected in some decisions by the courts about these offences.

Queensland and South Australia have recently undertaken extensive reviews of similar legislation and implemented simpler provisions about councillor conflict of interest. These provisions provide Victoria with a model for a simpler framework for dealing with this issue.

²⁶ The amended section 77(1) came into operation on 1 March 2016.



PROPOSED DIRECTION

60. Provide that a conflict of interest exists where:

- the councillor or a person with whom they are closely associated stands to gain a benefit or suffer a loss depending on the outcome of the decision (a 'material conflict of interest')
- the councillor has, or could reasonably be taken to have, a conflict between their personal interests and the public interest that could result in a decision contrary to the public interest.²⁷

61. Make a breach of conflict of interest subject to disciplinary action for serious misconduct through a councillor conduct panel, at the discretion of the CMI. The maximum penalty a councillor conduct panel can impose for serious misconduct is six month suspension from office and loss of a councillor allowance for that period.

62. Retain the capacity to prosecute a person in court for a conflict-of-interest breach when it involves failure to disclose a 'material conflict-of-interest'. This is a criminal offence with a maximum fine of 120 penalty units and an associated disqualification from being a councillor for eight years.

5.4 Misuse of position

ISSUES

Section 76D of the Act provides that it is an offence for a councillor or a member of a special committee to misuse their position to gain advantage for themselves or any other person, or to cause or attempt to cause detriment to the council or another person. The penalty of up to five years imprisonment reflects the seriousness of this offence.

The section identifies several circumstances that would amount to misuse of position including making improper use of information acquired as a councillor, disclosing confidential information, directing or improperly influencing staff, using public funds in a manner that is improper or unauthorised, and failing to disclose a conflict of interest.

The discussion paper noted that prosecutions under section 76D have been rare, observing that this may in part reflect the difficulty in establishing that alleged behaviour constituted a prohibited purpose. However, this may also be because the provision deals with particularly reprehensible misbehaviour, instances of which are rare.

No compelling suggestions for improving the current misuse-of-position provision were advanced in the submissions in response to the discussion paper or in other aspects of the consultation.

PROPOSED DIRECTION

63. Retain the current legislative provision on misuse of position.

²⁷ These conflict-of-interest provisions are based on Queensland and South Australian legislation.

5.5 Improper direction

ISSUES

The review discussion paper identified that councillors often do not understand the strict delineation of responsibilities between the council CEO (who is responsible for all administrative matters including staff oversight) and councillors (responsible for strategic directions and statutory decision-making).

The *Local Government Amendment (Improved Governance) Act 2015* reforms addressed this concern by clarifying the distinct roles and responsibilities of councillors, mayors and CEOs. The reforms also highlighted the importance of this delineation, and of councillors complying with it, by amending section 76E(2) to make it an offence for a councillor to direct or seek to direct a council staff member.

This has provided important flexibility so that more serious breaches of section 71E(2) can now be prosecuted as criminal offences in the Magistrates' Court by the CMI and less serious breaches can be dealt with as disciplinary matters (that is, as serious misconduct) by councillor conduct panels.

It is nonetheless important that the prohibition against councillors directing council staff is correctly understood and is not misconstrued so as to blur the appropriate separation between councillors and council staff that is essential to the proper and effective functioning of a council.

PROPOSED DIRECTION

64. Retain the current legislative provisions on improper direction, noting they will be supported by the further legislative measures to clarify the roles and responsibilities of councillors, mayors and CEOs set out in Chapter 2 of this paper.

5.6 Chief Municipal Inspector enforcement

The *Local Government Amendment (Improved Governance) Act 2015* reforms amended the Act to establish a clear statutory basis for the CMI and assigned the CMI new roles and powers within the councillor conduct framework.

The CMI is appointed by the Special Minister of State and heads up the Local Government Investigations and Compliance Inspectorate, an independent administrative office established to assess compliance with the Act by councillors and senior council officers. The inspectorate is staffed by inspectors of municipal administration who exercise functions and powers delegated by the CMI.

The functions of the CMI which can be delegated to officers employed in the inspectorate include:

- investigating complaints of alleged breaches of the Act by councillors, senior council officers and people with delegated responsibility under the Act
- conducting audits of all Victorian councils to assess compliance with the Act
- monitoring the corporate governance of Victorian councils
- monitoring electoral provisions
- undertaking prosecutions for offences under the Act
- providing recommendations to councils for continuous improvement
- advising the Minister for Local Government where a serious failure of corporate governance has been found at a council.

Incorporated in these functions are three new roles for the CMI about the new councillor conduct framework:

- a role about serious misconduct
- a direct role in gross misconduct matters
- a role to advise the Minister for Local Government about governance.

As a result, the CMI now has the power to investigate and initiate an application for a councillor conduct panel to make a finding of serious misconduct against a councillor. The CMI can also apply to the Victorian Civil and Administrative Tribunal (VCAT) for a finding of gross misconduct against a councillor.

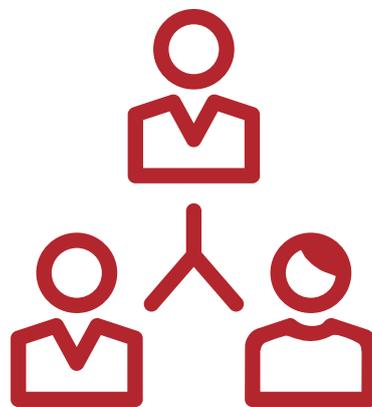
The reforms also amended section 77(1) to make it an offence for a councillor to disclose confidential information, and section 76E(2) to make it an offence for a councillor to direct or seek to direct a member of council staff. As a consequence, the CMI now has the option of prosecuting these matters as criminal matters before the Magistrates' Court or having them heard as serious misconduct before a councillor conduct panel (that is, as disciplinary matters).

The introduction of the new offences better aligns the confidential information and direction of staff provisions with the conflict of interest and misuse-of-position offence provisions, both of which carry significant penalties.

PROPOSED DIRECTION

65. Retain the current enforcement role, functions and powers of the CMI and the inspectorate.

6. Ministerial Oversight of Councils





6. Ministerial Oversight of Councils

Introduction

The minister is responsible for ensuring Victoria's local government sector operates effectively in the interests of citizens and the state. The Act gives the minister a role in relation to matters that are arguably not essential to the governance of individual councils or the integrity of the sector (such as receiving annual reports and providing exemptions for late budget approvals). Before the 2015 amendments to the Act, the minister had limited powers to intervene early if a council was having governance failures although the Act did have mechanisms to hold inquiries and investigations into a council.

The proposed directions aim to ensure the minister has adequate powers to oversee the sector to ensure it is fulfilling its role, and if necessary to intervene in a council to ensure citizens receive the services they deserve and are being effectively and responsibly represented.

6.1 Structure of the sector

ISSUE

One of the minister's most important roles is to ensure the structure of the local government sector is such that Victorians are properly represented: that is, that the number, size and boundaries of councils are appropriate.

Victoria has benefited from the major rationalisation of councils in the 1990s which resulted in efficient and accountable local municipalities. Part 10A of the Act sets out the requirements for changes to municipal districts. These involve the minister establishing local government panels to undertake any proposed restructure reviews and to consider this independent advice before recommending restructuring orders to the Governor in Council. It should be noted that the review is not contemplating changes to external council boundaries or council mergers.

PROPOSED DIRECTIONS

66. Include in the Act principles to apply to a proposal to create a new municipality, that:

- each new municipality shall be viable and sustainable in its own right
- the allocation of revenues and expenditures between municipalities being separated shall be equitable for the residents of each municipality
- the views of the communities affected by the restructuring shall be taken into consideration
- each new municipality shall have sufficient financial capacity to provide its community with a comprehensive range of municipal services and to undertake necessary infrastructure investment and renewal.

67. Other than the proposed direction above, retain the current provisions (in Part 10A) about altering external municipal boundaries.

6.2 Governance interventions

ISSUES

Dismissal of a council is the most-often used governance intervention by the state. To dismiss a council requires an Act of Parliament. There have been six cases of dismissal of a council in Victoria since 1998. In each case, the Minister for Local Government proposed legislation after an independent report identified governance issues at the council. The six cases of dismissal are:

- Greater Geelong City Council (dismissed by the *Local Government (Greater Geelong City Council) Act 2016*; a new council election is due in October 2017)
- Wangaratta Rural City Council (dismissed by the *Local Government (Rural City of Wangaratta) Act 2013*; a new council election is due in October 2016)
- Brimbank City Council (dismissed by the *Local Government (Brimbank City Council) Act 2009*: it was due to return to an elected council in 2012 but administration was extended by the *Local Government (Brimbank City Council) Amendment Act 2012* to March 2015 and further extended by the *Local Government (Brimbank City Council) Amendment Act 2014* to October 2016)
- Glen Eira (dismissed by the *Local Government (Further Amendment) Act 2005* on 11 August 2005 with a new council election on 26 November 2005)
- Nillumbik (dismissed by the *Local Government (Nillumbik Shire Council) Act 1998* in November 1998 with a new council election in March 1999)
- Darebin (dismissed by the *Local Government (Darebin City Council) Act 1998* in May 1998 with a new council election in September 1998).

In each of these cases, the independent reports recommending dismissal identified a pattern of governance issues over a period of time. This indicates that earlier and more targeted interventions by the minister may be more effective in addressing the sorts of governance issues that ultimately result in a council's dismissal. In many instances, the behaviour of one or two individual councillors ultimately led to overall council dysfunction.

The *Local Government Amendment (Improved Governance) Act 2015* implemented several reforms to address governance and conduct issues earlier so that problems can be resolved in a way that reduces the likelihood of a council facing the ultimate sanction of dismissal. This legislation provides the minister with a new power to appoint a municipal monitor to advise on governance issues at a council and to issue a governance direction to that council on the advice of the monitor.

The legislation also provides the minister with the power to recommend to the Governor in Council that an individual councillor be stood down if the councillor is subject to a serious or gross misconduct application; and if a monitor advises the councillor presents a threat to health and safety, or is obstructing the council in the performance of its functions, or is acting inconsistently with the role of councillor. The stand-down period is six months with the option of renewal for a further six months. There is a view in the sector that this new power should be extended.

PROPOSED DIRECTIONS

68. Retain the power of the minister to:

- appoint a municipal monitor in a manner and with the role and powers as currently set out in the Act
- issue a governance direction to a council, noting that other powers of the minister to direct councils (such as the power to direct a council to submit financial statements under section 135) be included in this general power
- stand down a councillor as currently set out in the Act.

69. Empower the minister to recommend that a councillor be suspended by an order in council where the councillor is contributing to or causing serious governance failures at a council. This power to only be exercisable in exceptional circumstances in that:

- the councillor has caused or substantially contributed to a breach of the Act or Regulations by the council or to a failure by the council to deliver good government and

- a council (by resolution), a municipal monitor, the CMI, the Ombudsman or the Independent Broad-based Anti-corruption Commission have recommended that the minister suspend the councillor on these grounds and
 - the council, the municipal monitor, the CMI, the Ombudsman or the Independent Broad-based Anti-corruption Commission have satisfied the minister that the councillor has been provided with detailed reasons for the recommendation and was given an opportunity to respond to their recommendation and
 - the minister is satisfied that if the councillor is not suspended that there is an unreasonable risk that the council will continue to breach the Act or continue to be unable to provide good government for its constituents.
70. Retain the provisions in the Act about the suspension and dismissal of a council in their current form, including the provisions allowing appointment of administrators.

“As a principle, the Act should provide a broad enabling framework, which enables and empowers high performing councils to get on with their business ... while retaining the capacity for the Minister to intervene decisively, where necessary, at an individual or council level in circumstances where repeated governance or performance failures persist.”

KNOX CITY COUNCIL

6.3 Commissions of Inquiry

ISSUES

The Act currently has various mechanisms available to the minister to conduct inquiries into the affairs of councils. This includes recommending the appointment of boards of inquiry to determine disputes between councils, appointing commissioners to inquire into a council and make recommendations to the minister, and appointing local government panels to make recommendations about councillors' allowances and any other matters. These are in addition to local government panels appointed to make recommendations about local government boundaries (see 6.1 above).

Under the rationalised powers proposed here, a commission of inquiry will have the powers set out in the current Act. These include to examine witnesses and have access to documents and places as required to carry out the inquiry. The costs of commissions of inquiry will be borne by the council or relevant parties as determined by the commission.

PROPOSED DIRECTION

71. Streamline the minister's power to conduct inquiries into councils into a single power to appoint commissions of inquiry consisting of one or more commissioners to inquire into and make recommendations to the minister about any matter as requested by the minister. This will include, but not be limited to:
- governance issues
 - financial probity issues
 - disputes between councils and between councils and other parties.

“The minister’s role in ensuring the integrity of governance and standards of behaviour should be a reserve power. Most of the work done in this area should be undertaken by other bodies established by the minister or the Act, be they Councillor Conduct Panels, the Inspectorate or some other agency. The minister’s direct intervention should only be a last resort after all else has failed.”

AUSTRALIAN SERVICES UNION



6.4 Minister's power relating to CEO employment

The current Act empowers the minister to forbid a council from employing a new CEO or entering into a new contract with an existing CEO. The same provision applies for senior officers.

ISSUE

This provision of the Act has not been utilised. However, there have been instances where issues about CEO contract negotiations have come to the attention of the CMI and councillors have consequently been prosecuted for breaching the Act. In such circumstances, it may be appropriate to empower the minister to take preventive action about the employment of a CEO.

PROPOSED DIRECTIONS

72. Retain the existing power to forbid a council from employing a new CEO or entering into a new contract with an existing CEO but amend the power to provide that it can only be exercised on the recommendation of a municipal monitor or the CMI.
73. Remove the power relating to senior officers from the new Act as all staff employment matters should be dealt with by relevant employment laws.

6.5 Minister's power to set a cap on rates

ISSUE

The minister's powers in relation to the Fair Go Rates System are currently in a separate Act.

PROPOSED DIRECTION

74. Bring all provisions (and all other elements) of the Fair Go Rates System into the new Act consistent with the legislative hierarchy in Chapter 10.

6.6 Minister's power to make regulations and issue guidelines

ISSUE

The current Act provides the minister with general powers to recommend regulations to the Governor in Council about any matter necessary to give effect to the Act. It also sets out certain matters about which the minister has the power to issue guidance. Some in the sector have argued that councils meeting the objectives of the Act and achieving the outcomes required should not be required to follow processes in Regulations.

PROPOSED DIRECTIONS

75. Retain the general power for the minister to recommend regulations to give effect to the Act and empower the minister to relieve a council of requirements to follow processes set out in Regulations.
76. Empower the minister to issue non-regulatory guidelines on any matter under the Act.

6.7 Ministerial exemptions

ISSUE

The Act currently enables the minister to exempt councils from certain requirements under the Act. These provisions were intended to provide ministerial oversight of what could be considered basic responsibilities of any efficient corporate enterprise following modern corporate governance standards. The reform directions about these exemptions aim to provide as much autonomy as possible to councils, in the expectation they will have adequate systems to manage these matters.

PROPOSED DIRECTIONS

77. Remove the requirement to request ministerial exemption from public tenders, as explained in Chapter 8.
78. Remove the power requiring a contract for a senior officer: all employment matters for council staff will now be subject to employment law.
79. Explore an alternative method for handling instances of a majority of councillors having a conflict of interest preventing them voting on a planning scheme amendment.



Part B: Innovative, collaborative and efficient councils

Part B explores reform directions designed to:

- strengthen council performance by establishing integrated planning frameworks
- embed sound financial management principles, deregulate business practices to enable innovation and enterprise
- increase collaboration to deliver integrated investment and shared services
- reinforce rigour, consistency and fairness in rating.

7. Integrated Planning





7: Integrated Planning

Introduction

The new Act should support council autonomy. To achieve this, we must remove most of the detailed prescriptive processes from the Act and replace them with principles-based provisions setting out outcomes that councils must deliver. This broad approach is supported by a series of proposals to achieve a properly integrated, longer-term and fully transparent planning and reporting framework organised around the council plan as the core council planning document.

Accordingly, reform directions in this chapter aim to support innovation and integration in strategic planning. This chapter should be read in concert with the reform directions about community engagement in Chapter 4.

7.1 Integration of strategic plans and reports

ISSUES

The Act currently requires a council to prepare a council plan, strategic resource plan, budget and annual report. However, it provides little clarity about the purpose of these documents and how each relates to the others. The consequence is that preparation of the documents may drift into a routine compliance exercise. Rather, there should be an integrated planning and reporting framework for councils based on a clear, fully integrated hierarchy of long, medium and short-term planning.

The council plan is the key strategic plan of the elected council and must fully align with the community plan. All other plans in the framework must then align with the council plan. The annual report becomes the key accountability mechanism.

The current Act gives people the right to make a submission about their council's plan and budget but, as explained in Chapter 4, the right to be engaged is deferred to the end of the preparation process rather than at the beginning. As a result, while the public participation process helps inform the community it does not incorporate their interests and concerns in the plan at the outset.

Chapter 4 explains the proposed direction for a council to undertake a deliberative community engagement process in the early stages of developing the strategic planning documents (that is, the council plan, community plan, financial plan and asset plan).

“The new Act should seek to streamline the planning and budgeting requirements of Councils so they are more coherent and integrated, including the provision of financial planning that spans 10 years.”

LOCAL GOVERNMENT PROFESSIONALS (LGPRO)

PROPOSED DIRECTIONS

80. Include an integrated strategic planning and reporting framework in the Act that identifies the four-year council plan as a council's central strategic planning instrument, and also requires long-term (10 year) plans—being a community plan, financial plan and asset plan—and short-term (1 year) reporting documents—being the budget and annual report (containing all performance reporting).

81. Include in Regulations and guidelines details about the information a council will include in each plan.

"[They need to] keep residents in the loop, These are the areas that need to be addressed and this is how we are going to address them."

QDOS RESEARCH FOCUS GROUP PARTICIPANT

7.2 Council and community plans

ISSUES

The current Act requires a newly elected council to prepare a council plan for its four-year term within six months or by 30 June after a general election. A new council spends the first few months after election in induction, planning and consultation activities, often making it hard for it to meet the 30 June deadline for preparing and adopting the key planning documents.

The situation is further complicated by the fact that, in preparing its council plan, a council does not start in a policy vacuum: it inherits an existing four-year plan and many councils also have 10- or 20-year community plans. A community plan typically describes the community's long-term vision and aspirations and is a vehicle for directly involving the community in the lead-up to council plan preparation. Developing a long-term community plan is now considered best practice and is consistent with the objective of restoring community engagement as a principle of the Act and a core role for councillors. The community plan complements the council plan by including the contributions required to meet the vision, not only from the council but from other levels of government and other contributors (such as business and non-government organisations).

The council plan should be the key planning document of the new council. It should contain the council's strategic vision and other strategic commitments to deliver services and infrastructure. It is important to give councils the time to get this right.

If the council plan is available on a council's website, the requirement to submit it to the minister is redundant.

PROPOSED DIRECTION

82. Require:

- a council to prepare and adopt a four-year council plan by 31 December of the second year after a general election
- preparation of the council plan to be informed by the deliberative community engagement process described in Chapter 4
- the council plan to include information about services, infrastructure and amenity priorities for the council term.

83. Remove the requirement to submit a copy of the council plan to the minister and replace it with a requirement to publish it on the council website and to have the mayor report annually to the community on the achievement of the council plan.

84. Require a council to prepare and adopt a rolling community plan of at least 10 years by 31 December of the second year after a general election to guide strategic planning and inform the preparation of the council plan. Require preparation of the community plan to be informed by the deliberative community engagement process that also underpins the council plan.

85. Set out in Regulations and guidelines what is to be included in the community plan, including a community vision statement.

7.3 Longer-term financial and asset planning

ISSUES

Council financial and asset management would be strengthened by rigorous long-term planning. The Act requires a newly elected council to prepare a strategic resource plan as part of its council plan. The strategic resource plan must be prepared for at least four years, making it a rolling plan that must be updated and adopted by council each year.

In a paper commissioned for the review, John Comrie noted that, 'All states other than Victoria now have legislation in place requiring councils to prepare ten-year, long-term financial management plans.'²⁸ Preparation of a standalone ten-year financial plan also recognises that small variations in assumptions can have a large compounding effect on a council's long-term financial forecasts and financial sustainability.

The maintenance and renewal of infrastructure is a key responsibility of a council and most councils have asset management plans for each class of infrastructure assets. Comrie also notes that, 'In all states other than Victoria, councils are now explicitly required to prepare asset management plans for their major classes of assets and covering a planning horizon of at least ten years.'²⁹ The requirement for these standalone plans for major classes of assets recognises the importance of councils planning for future asset renewal and maintenance.

Victoria's councils need their financial and asset planning to be at least as rigorous as that which occurs in other Australian jurisdictions.

PROPOSED DIRECTIONS

86. Require all councils to prepare and adopt a rolling financial plan of at least ten years by 31 December of the second year after a general election, in accordance with the principles of sound financial management, and for council to review and approve this plan annually.

87. Remove the requirement for a council to prepare a strategic resource plan.

88. Require the financial plan to:

- guide financial planning and inform the council plan
- provide the community with prescribed information about the human resource and capital works assumptions and decision-making underlying financial forecasts
- be informed by the deliberative community engagement process.

89. Require all councils to prepare and adopt a rolling asset plan of at least ten years by 31 December of the second year after a general election, in accordance with the principles of sound financial management, and for a council to review and approve this plan annually. This plan will guide asset planning and inform the council plan.

90. Require the asset plan to include information about new assets, asset retirement, maintenance and renewal requirements for each class of infrastructure assets and to be informed by the deliberative community engagement process.

91. Set out requirements for what is to be included in the financial and asset plans in Regulations and guidelines.

"In terms of specific planning, there is a case for long term financial and community plans that are linked, and updated on a rolling basis, and for linked operational and resourcing plans that align with a council term..."

VICTORIAN LOCAL GOVERNANCE ASSOCIATION

²⁸ Comrie, J 2016, Local Government Act Review: Streamlining Council Financial Requirements, pp 4–5

²⁹ op. cit. p 4.



7.4 Improved budget guidance

ISSUES

The Act requires a council to prepare a revised budget if circumstances arise which cause a material change in its budget and which affect the financial operations and position of the council. However, the legislation provides no guidance about what constitutes a material change in the budget. Accordingly, few councils revise their budgets other than if they want to take out borrowings which are unbudgeted.

While it is common for budgets to vary throughout the year due to unforeseen circumstances, there is no requirement for a budget to be reviewed mid-cycle to determine whether a revised budget is required. It is common practice for state and federal governments to undertake midyear budget reviews and to reforecast their expected end-of-year results. Most Victorian councils undertake this exercise as a matter of good practice although there is no requirement for the review to be made public.

A council is already required to publish its budget on its website, so the requirement to submit it to the minister is redundant.

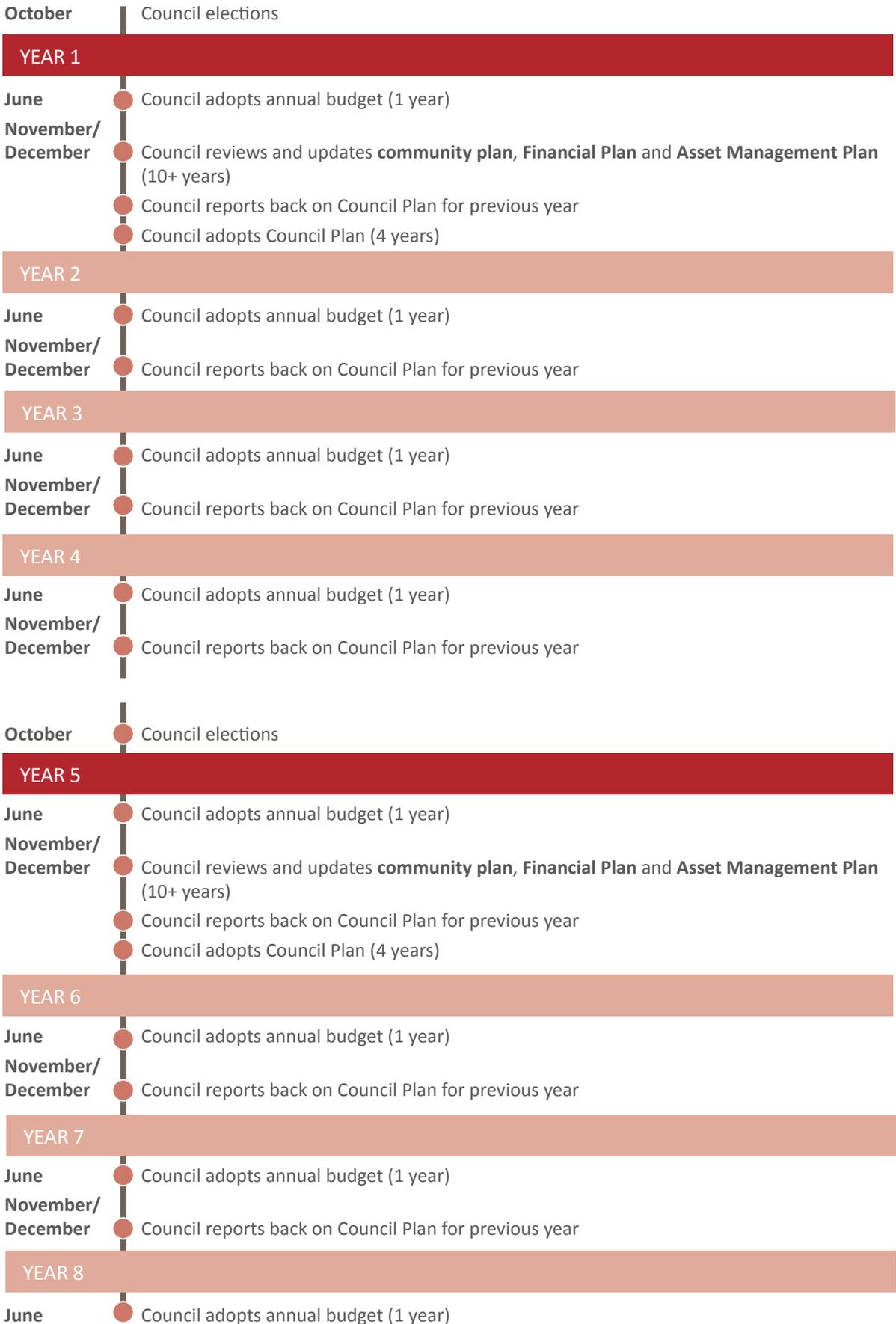
PROPOSED DIRECTIONS

92. Require a council to prepare a budget annually and to review it mid-cycle at 31 December each year. Require the CEO to report the results and to explain material budget variations, including whether a revised budget is required, to council.
93. Include in the Act a clearer definition of material variation in order to clarify when a revised council budget must be struck.
94. Remove the requirement to submit a copy of the adopted budget to the minister.

“Clarification is needed under section 128 that a revised budget is not a quarterly budget review (provide clear distinction between the two). Revised budgets should be prescribed for certain situations of significance i.e. decisions to take on borrowings, new special charge scheme and not changes in expenditure resulting from normal operations and reasonable variations from budget.”

GREATER SHEPPARTON CITY COUNCIL

Figure 3: Indicative Timeline for Strategic Planning



7.5 Strengthened role for audit and risk committees

ISSUE

The Act requires a council to establish an audit committee as an advisory committee. The audit committee plays an important oversight role. Most council audit committees combine councillors and independent members responsible for a broad range of financial and risk management functions. However, the audit committee role is not clearly specified in the Act and as a consequence its functions vary from council to council.

There is support for this committee to assume a broader risk management role over and above financial auditing.

PROPOSED DIRECTIONS

95. Require all councils to establish an audit and risk committee with an expanded oversight of:

- the integrated strategic planning and reporting framework and all associated documents
- financial management and sustainability
- financial and performance reporting
- risk management and fraud prevention
- internal and external audit
- compliance with council policies and legislation
- service reviews and continuous improvement
- collaborative arrangements
- the internal control environment.

96. Require the audit and risk committee to include a majority of independent members and include councillors, but not council staff.

97. Require the audit and risk committee to report to the council biannually and require each council to table the biannual audit and risk committee report at a council meeting.

7.6 Improved accountability to the community

ISSUES

The Act requires a council to prepare an annual report containing a report of operations, audited performance statement and audited financial statements. The report of operations is the key reporting document by which a council is accountable to the community for delivery of its strategic plans. It must include information about major initiatives; a governance and management checklist; service performance indicators; and a range of organisational, staffing and other information required by the Regulations. However, its contents are not well aligned to the strategic planning documents, often making it difficult for the community to assess the council's performance.

A council must publish its annual report on its website, so the requirement to submit it to the minister is redundant.

PROPOSED DIRECTIONS

98. Continue to require a council to include information in its annual report of operations about achievements against its council plan, community plan, financial plan, asset plan and budget.

99. Remove the requirement for a council to submit a copy of its annual report to the minister.

100. Require a council to present its annual report at an annual general meeting at which the mayor must report progress on implementing the council plan.



7.7 Regional-level planning and integration with state government policy and planning

ISSUE

To promote the principles of collaboration and integration, a council plan could be required to consider regional or statewide objectives as well as local issues. The Queensland Government requires a council plan to consider regional issues.³⁰ New South Wales and South Australia require a council plan to have regard to state plans. Many council plans in Tasmania also incorporate state-level planning objectives.

PROPOSED DIRECTION

101. Require that in developing its council plan, a council take account of relevant aspects of regional and state plans that affect the municipality.

30 Tan, SF and Artist, S 2013, *Strategic Planning in Australian Local Government: a comparative analysis of state frameworks*, p. 22

8. Sustainable Finances for Innovative and Collaborative Councils





8. Sustainable Finances for Innovative and Collaborative Councils

Introduction

The review of the Act aims to create a legislative environment that embraces innovation, modern business practices and microeconomic reform. The proposed directions in this chapter remove provisions that impede collaboration and innovation, including those needing elaborate corporate structures for simple service-sharing arrangements between councils. The directions aim to strengthen opportunities for shared facilities and major projects and for aggregation in the purchase of shared services and infrastructure.

The review also provides the opportunity to modernise councils' commercial policy approaches in areas such as investment, debt management and procurement. It seeks innovation and collaboration within a rigorous framework for sound financial management and review. Stronger oversight by independent audit and risk committees is a key element of the proposed directions.

8.1 New financial sustainability principles

ISSUES

The Act defines principles of sound financial management, which require councils to manage their finances responsibly. This requires that councils establish a mandated budget and a reporting framework consistent with the principles of sound financial management. The principles also include the need for rating policies that are consistent with a stable rates burden. However, the Act does not currently provide an adequate degree of clarity or demand sufficient transparency about how sound financial management principles must apply to strategic planning and decision-making. Given this, it is not surprising that there are no sanctions imposed on councils that do not comply with the principles.

The principles do not specifically make reference to financial sustainability, which should be the ultimate goal of financial management.

PROPOSED DIRECTIONS

102. Require a council to embed the principles of sound financial management in its council plan, community plan, financial plan and asset plan.

103. Include in the Act the following principles of sound financial management:

- manage financial risks prudently, having regard to economic circumstances
- align income and expenditure policies with strategic planning documents
- undertake responsible spending and investment for the benefit of the community to achieve financial, social and environmental sustainability over the long term
- provide value-for-money services and infrastructure which are accessible and responsive to the community's needs
- ensure that decisions are made and actions are taken having regard to their financial effects on future generations
- ensure full, accurate and timely disclosure of financial information about the council
- undertake regular stress testing and evaluation of financial risk management.

8.2 Removal of Best Value principles

ISSUES

The Act contains best value principles that a council must follow in providing council services; and it must report annually that it is doing so. The best value provisions aim to promote benchmarking and ensure services meet minimum standards. However, councils apply the principles in a wide range of ways and there have been few service-level reviews published that define the actual cost and quality of a service by comparing similar groups of councils. Establishing what constitutes best value is consequently very hard. There are also no sanctions for councils that do not comply with the principles. Given this, it may be better to embed the intent of the best value principles into the relevant sections of the Act where services are considered (that is, in the council plan, financial plan, asset plan, budget and annual report) and more generally into the principles of sound financial management.

PROPOSED DIRECTION

104. Remove the current best value provisions, as value for money is included in the new principles of sound financial management.

8.3 Streamlined procurement practices

ISSUES

The Act requires a council to have a procurement policy that sets out the principles, processes and procedures it will apply to all purchases of goods, services and works. It must also publicly tender for goods or services valued at \$150,000 or more, or \$200,000 or more for works. These requirements aim to ensure that councils and their communities achieve value for money through open and fair competition. They also seek to ensure councils follow high standards of probity, transparency, accountability and risk management.

A council must review its procurement policy annually. This is time-consuming for councils. Also, the tendering thresholds are misaligned to contemporary value and fail to distinguish between councils of different scale (such as of size and location). This often results in councils calling tenders to satisfy redundant requirements rather than to serve the public interest. The process for seeking ministerial exemptions is also time-consuming, often deterring councils from pursuing this option even when it provides public value.

Councils also see the current provisions as a disincentive to collaborating with other councils in the procurement and delivery of services and infrastructure. They are entirely at odds with the enabling, autonomous and enterprising management approach expected of modern organisations.

“Service sharing should be encouraged and codified in the Local Government Act. The Act should also specifically raise the potential for service sharing not just between LGAs, but between Local and State Governments and, where relevant, other government entities.”

CR SEBASTIAN KLEIN

PROPOSED DIRECTIONS

105. Require a council at the start of the council term to develop and adopt a procurement policy that is consistent with the principles of sound financial management and require that all council procurement practices and contracts comply with this policy.

106. Specify in Regulations what must be included in a procurement policy, including when council will go to tender for the provision of goods and services (including thresholds), the process for going to tender and what collaborative arrangements have been explored to deliver value for money for the council.

107. Require the audit and risk committee to review compliance with the procurement policy and require a council to report in its annual report any non-compliance with its procurement policy.

108. Require a council to make its procurement policy available on its website.

- 109. Remove the requirement for an annual review of the procurement policy and the requirement to obtain ministerial exemptions for failure to go to tender in certain circumstances.
- 110. Provide councils with automatic access to state purchase contracts, whole-of-Victorian-Government contracts and the *Construction Suppliers Register* to save time, strengthen standards and improve efficiency.

“Councils should be empowered to determine the thresholds for different forms of procurement and the means by which public notice is issued. Individual Councils are then able to appropriately tailor their policy and procedures to their respective needs.”

LGPRO PROCUREMENT SPECIAL INTEREST GROUP

8.4 Improved investment practices

ISSUE

The Act allows a council to invest money in certain securities (including Commonwealth and Victorian Government securities), with authorised deposit-taking institutions and in any other manner the minister approves. However, the range of council investment vehicles allowed in Victoria is much narrower than in other Australian states, which may result in lower returns for Victorian councils.

PROPOSED DIRECTIONS

- 111. Require councils to develop and adopt an investment policy in accordance with the principles of sound financial management and require all council investment decisions to be made in accordance with that policy.
- 112. Require the audit and risk committee to review compliance with the investment policy and require a council to report any non-compliance with its investment policy in its annual report.

“Councils need broad powers of investment. While it is appropriate that council investments are not too speculative, the current provisions regarding entrepreneurial powers act as a disincentive to innovation. Section 193 is unwieldy and difficult to interpret, and in practice this provision deters innovation and collaboration...”

MELBOURNE CITY COUNCIL

8.5 Improved debt practices

ISSUES

The Act allows a council to borrow money to perform its functions or exercise its powers and obtain an advance by overdraft from an authorised deposit-taking institution subject to the principles of sound financial management. However, the range of available borrowings could be expanded, which would strengthen the existing power to borrow and the ways borrowings can be applied. As well, the overdraft provisions may be redundant given they stipulate the requirement to comply with the principles of sound financial management which are now to form an overarching condition of all aspects of council financial management, including debt practices.

PROPOSED DIRECTIONS

- 113. Require a council to develop and adopt a debt policy in accordance with the principles of sound financial management and only enter into debt in accordance with that policy.
- 114. Require the audit and risk committee to review compliance with the debt policy and require a council to report any non-compliance with its debt policy in its annual report.
- 115. Remove the overdraft provisions and remove the requirement for the minister to approve the repayment of an overdraft from its borrowings.



8.6 Streamlined sale and exchange of land provisions

ISSUES

The Act allows a council to purchase or compulsorily acquire land in connection with its functions or powers. If a council has acquired any land for a particular purpose, it can use the land for another purpose if it is satisfied the land is not required for the original purpose.

A council must notify the public of its intention to sell, exchange or lease land at least four weeks in advance and must allow public submissions about its intention. There are limitations to this power where the transfer, exchange or lease of the land is to the Crown, a minister, public body or statutory trustee. The requirement to notify the public applies even if the transfer, exchange or lease of land has in most instances already been approved by the council as part of the budget process. However, their disclosure as part of the budget is not mandated.

PROPOSED DIRECTIONS

116. Require councils to expressly describe in their budgets any intention to sell, exchange or lease land. This will enable consultation with the community during the budget process.
117. Remove the requirement for a council to allow a person to make a submission under the Act in relation to the sale, exchange or lease of land where the matter has been considered as part of the budget consultation.

8.7 Streamlined insurance requirements

ISSUE

Under current arrangements, a council must take out insurance against public liability and professional liability. Further, a council may comply with this requirement by becoming a member or participating in a scheme approved by the minister. Neither the minister nor the department have the technical expertise to advise councils on insurance matters. The power for the minister to approve insurance schemes in this way runs counter to the expectation that a council assume responsibility for adhering to sound financial management principles in the conduct of its operations and decision-making.

PROPOSED DIRECTION

118. Remove from the Act any role for the minister in determining or approving the kinds of insurance schemes councils may wish to participate in and remove from the Act the requirement for councils to have public liability and professional liability insurance. As a body corporate and organisation with a number of roles and responsibilities to the community and its staff, it is expected as a matter of course that councils take out appropriate insurance policies consistent with effective risk management as well as with the sound financial management principles in the Act.

8.8 Entrepreneurial powers integrated into new collaborative arrangements

ISSUE

The Act provides a process for a group of councils to agree to form a regional library corporation. This enables member councils to provide a higher level of library service than would be possible as individual councils; it also results in economies of scale and saves money. However, the process in the Act is cumbersome and councils need to adopt an elaborate corporate structure to use it. It also limits collaborative mechanisms to regional library corporation arrangements: collaborative arrangements for the delivery of other council services are currently severely restricted and should be encouraged in the new Act.

“...the Act needs to ensure, encourage and enable much greater level of collaboration across the local government sector on service delivery, procurement, boundary interface issues and other projects of common significance.”

MELBOURNE CITY COUNCIL

Councils now have the power under the Act to enter into commercial arrangements subject to strict requirements and, where applicable, ministerial approval. This process can be onerous to apply, approval slow and the types of commercial activities limited, restricting commercial opportunities and creating disincentives for collaborative arrangements. Creating a new provision to enable streamlined, collaborative arrangements would allow the existing entrepreneurial provisions to be removed.

PROPOSED DIRECTION

119. Remove the entrepreneurial powers in the Act and include revised powers to allow councils to participate in the formation and operation of an entity (such as a corporation, trust, partnership or other body) in collaboration with other councils, organisations or in their own right for the delivery of any activity consistent with the revised role of a council under the Act.

9. Fair Rates and Sustainable and Efficient Councils





9: Fair Rates and Sustainable and Efficient Councils

Introduction

The proposed directions in this chapter aim to achieve greater consistency and transparency in rating policy and to embed the principles of sound financial management as the basis for all commercial and financial decisions that councils make. They include mandating a single land valuation system for rating to enable comparable assessment of rating effort. They also include review and modernisation of the exemptions framework to bring it into line with modern legislation and contemporary community standards.

As part of the effort to improve transparency, the proposed directions include establishing clearer criteria for which differential and special rates apply; establishing minimum requirements for information to ratepayers on their rates notice; and options to provide greater convenience for ratepayers and efficiency for council administrations in collecting and processing rates.

9.1 Improved transparency of revenue and rating systems

ISSUE

While rates and charges are a council's primary source of revenue, they are supplemented by state and Commonwealth grants, user fees and charges and other sources of revenue (such as developers' contributions). A revenue and rating strategy can help a council take a comprehensive approach to considering all its revenue sources when setting its pricing policy for services (that is, the amount it will subsidise its services through rates and charges after taking account of all other sources of revenue). A revenue and rating strategy is also a useful mechanism for engaging with the community about the rating structure a council will use to allocate the rate burden to different types and classes of properties, based on the principles of taxation.

PROPOSED DIRECTIONS

120. Require a council to prepare a revenue and rating strategy that:

- is for at least four years
- outlines its pricing policy for services
- outlines the amount it will raise through rates and charges
- outlines the rating structure it will use to allocate the rate burden to properties.

121. Require a council to align the strategy to its financial plan and to review and adopt it after each general revaluation of properties.

“Consideration could also be given to include a ‘revenue policy’ in the budget and reporting framework. Such a policy could enhance transparency and accountability...”

VICTORIAN LOCAL GOVERNANCE ASSOCIATION

9.2 Clearer exemptions for rateable land

ISSUES

The Act states that all land is rateable subject to some exemptions including land owned or vested in the Crown, minister or a council; land used exclusively for charitable purposes; land which is vested in or held in trust for any religious body; land which is used exclusively for mining purposes; and land used exclusively as a club for returned servicemen.

The current exemptions are unclear and as a result can be inconsistently applied (such as where land is owned by a for-profit organisation but leased to a charitable organisation). Some provisions (such as the exemption for land used exclusively for mining purposes) should be reconsidered, given that the predominant mining activity (gold mining) when the exemption was originally included in the Act is no longer Victoria's main mining activity. All other jurisdictions (including the Northern Territory) rate mining operations recognising the impacts of mining on local government infrastructure, services and the environment. It is estimated that the annual rates foregone by councils in Victoria in 2014–15—assuming all mining assessments were active—was \$3 million.

PROPOSED DIRECTIONS

122. Define all land as rateable except for the following four categories of land that would be exempt:

- land of the Crown, public body or public trustee that is unoccupied or used exclusively for a public or municipal purpose (to be defined to mean to perform public functions for the common good)
- land vested or held in trust for any charitable not-for-profit organisation and used exclusively for a charitable purpose (to be defined to mean the relief of poverty, the advancement of education, the advancement of religion or for other purposes beneficial to the community and the environment)
- land vested or held in trust for any religious not-for-profit body and used exclusively as a residence of a minister of religion or place of worship or for the education to be a minister of religion
- land held in trust and used exclusively as a not-for-profit club for persons who performed service duties under the Veterans Act 2005. **(Option 1)** or

Include land subject to a lease, sublease, licence or sublicense that is used for the purposes in Option 1, provided the lease, sublease, licence or sublicense is for a nominal amount (that is, the lease or rental amount is very small compared with the actual market lease or rental amount: commonly called a peppercorn rent).

Make land rateable that is:

- owned by a for-profit organisation but leased to a charitable organisation
- used exclusively for mining purposes. **(Option 2)**

123. Retain the capacity for councils to grant rebates and concessions and apportion rates based on separate occupancies or activities.

“In other commercial and industrial situations growth in industry will generally lead to a growth in the rate base, however with mining the result is a reduction in the rate base as farm land is lost and the mining activity that replaces it is exempt from rates under Section 15 4 of the Local Government Act 1989 (the Act).”

HORSHAM RURAL CITY COUNCIL

9.3 A consistent method of valuing land for the purpose of raising general rates

ISSUES

The Act allows a council to use site value (SV), net annual value (NAV) or capital improved value (CIV) for the purposes of raising general rates where:

- SV is the value of the land
- CIV is the value of the land and any improvements on the land
- NAV is 5% of the CIV or for commercial/industrial assessments it is the net annual rental value.

Currently, 73 councils use CIV and the remaining six use NAV.

Allowing councils to choose among the three valuation systems confuses land owners and may be seen as arbitrary, given that councils apply the systems differently. As one of the commissioned papers for the review argued, 'whilst the system is relatively efficient it fails the tests of equity, simplicity and neutrality'³¹. It is also potentially a platform for 'comparing the rating effort between municipalities and therefore a basis with other measures to compare the efficiency and effectiveness of council service delivery'³².

There is a strong case to adopt CIV as a uniform system for valuing land as almost all Victorian councils use it and, as it includes all improvements in the valuation, it reflects more closely the capacity-to-pay principle. As well as improving consistency, it is also more transparent given that the public find the concept of a market value of a property much easier to understand than NAV or SV.

PROPOSED DIRECTION

124. Require councils to apply capital improved value as the single uniform valuation system for raising general rates. The City of Melbourne would be exempt from this provision.

"The capital improved valuation (CIV) of land is an accepted and understood method for rating and arguably CIV should be universal."

GREATER GEELONG CITY COUNCIL

9.4 Municipal charge to be fixed at a maximum of 10%

ISSUES

A council may declare a municipal charge on all rateable land, to be levied against all ratepayers, as a general contribution to the administration cost of the municipality. The Act prescribes that total revenue from municipal charges cannot exceed 20% of the total of revenue from municipal charges and general rates in the financial year. The average proportion of revenue derived from municipal charges for all councils for the 2015–16 financial year was 9.1%.

There are equity issues applying the municipal charge, given it is a flat tax. There is also a lack of transparency inherent in its application as administration costs—the justification for the charge—are not defined. A viable approach to balancing the dependence of some councils on municipal charges may be to retain a council's right to declare a municipal charge but reduce its maximum allowable percentage contribution to revenue.

PROPOSED DIRECTION

125. Fix the municipal charge at a maximum of 10% of the total revenue from municipal rates and general rates in the financial year, divided equally among all rateable properties.

³¹ Blacher, Y 2016, Local Government Act Review: Imagining Local Government in the 21st Century, p. 12

³² op.cit., p. 12.

“The Municipal Charge needs to be limited to a maximum of 10% of the overall rate take as it is a flat charge which falls disproportionately on low valued properties.”

CR STEPHEN HART

9.5 Increased transparency in the levying of differential rates

ISSUES

A council may raise any general rates by the application of a differential rate if it uses the CIV system of valuing land. If a council declares a differential rate for any land, it must specify the objectives of the differential rate, define the types or classes of land to which it applies, explain the reasons for the use and level of the rate, and specify the characteristics of the land which meet the criteria for declaring the differential rate. The highest differential rate must be no more than four times the lowest differential rate. A council must also consider any relevant ministerial guidelines before declaring a differential rate.

Some submissions argued that the Act should mandate reduced differential rates for particular types of property (such as farm land and retirement villages). For farm land, the argument is that depending on land for your income results in a higher-than-usual rating burden: farmers must have land to farm; it is essential for their livelihood; so subjecting them to higher rates without considering their capacity to pay violates the equity principle. Some submissions also argued that farms have a perceived lower level of access to council services.

However, mandating a rate subsidy for a property type means providing a discount, the cost of which would be borne by other ratepayers who would in effect be paying more. Historically, councils have made decisions about fairness and equity, taking account of their municipality's particular requirements and accepting the costs and benefits of doing so via the rating system. A provision for a compulsory differential rate for one property type would be likely to greatly increase the complexity of the rating system, with consequences for fairness and equity for the whole community.

In the case of retirement villages, the valuation of the property (and so the rate) already takes account of any diminution of access or proximity to municipal services. A mandated differential rate for this class of property may have the effect of distortion, which could reduce fairness and equity.

The alternatives to address these issues are either to mandate reduced differentials for farm land and retirement villages or retain the current provisions, recognising that the types and characteristics of land are different within each individual municipality. Differential rating is best determined by councils to reflect local circumstances.

PROPOSED DIRECTIONS

126. Retain differential rates in their current form. Continue through ministerial guidelines to advise that farm land and retirement villages are appropriate for the purposes of levying differential rates at the discretion of councils.
127. Require councils to clearly specify how the use of differential rating contributes to the equitable and efficient conduct of council functions compared to the use of uniform rates (including specification of the objective of and justification for the level of each differential rate having regard to the principles of taxation, council plans and strategies and the effect on the community).
128. Retain the requirement that the highest differential rate must be no more than four times the lowest differential rate.

9.6 Streamlined service charges

ISSUES

The current Act allows a council to declare a service rate or annual service charge or a combination of the two for a specific purpose (such as providing a water supply, collecting and disposing of refuse and providing sewage services or any other prescribed service). This is distinct from the municipal charge in that it is not a general administrative charge but rather a charge for a specific service. These charges may also be applied to non-rateable land. However, councils no longer have responsibility for water supply and sewage services so the power to levy service rates and charges for these purposes is now redundant. Councils may also want to levy other service rates or charges (for example, an environmental charge to fund the purchase of green power for public lighting or an infrastructure charge to fund asset renewal).

The existing name—service rates and charge—creates confusion, giving the impression that these charges are part of the general rate.

PROPOSED DIRECTIONS

129. Retain service rates and charges, renamed 'service charges' but remove their application to the provision of water supply and sewage services.
130. As part of these changes, provide the minister with the power to prescribe the setting of other service charges in Regulations.

9.7 More transparent special charges

ISSUES

A council can declare a special rate or charge or a combination of both on rateable land. It can do this to pay specific council expenses or to repay an advance, a debt or a loan to perform a function or exercise a power the council considers of special benefit to the people required to pay the rate or charge.

Before declaring a special rate or charge, a council must determine the total amount of the special rates and charges it will levy and the criteria it will use as the basis for declaring the special rates and charges. It calculates the maximum amount it will levy from all people in the scheme by multiplying the total cost by the benefit ratio (which is the estimated proportion of the total benefits that will accrue as special benefits to all people in the scheme). If a council proposes to levy a special rate or charge to recover more than two-thirds of the total cost of the scheme, it must allow affected ratepayers to object and may not proceed if a majority of affected ratepayers object.

Special rates and charges are often difficult to levy as the majority of affected ratepayers can stop a proposed scheme where they are funding more than two-thirds of the cost. This is especially true for shopping strips and town centres where councils use such schemes to fund marketing, promotion and other services. There is no guidance about the criteria for declaring the scheme or the benefit ratio. This contributes to inconsistency in the application of special rates and charges. Finally, there is also some confusion about whether these are part of the general rate or are a separate charge.

PROPOSED DIRECTION

131. Retain special rates and charges, but provide clearer guidance in the Act about the purpose of special rates and charges, and about the criteria councils should use when declaring them and determining the benefit ratio.

9.8 More flexible rate payment methods

ISSUES

A council must allow a person to pay a rate or charge (other than a special rate or charge) in four instalments or as a lump sum on a date fixed by the minister. A council can also provide incentives for early payment of a rate or charge before the due date. However, some argue that the current lump-sum arrangements put financial strain on councils because receiving the lump-sum payment in February creates cash-flow difficulties. Councils and ratepayers would all benefit from more flexible payment arrangements and methods, particularly in cases of hardship.

PROPOSED DIRECTION

132. Allow councils to offer ratepayers the ability to pay by lump sum or more frequent instalments on a date or dates determined by a council, provided all ratepayers have the option to pay in four quarterly instalments. Penalty interest when it is charged is to be charged on any late payment from the respective instalment due date.

“A key concern for people is the pressure of the quantum of rates and how they are legislated to be paid. Greater freedom should be set so that councils can offer a range of payment options to rate payers.”

SOUTH GIPPSLAND SHIRE COUNCIL

9.9 Greater autonomy in applying rebates and concessions

ISSUE

A council may grant a rebate or concession for any rate or charge to assist the proper development of the municipality; to preserve buildings or places of historical or environmental interest; to restore or maintain buildings or places of historical, environmental, architectural or scientific importance; or to assist the proper development of part of the municipality. However, the application of rebates and concessions is very restrictive. It may prevent a council from incentivising activities that are beneficial to the broader community or supporting some groups in the community on equity grounds.

PROPOSED DIRECTION

133. Allow a council to use rebates and concessions to support the achievement of their council plan's strategic objectives, provided that the purpose is consistent with their role and functions as specified in the Act.

“In recent years, more and more Councils are recognising that extra assistance needs to be given to lower income ratepayers and provide their own, Council funded, waivers or concessions. The current legislation does not make this process easy and straight forward...”

REVENUE MANAGEMENT ASSOCIATION

9.10 Clearer guidance on land ceasing to be rateable

ISSUES

If land ceases to be rateable land during the financial year for which a rate or charge has been levied on it, a council must, if any payment of the rate or charge has been made, refund to the current owner of the land an amount proportionate to the part of that financial year remaining after the land ceases to be rateable land. If none of the rate or charge has been paid, the council must require the person to only pay an amount proportionate to the part of that financial year before the land ceases to be rateable land. However, where a person successfully appeals a decision of council about their rates and charges (such as about the rateability of their land or the class or type of their land for the purposes of applying a differential rate), there is ambiguity in the current provisions as to the timeframe to which the appeal decision applies (that is, whether it applies retrospectively).

PROPOSED DIRECTION

134. Clarify in the Act that, where a ratepayer successfully challenges the rateability of land, a refund of rates may only be backdated to the date of most recent ownership.

9.11 Uniform process for reviewing and appealing rates and charges

ISSUES

The Act sets out the grounds for which reviews and appeals of rates and charges may be raised, and the appropriate body. It also sets out the time periods for lodgement, which vary according to the nature of the appeal. A person aggrieved by a rate or charge may appeal to the County Court for a review on specific grounds (such as that the land in question was not rateable land). The appeal must be lodged within 60 days of receiving the first notice.

Where a council applies differential rates, an owner or occupier affected by a council decision to classify or not classify the land as belonging to a particular type or class can apply to VCAT for a review within 60 days of receiving the notice.

A person may apply to VCAT on special grounds for a review of a council decision imposing a special rate or charge. This must be done within 30 days of receiving the first notice. A person may also apply to VCAT for a declaration about the validity of a decision to impose a special rate or charge. In determining an application, VCAT must take into account any relevant planning scheme.

The different grounds and appeal mechanisms currently available under the Act can confuse people seeking a review or wanting to appeal a rates and charges decision. The lack of a consistent approach may result in people not effectively using the review or appeal processes to exercise their rights.

PROPOSED DIRECTION

135. Establish a uniform process and timeline for people wanting a review or to appeal a rates or charges decision.



9.12 Inclusion of *Cultural and Recreational Lands Act 1963* rating provisions

ISSUES

The primary purpose of the *Cultural and Recreational Lands Act 1963* is to administer the acquisition and rating of lands used for cultural, recreational, sporting and similar purposes. 'Recreational lands' is defined as lands which are used for outdoor, sporting, recreational or cultural purposes or similar outdoor activities; lands which are used primarily as agricultural showgrounds; the Melbourne Cricket Ground; the Flemington Racecourse land; the National Tennis Centre land; or lands (whether or not otherwise rateable) which are declared by order of the Governor in Council to be recreational lands.

The *Cultural and Recreational Lands Act 1963* states that such rates as the council thinks reasonable are to be paid to the council each year for the recreational lands, having regard to the services they provide and to the benefit the community derives from them. A council can also impose and collect a reasonable charge for any service it provides or makes available to any recreational lands. Allowing council to determine rates based on what it considers reasonable allows scope for arbitrariness and may contribute to uncertainty.

There appears to be no good reason to isolate rating provisions for recreational lands in another Act. Incorporating these provisions in the Act would ensure greater consistency in the setting of rates and charges on recreational lands.

PROPOSED DIRECTION

136. Incorporate the municipal council rating provisions in the *Cultural and Recreational Lands Act 1963* in the Local Government Act. Require in the Act that councils disclose the rates that are struck for cultural and recreational lands.

“The Cultural and Recreational Lands Act 1963 should be incorporated into the Local Government Act because it is an Act that’s primary purpose is for the administration of rates that are payable to Council’s in respect of recreational Lands. There is no apparent reason why this Act should continue to exist in isolation.”

DOMENIC ISOLA, CEO HUME CITY COUNCIL

9.13 Inclusion of *Electricity Industry Act 2000* rating provisions

ISSUE

The primary purpose of the *Electricity Industry Act 2000* is to regulate the electricity supply industry. Section 94 of this Act allows a generation company that is liable to pay rates under the Act to elect to pay amounts agreed between the generation company and a council.

There appears to be no good reason to isolate rating provisions for the electricity industry in another Act. Incorporating these provisions in the Act would ensure greater consistency in the setting of rates and charges on land used for generation functions.

PROPOSED DIRECTION

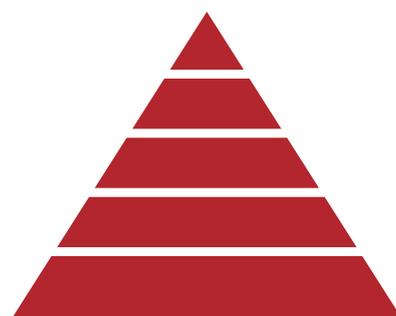
137. Incorporate the municipal council rating provisions in the *Electricity Industry Act 2000* in the Act.



Part C: An easy to read, accessible act

The Act will set out the principles by which councils are to achieve outcomes clearly expressed in the Act. Processes for achieving these outcomes will be set out in Regulations. This final part outlines the legislative framework for creating an clear and accessible Act.

10. A Rational Legislative Hierarchy





10: A Rational Legislative Hierarchy

Introduction

Chapter 10 examines the organising framework for a new act and the harmonisation of provisions in the Local Government Act with other legislation that imposes obligations on councils. It outlines an organising framework for an easy-to-read, accessible act. In particular, this chapter sets out proposed directions to create a systematic legislative hierarchy comprising:

- a principle-based Act which provides greater autonomy to councils alongside effective oversight
- Regulations that prescribe the processes and minimum requirements for achieving the Act's required outcomes
- practical, best-practice guidance about ways of complying with the Act's requirements.

10.1 Legislative hierarchy

ISSUE

The current Act was originally intended to provide councils with broad discretion in the exercise of their roles and was therefore initially less prescriptive than the *Local Government Act 1958*. However, subsequent amendments have introduced many more (prescriptive) requirements. Complying with these requirements is often resource-intensive for councils and does not necessarily result in better governance. The amendments have also resulted in an Act with unnecessary detail in some areas and too little detail around provisions that are arguably more significant. It has also resulted in contradictory requirements and insufficient clarity in some areas.

PROPOSED DIRECTIONS

Hierarchy

138. Create a systematic legislative hierarchy comprising new principle-based provisions in the Act and new Regulations setting out the processes required to meet the obligations set out in the Act, and with the capacity for the minister to issue ongoing non-statutory sector guidance as required about any aspect of the Act.

Principle act

139. Include an overarching statement of the Act's objectives, intended outcomes³³ and a plan of the remaining provisions in the Act.

140. Include high-level statements to frame the structure, language and content of the remainder of the Act, including new sections setting out the roles and functions and powers of councils.

Subordinate legislation

141. Include a general power for the minister to make Regulations setting out the requirements councils must meet when exercising their powers or discharging their responsibilities under the Act (for example, requirements about the conduct of elections and mandated obligations under the councillor code of conduct framework). Include in this power capacity for other relevant subordinate legislation (such as legislative instruments like ministerial orders and governor-in-council orders) with the subordinate legislation only relating to matters permitted by the Act.

³³ The Western Australian legislation (*Local Government Act 1995*) provides an example of such a statement.

142. Empower the minister to release a council from the processes set out in Regulations if the council can show it is successfully discharging its obligations under the Act using different processes.

Non-legislative guidance

143. Include a general power for the minister to make guidelines to supplement Regulations on any issue related to the Act (such as best-practice versions of documents councils must adopt like councillor codes of conduct, budget documents, meeting procedures and councillor briefing processes). The presumption would be that, by adopting these best-practice documents, a council would comply with the Act and Regulations.

144. Empower the minister through the ministerial directions power to require a council to adopt these best-practice policies and procedures where there have been governance failures.

Figure 4: Proposed Legislative Hierarchy



10.2 Principle-based obligations in the act

ISSUES

In 2003, the current Act was amended to include a set of principle-based statements in a preamble and charter at the front of the Act. The preamble is a broad statement of the purpose and intent of the Act. The charter comprehensively describes the functions, role and powers of councils.

These high-level statements were intended to provide a clear definition of local government and to frame the interpretation of the remainder of the Act. The language and concepts in both the preamble and the charter were not, however, subsequently reflected in other parts of the Act. This has resulted in a disconnect between these provisions and the remainder of the Act. These provisions have arguably been of little help to the sector and the community to understanding the role and functions of councils in Victoria.

PROPOSED DIRECTION

145. Require councils to take the following principles into account when performing their functions and exercising their powers:

- the need for transparency and accountability
- the need for deliberative community engagement

- the principles of sound financial management
- the economic, social and environmental sustainability of the municipality
- the potential for cooperation with other councils, tiers of government or other organisations
- plans and policies in relation to the municipality, region, state and nation
- the need for innovation and continuous improvement.

These principles will underpin the more specific requirements in the Act.

“Prescription within the Act needs to be fair and reasonable, primarily focused on matters of principle rather than methodology...”

MURRINDINDI SHIRE COUNCIL

10.3 Prescriptive requirements in regulations

ISSUES

The new Act will provide statutory powers and responsibilities to councils but will not say how they are to exercise these powers or discharge their responsibilities. This is in contrast to the current Act which provides a high level of prescriptive detail about some but not all matters.

While this will enable a council to be more innovative and responsive in meeting community needs, some detailed requirements and limitations will continue to be necessary to ensure a council meets the standards its community and the state government expect. This is particularly important where a council's actions or decisions directly affect constituents (such as the levying of rates) or where requirements relate to the overall integrity of the sector (such as the conduct of elections).

In the past, the areas of the Act subject to the most amendment were those about council administrative matters. Prescriptive requirements were imposed because issues arose that concerned the community and the state felt needed to be addressed to protect community standards. Other amendments were made to address technical deficits that the sector identified or to reflect changes in standard practices. The result is a patchwork Act: some parts have many highly mechanical requirements and others have few details for broad areas of council activity.

Any prescriptive requirements of councils must therefore be amenable to change as required for the reasons above. But they must be expressed in a way that future changes to them do not adversely affect or distort the overall framework of the new Act. Putting prescriptive, process requirements in Regulations will enable them to be changed without needing to amend the Act. It will also create a clear separation in the new legislative hierarchy between having:

- the powers and obligations of councils in the Act
- detailed requirements in Regulations with which councils must comply to meet their statutory obligations.

PROPOSED DIRECTIONS

146. Retain the current power of the minister to intervene where a council does not comply with the obligations set out in the Act or regulations by imposing a municipal monitor or by issuing a ministerial governance direction.

147. Include a general power for the minister to make Regulations setting out the detailed requirements of councils when exercising their powers or discharging their responsibilities under the Act (such as requirements about the conduct of elections and mandated obligations under the councillor code of conduct framework). Include in this power other relevant subordinate legislation.

148. Empower the minister to release a council from the processes set out in Regulations if the council can show it is successfully discharging its obligations under the Act using different processes.

10.4 Best-practice guidelines

ISSUES

The new Act will provide councils with greater autonomy to develop policies, procedures and processes that best suit them (such as about when and where meetings are held, how community access to council decisions is facilitated and how councillors are briefed). It will be up to councils to determine the processes for developing their strategic documents, and broadly their contents and formats.

However, some councils may seek more guidance than others about how to create their own policies, procedures and oversight mechanisms from scratch. Greater autonomy may create governance risks for councils with fewer resources to develop policies and procedures.

PROPOSED DIRECTIONS

149. Provide guidance to the sector in relation to governance, compliance and best practice. This guidance will be in the form of guidelines and formal and informal advice to the sector.
150. Create best-practice versions of essential documents that councils are required to adopt. Adoption of these best-practice documents will constitute compliance.
151. The minister will have a power under the new Act to require the council to adopt best-practice policies and procedures as part of a governance order where governance issues have been identified.

“To be effective, legislation must be complemented by robust policy frameworks and other practical supports.”

VICTORIAN LOCAL GOVERNANCE ASSOCIATION

10.5 Harmonisation of legislation

Introduction

There are over 120 Victorian Acts and Regulations other than the Local Government Act 1989 that impose obligations or confer powers on councils.³⁴ There are some areas of overlap and intersection between the Local Government Act and this other legislation.

Having the same areas addressed in different pieces of legislation creates unnecessary complexity and increases the risk of inconsistency. Consequently, as some submissions noted, councils are often compelled to seek legal advice to clarify their obligations under different legal frameworks, and the wider community finds it difficult to understand their individual rights and responsibilities. This review provides an opportunity to reduce, where possible, the administrative burden on councils and increase clarity for the community by removing redundant legislation, schedules and provisions and harmonising the different legislative provisions that apply to councils.

In addition to dealing with the *Cultural and Recreational Lands Act 1963* and *Electricity Industry Act 2000* (as explained in Chapter 9), the following legislation will be dealt with.

Roads traffic and transport legislation

ISSUES

The Act's provisions about roads existed before the *Road Management Act 2004* was enacted. As the Road Management Act now establishes the responsibilities for roads in Victoria of the various road authorities, there is little merit in keeping road management provisions in the Local Government Act. Both acts have similar provisions (schedule 10 of the Local Government Act and Schedule 3 of the Road Management Act); the Road Management Act relates mostly to VicRoads while the Local Government Act relates to councils. Including all councils' road functions in the Road Management Act would place portfolio responsibility for all road matters under the one Act and one minister, enabling a coordinated strategic approach to road issues across the state.

³⁴ Appendix 7 has a list of these Acts.

A similar issue is councils' powers over traffic management and parking. There are similar provisions about traffic functions in both the Road Management and Local Government Acts (Schedule 11 of the Local Government Act and Schedule 4 of the Road Management Act) that would also benefit by being integrated into a single Act, enabling a holistic approach to be taken for all traffic management issues across state and local government jurisdictions.

“Dealings with Roads, including ownership and status, are currently spread across a number of Acts. Rationalisation of these various provisions would reduce confusion and streamline processes that are often complex and poorly understood.”

ASSOCIATION OF CONSULTING SURVEYORS VICTORIA

PROPOSED DIRECTION

152. Incorporate relevant sections of Part 9, Division 2 and schedules 10 and 11 of the current Act into the *Road Management Act 2004* (or other relevant legislation), to better consolidate the legislation dealing with road management.

“The Local Government Act should be streamlined and overlapping provisions removed particularly in regards to issues related to roads management and the electoral process.”

MANNINGHAM CITY COUNCIL

Water Act 1989

ISSUES

There is scope to increase clarity about councils' water and drainage responsibilities in the new Act.

Under section 198 of the current Act, management and control of public sewers and drains is vested in councils, but the Act does not clearly specify how management or control is to be exercised. The Act provides some powers to councils about drainage of land and other water-related matters, including approved schemes under the *Water Act 1989*.

However, the current Act does not provide guidance about how these powers are intended to operate in conjunction with those of other bodies (such as water authorities) that also have a role in these matters. It has been argued that councils need more explicit functions and powers in relation to water and drainage (including over local drainage, waterways and flood management) as well as rights (such as to local stormwater). These could be included in relevant water legislation or in the new Act.

PROPOSED DIRECTION

153. Clarify the role of councils in local drainage, waterways and flood management. Consult about whether these are included in the new Act or in the *Water Act 1989*.

Requirements of other legislation

ISSUE

Other state government legislation also imposes obligations on councils. These obligations are not the subject of this review, apart from determining whether there are opportunities to rationalise and harmonise requirements as explained above. One way to ensure clarity about what the state government requires of councils would be to include reference to this other legislation in the new Act.

PROPOSED DIRECTION

154. List all Acts that impose obligations on councils in a schedule in the new Act, to be updated as new legislation is enacted.

“A comprehensive link/index to other legislation could be incorporated as a Schedule with the Act – would overcome the difficulty of the Act ballooning out of all proportion.”

MAROONDAH CITY COUNCIL

City of Greater Geelong Act 1993

ISSUE

Several submissions (including a submission from the City of Greater Geelong) supported incorporating the City of Greater Geelong Act entirely into the Local Government Act as a distinct section.

PROPOSED DIRECTION

155. Repeal the City of Greater Geelong Act 1993 and include relevant provisions in the new Act.

City of Melbourne Act 2001

ISSUE

The *City of Melbourne Act 2001* has objectives recognising Melbourne as the state capital. It includes electoral provisions unique to Melbourne including a different voter franchise (recognising the municipality's large business base) and direct election of the Lord Mayor and Deputy Lord Mayor. Further, recognising that Melbourne drives Victoria's productivity and innovation and is home to many small and large businesses and major infrastructure, the Act provides for greater coordination between the state government and the council about matters of significance to Victoria.

The grounds for retaining a distinct act and franchise for the City of Melbourne are strong. Melbourne has a series of unique characteristics that demand distinct legislative arrangements. As the state's capital Melbourne is the engine room of the Victorian economy. Its landscape and asset composition is also distinct, comprising a mix of business, residential and vital state infrastructure. The provisions of its act were subject to extensive consultation and there are no compelling performance issues that provide a current basis for further significant review.

PROPOSED DIRECTION

156. Retain the *City of Melbourne Act 2001* as a separate Act with the City of Melbourne retaining its distinct electoral provisions. Consider ways to modernise the Act and remove redundant or outdated provisions.

Municipal Association Act 1907

PROPOSED DIRECTION

157. Consider matters relating to the *Municipal Association Act 1907* independently of this directions paper in consultation with the Municipal Association of Victoria.



How to get involved





How to get involved

The government invites all Victorians to get involved in the review of the *Local Government Act 1989* by making a submission about the proposed directions and options in this directions paper.

Submissions

In the first instance, the government invites written submissions. Please make a submission in one of three ways.

Online via the online submission form, or by uploading your completed submission form at the Your Council Your Community website: www.yourcouncilyourcommunity.vic.gov.au

Email your completed form to local.government@delwp.vic.gov.au.

Post your completed form to:

Local Government Act Review Secretariat
C/o Local Government Victoria
PO Box 500, Melbourne VIC 3002.

Submissions in other formats will also be accepted.

To contact the Local Government Act Review Secretariat:

Visit www.yourcouncilyourcommunity.vic.gov.au

Email local.government@delwp.vic.gov.au

Call (03) 9948 8518

Submissions to the directions paper close on Friday 16 September 2016 at 5pm.

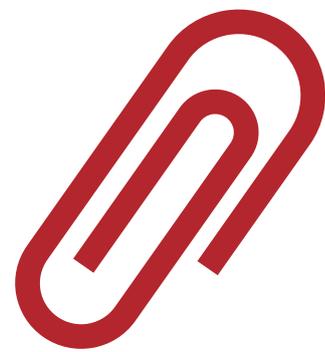
Your submission will be made public unless you ask for confidentiality and the Local Government Act Review Advisory Committee grants it, or if the committee determines your submission should remain confidential. Submissions that are defamatory or offensive will not be published.

There will be a further opportunity to make a submission about an exposure draft Bill which will be developed in 2017 on the basis of responses to this directions paper.

Community forums

Local Government Victoria will be undertaking community forums to discuss the proposed directions. The times and venues for these forums will be advised at www.yourcouncilyourcommunity.vic.gov.au.

Appendices



Appendix 1:

Principles for creating a new act

Introduction

The Review Advisory Committee (whose members are named in Chapter 1) drafted the following principles to guide development of the new Act. The principles provide a clear and logical way to address issues arising from the analysis of challenges and opportunities explained in Chapter 1.

They are also signposts to the outcomes the new Act envisages. Accordingly, the review has used them as touchstones when developing the proposed reform directions in this paper.

Principle 1

An Act that is contemporary and meets future needs, is clear and comprehensive, and does not duplicate other legislation.

Principle 1 speaks to the need for the new Act to encourage and support contemporary councils that can meet future challenges. The current Act has been in force for more than a quarter of a century. The Act that replaces it—in an information age of accelerating change—must be sufficiently flexible and robust to serve councils and their communities for the next twenty years. This means we must take care to avoid prescription that binds councils to specific processes and technologies. The new Act must provide scope for councils to adapt and evolve to prosper in circumstances that are currently unforeseeable. Information and communication technology is a case in point: references in the Act that require councils to advertise in newspapers have been redundant for years. The new Act must be neutral about the best, modern tools for governance and administration. These may not have yet been invented.

The new Act will not include provisions better dealt with through other legislation. Unlike the *Local Government Act 1958* (which was a comprehensive compendium of the roles that councils then performed), the 1989 Act distributed council functions and responsibilities in areas covered by other portfolios to the primary Act of the relevant portfolio area. The new Act will continue to exclude provisions better included in legislation in other portfolios. However, unnecessary duplication will be removed.

Principle 2

Enhance democracy, diversity of representation, council transparency and responsiveness to the community and the state.

The analysis in Chapter 1 highlighted that in some instances the current Act undermines recognition of council mandates to represent and make decisions on behalf of their constituents. Whatever the cause, it is clear that the democratic legitimacy of councils appears to have declined in an era of larger, more complex corporate bodies.

This principle reinforces the importance of councils governing in an environment fully authorised by their citizens. Delivering on this principle means having electoral processes that voters understand and accept as fair and equitable and that encourage diverse and capable candidates. It also means ensuring that council decision-making is transparent; that councils are responsive to the communities they represent; that councils understand the broader environment in which they act (including their regional environment); and that they understand they must implement prescribed state government policies.

The proposed directions in this paper provide a framework to reinforce the representativeness of councils and their role in delivering community leadership. Elements of this framework include reinforcing the authority of mayors; strengthening the consistency of representative structures, electoral systems and voting rules; and building the capability of councils to deliver a form of participatory engagement that reflects their position in the federation as the level of government closest to the people.

The proposed directions make strong community engagement a fundamental objective of councils and a key responsibility of councillors under a new Act.

Principle 3

Improve corporate efficiency, and reduce administrative burden.

This principle highlights the important role of a council's administrative arm and points to the need for a legislative environment that promotes innovation, modern business practices and microeconomic reform. The current Act has impediments to corporate efficiency in various areas including prescribed, anachronistic procurement and financial management arrangements. It also imposes regulatory requirements on councils that diminish a council's effectiveness for little or no advantage.

The proposed reform directions require councils to apply sound financial management and fully integrated strategic planning approaches and to report on these to the community. They also remove unnecessary regulatory impositions that stifle innovation and efficiency.

Principle 4

Facilitate collaborative arrangements.

Current legislation constrains councils seeking to collaborate with other bodies (such as neighbouring councils or other public or private organisations). While the 1989 Bill sought to provide for collaborative mechanisms, this was ultimately reduced in the 1989 Act to only enabling regional library corporations.

This principle serves to encourage collaboration not only between councils but between councils, businesses and other public and non-government agencies. This reflects the growing recognition in other tiers of government and in the private and non-government sectors of the importance of partnerships in delivering economic, social and environmental goals. The new Act will support collaboration becoming the modus operandi of councils. It will provide momentum for councils to engage in collaborative procurement (both in the purchase and delivery of shared services and infrastructure) and achieve back-of-house efficiencies. Collaboration will help councils to work with other councils, tiers of government and organisations and to better participate in regional planning that advances the public interest of their local communities.

Principle 5

Create a systematic hierarchy of legislative obligations:

- an Act that is principle-based, providing greater autonomy to councils, balanced with effective ministerial intervention;
- Regulations that specify the more prescriptive detail;
- Non-statutory guidelines.

This principle informs the overall architecture—the structure—of the new legislative framework. It means that provisions in the new Act will be principle-based: they will specify the outcomes that councils must deliver rather than how they deliver them. These are the primary obligations the Act will impose on a council and failure to comply with them will have consequences including the minister requiring the council to take action to achieve the outcome described through a governance direction or other mechanism.

Subordinate legislation (Regulations) will specify the actions a council must take to achieve the principles in the Act. Processes to achieve outcomes, and therefore Regulations, may change from time to time as new technologies emerge. This does not mean significant legislative obligations will be transferred to subordinate legislation: it means the Act will not be cluttered with process mechanisms.

The principle is to remove unnecessary prescription in the Regulations as well as in the Act. Where there are different ways of achieving the same outcome, councils will have autonomy to choose the most relevant approach for their circumstances.

Guidelines may sometimes be the best way to set out process requirements that, if followed, will be evidence that a council is complying with the principle obligation in the Act. The Act will not prescribe areas where the minister may issue guidelines as this is a general power for any matter covered by the Act.

Appendix 2:

Terms of Reference

Purpose

1. The purpose of the review is to revise the current legislation governing local government in Victoria to create a more contemporary, accessible, plain English Act, that meets current and future needs of the community and local government sector.

Scope

2. The review will consider all aspects of the current Local Government Act 1989 with a view to more accurately and consistently reflecting policy intent and improving clarity, including provisions setting out:
 - objectives, roles, functions, and powers of councils;
 - roles and responsibilities of councillors, mayors and council staff;
 - directions about governance and administrative processes required to be followed by councils directed to ensuring all decision-making, actions and reporting is open and transparent, free from bias and improper considerations, and provides for community input;
 - the system of electoral representation that provides fair and equitable representation;
 - electoral arrangements that deliver a democratic, transparent and secure system of elections for local government resulting in high levels of participation;
 - processes for the maintenance of efficient planning and reporting, and financial arrangements by councils that provide effective accountability to their communities;
 - offences under the Act;
 - the circumstances in, and the extent to which, the Victorian Government, through the Minister for Local Government, can guide, direct or intervene in council governance.

The review will include consideration of all legislation for which the Minister for Local Government has administrative responsibility with a view to simplifying and integrating these Acts in the new Act where possible; but will not include consideration of legislation which imposes responsibilities on councils which is not the responsibility of the Minister for Local Government (for example, The Planning and Environment Act 1987), except insofar as this latter legislation interacts with the Local Government Act 1989 with a view to clarifying that interaction.

The review will not include consideration of any changes to existing external boundaries of Victorian municipalities, nor any proposals that would increase the number of councillors above and beyond increases associated with electoral representation reviews conducted by the VEC.

Principles

3. The review will have regard to:
 - The recognition in the Victorian Constitution of local government as a distinct and democratic tier of government in Victoria charged with responsibility for delivering peace, order and good government for local communities.
 - The necessity for the legislation to strike an appropriate balance between autonomy for councils in their operations and decision-making processes and the interests of the Victorian community and Government.
 - The need to reduce, wherever practicable, the imposition of unnecessary administrative requirements on the sector.

Process

4. The review will involve extensive engagement with the local government sector and the broader Victorian community, through the release of papers and receipt of submissions, to ensure their views are incorporated into recommendations to the Minister for Local Government in respect to the new Act.
5. Key stages include:
 - Identification of and consultation on issues under the current Act
 - Development of and consultation on proposed directions for the new Act
 - Release of the Exposure Draft Bill

Act Review Website

More details about the terms of reference and other aspects of the review are on the Local Government Act review website at www.yourcouncilyourcommunity.vic.gov.au. On the website you can:

- keep informed about developments
- view a range of background papers
- view the discussion paper and the directions paper
- view submissions from the sector and community to the discussion paper and the directions paper
- have your say about reform options.

Appendix 3:

List of submissions

There were 348 submissions received, excluding six submissions that were not published on account of being completely out of scope or inappropriate. The following people and organisations made public submissions to the discussion paper:

1 resident = 1 vote

A McLellan	Brimbank City Council
Adjungbilly Pty Ltd	Brunhilde Krix
Alan	Cardinia Ratepayers & Residents Association
Alan Getley	Carlton Residents Association
Alan Temple	Carol Rourke
Alan Woodman	Carol Walker
Alec Sandner	Casey Residents & Ratepayers Association
Allan P Bellmont	Central Goldfields Shire Council
Angela K	Chris and Glenda Barratt
Anita Voros	Chris Curtis
Ann Zaccaria	Chris Erlandsen
Anne Bonello	Chris Harrison
Anne Field	Chris Teitzel, A/CEO Greater Shepparton City Council
Anne Jansen	Cliff Mitchell
Annette Varley	Coalition of Resident and Business Associations
Anthony Bonello	Colin Burns
Association of Consulting Surveyors Victoria (ACSV)	Colin Price
Audrey Yallop	Committee for Bellarine Inc.
Australian Services Union, Victorian and Tasmanian Authorities and Services Branch	Committee for Geelong
Banyule City Council	Concord Place, Brookland Greens, Cranbourne
Barbara Elliott	Corangamite Shire Council
Barbara Read	Cr Bo Li, Darebin City Council
Barbara Thompson	Cr Coral Ross, Boroondara City Council
Bass Coast Shire Council	Cr Darryn Lyons, Mayor City of Greater Geelong
Bayside City Council	Cr Fern Summer
Bedford Heights Estate Residents Association Inc.	Cr Karin Orpen, Knox City Council
Bedford Heights Estate Residents' Committee	Cr Matthew Kirwan, Greater Dandenong City Council
Bendigo Domain Village	Cr Michael Neoh, Warrnambool City Council
Bendigo Retirement Village	Cr Peter Cox, Greater Bendigo City Council
Beryl Beel	Cr Rohan Leppert, Melbourne City Council
Better Local Government Association Inc.	Cr Sebastian Klein
Betty Golledge	Cr Stephen Hart, Colac Otway Shire Council
Bev Chrystie	Cr Tom Melican, Banyule City Council
Beverley Paterson	Craig Niemann, CEO Greater Bendigo City Council
Boroondara City Council	Craig Pierce
Brian Oates JP	Craig Walters
Brian Smith	D. Cashion
	Daniel Gerrard

Darryl Claffey	Gwendolyn Ann Chitts
David Hopkirk	H.C. & J.E. Limpens
David Rundell	Hawthorn ALP Branch
Dawn Claffey	Heather Charles
Dawn Jones	Heather Mays
Delys Gourley	Helen Helliar
Diane Fitt	HIA
Domenic Isola, CEO Hume City Council	Hilda Collins
Don Mays	Hildegare Hopf
Donald Pinsent	Hopeful
Dorothy Young	Horsham Rural City Council
Douglas Godleman	Ian Brown
Dr Jackie Watts, Councillor Melbourne City Council	Ian Hundley
Dr Rosetta Manaszewicz	Ian Roper
East Gippsland Shire Council	Indigo Shire Council
Eastern Alliance for Greenhouse Action	Ingeborg Gungl
Eastern Region Group	Inner South Metropolitan Mayors' Forum
Eastern Regional Libraries Corporation	Irene Buck
Edward Buckingham	Iris Bowman
Edwin James Golledge	J Burridge
Ellen Csar	J Wilson
Evan Jones	James Patterson
Evelyn Buckingham	Jan Johns
Fay Irwin	Janette Temple
Fay Smith	Janice Molineaux
FinPro	Jantina Patterson
Frank Zaccaria	Jasper William Lewin
Frankston City Council	Jeannette Johanson
Friends of the Shepparton Library	Jenni Bransgrove
Gannawarra Shire Council	Jennifer Bellmont
George McMurtry	Jennifer Jones
Georgina Wilma Wailes	Jennifer Lowe
Geraldine Ostwald	Jennifer Paterson
Gerard Pearson	Jill Edmonds
Gillian Waterman	Jim Walker
Gisela Holm	Joan and Gary Hayman
Glen Eira City Council	Joan Donovan
Glen Eira Environment Group	Joan Owens
Glenelg Shire Council	Joan Pearson
Glenys Brittain	Joan Roper
Golden Plains Shire Council	Joe Lenzo
Goulburn Valley Regional Library Corporation	John Glazebrook
Graeme Paul	John Hadley
Graeme Reynolds	John Henry
Graham Garratt	John L Scott
Graham Jolly	John Mrage
Greater Bendigo City Council	John Muzyk, Bayside City Council
Greater Geelong City Council	John Phair
Greater Shepparton City Council	John Rourke

John Watson, Chair of Administrators
Brimbank City Council

Joy

Justin

Karen and Danny Ellis

Karl Schiesser

Kathleen Drohan

Kay Hunnam

Kaye Hammond

Keith Fagg

Keith Gratton

Ken Merrey

Kensington Retirement Village

Kevin Gourley

Kevin John Canning

Kevin Krahe

Kevin La Fontaine

Kevin Leahy

Kevin Woff

Kids By The Bay Children's Centre

Knox City Council

Lance Allen

Landowners of 175-199 and 201-219 Ironbark Road

Leslie Rosenblatt

LGPro

LGPro Procurement Special Interest Group

Lillian Ivy Watts

Lillian Ormandy

Local Government Spatial Reference Group

Lois Chesser

Lorraine Leahy

Lorraine McLellan

Lyn Smith

Lynette Ritson

Macedon Ranges Residents' Association Inc.

Mainstreet Australia

Manningham City Council

Maree Williams

Marg Allen

Margaret Anderson

Margaret Hadley

Margaret O'Dowd

Margaret Thomas

Maria Poletti

Maribyrnong City Council

Marisa Goding

Marlene Kimpton

Maroondah City Council

Marthas Point Retirement Village Residents
Committee

Martin Lira

Mary-Lou Howie

Matthew Nickson

Maureen Rundell

Maurice Fitt

Mavis Mrage

Meerkin & Apel Lawyers

Melbourne City Council

Melbourne South Yarra Residents Groups Inc.

Melbourne Water

Melton City Council

Merrindal Routley

Michael Drohan

Michael McKenzie

Mieke Van Besouw

Mitchell Shire Council

Moira Shire Council

Moonee Valley City Council

Moreland City Council

Mount Alexander Shire Council

Municipal Association of Victoria (MAV)

Murrindindi Shire Council

Nerida Rutt

Newton Gatoff

Nillumbik Shire Council

Noel Cashion

Norm Hart

Norm Kimpton

Norma J Morris

North & West Melbourne Association Inc.

Northern Alliance for Greenhouse Action

Northern Grampians Shire Council

Pamela Dear

Pat Merrey

Patricia Joyce Canning

Patricia Matthew

Patricia P Godleman

Patricia Price

Patricia Woodman

Paul Caine

Pauline Lowe

Peter Craig

Peter Douglas

Peter Field

Peter Johns

Peter Loney

Philip Star
Port Phillip City Council
Property Council of Australia
Proportional Representation Society of Australia
Pyrenees Shire Council
Ratepayers Victoria Inc, Monash Ratepayers Inc, Knox
Ratepayers Association and the Chinese Australian
Accord
Ray Hunnam
Reg Burridge
Residents of Retirement Villages Victoria
Resilient Melbourne
Revenue Management Association (RMA)
Rhonda Gratton
Rob Harrison
Robin McLiesh
Robyn Erica Schmidt
Roderick Vance
Rodolfo Nuti
Roger Gardner
Ron Pringle
Ronald Thomas
Roslyn Brown
Roy Travis
Rt Hon Robert Doyle Lord Mayor of Melbourne
Russell Charles
Russell Smith, Saturn Corporate Resources Pty Ltd
Ruth Hoobin
Sandra Bligh
Sandra Douglas
Save Moonee Ponds Inc.
Save Our Suburbs Inc.
Shirley Fry
Shirley Garratt
Snickers
South East Councils Climate Change Alliance Inc.
South Gippsland Shire Council
Southern Grampians Shire Council
Springthorpe Retirement Village
Stan Ford
Stephen Owens
Steve Johns
Stonnington City Council
Stuart Bligh
Surf Coast Shire Council
Susan Perrett
Suzanne M Ryder
Syndicate of CEOs of Regional Library Corporations

Teresa Schiesser
The Essential Points
The Geelong Chamber of Commerce
The Institute of Internal Auditors
The Point Cook Retirement Village
Thomas Perrett
Thomas Walker
Tony
Tony Hooper
Trevor Dance
Trevor Ryan
Valerie Burston
Vaughan Duggan
Verona Hart
Victorian Aboriginal Heritage Council
Victorian Association of Forest Industries
Victorian Chamber of Commerce
Victorian Electoral Commission
Victorian Farmers Association
Victorian Local Governance Association (VLGA)
Victorian Ombudsman
Victorian Spatial Council
VicTrack
W Helliar
Warren Wealands
Wendy Pinsent
West Wimmera Shire Council
Whitehorse City Council
Whittlesea City Council
William Chrystie
Wyndham City Council
Yarra City Council
Yarriambiack Shire Council
Yvonne Campbell

Appendix 4:

Technical Working Group Members

The review has been supported by six technical working groups. The names and members of the technical working groups are listed here.

Council Operations

Anne-Maree Neal, Manager Governance & Risk , Warrnambool City Council

Christine Denyer, Legal Services Manager, Melton City Council

Colleen White, Director Corporate Strategy, Ararat Rural City Council

David Thompson, Manager Governance, Boroondara City Council

Doug Evans, Manager Governance, Cardinia Shire Council

Keith Williamson, Manager Governance & Legal, Melbourne City Council

Melanie Fler , Manager Governance, Brimbank City Council

Nick Andrianis, Coordinator Governance, Monash City Council

Peter Jones, Senior Governance Analysis, Local Government Victoria (LGV)

Stephen Cooper, Consultant

Tim Presnell, Senior Advisor, LGV

Consultation and Engagement

Chris Phoon, Senior Manager Intergovernmental Relations, LGV

Clare Murrell, Senior Advisor Community Engagement, Yarra City Council

Cr Sebastian Klein, Councillor, Hepburn Shire Council and President, VLGA

Desley Renton, Program Manager, Melbourne City Council

Diana Rice, Community Infrastructure Broker, DELWP and City of Wyndham

Pauline Gordon, Director Community Wellbeing, City of Greater Bendigo

Peter Jones, Senior Governance Analyst, LGV

Council Role and Responsibilities

Dan Hogan, Manager Customer Engagement, Melton City Council

Darren Ray, Senior Governance Adviser, Wyndham City Council

Gina Burden, Manager Governance and Communication, Banyule City Council

John Baring, Senior Legislative Analyst, LGV

Lisa Roberts, Governance Manager, Greater Dandenong City Council

Ryan Galbraith, Coordinator Intergovernmental Relations, LGV

Steve Crawcour, CEO, Strathbogie Shire Council

Tim Brown, Director Applied Business Solutions

Zane Gaylard, Senior Legislative Analyst, LGV

Rates and Charges

Binda Gokale, Manager Financial Services, Wyndham City Council
Daniel O'Shea, Finance and Business Analyst, LGV
Glendon Dickinson, Manager Revenue and Property, Warrnambool City Council
Greg Stevens, Manager Property Services, Melbourne City Council
Hannah Wood, Legislation Analyst, LGV
Helen Anstis , CEO, Baw Baw Shire Council
Ian Goulet, President, Revenue Management Association
Joanne Truman, Director Corporate Services, Knox City Council
Leighton Vivian, Manager Policy Development, LGV
Michael Concas, Senior Legislative Analyst, LGV
Neil Wrigley, Manager Rates and Valuation, Greater Bendigo City Council
Paul Franklin, General Manager Corporate Services, Kingston City Council
Paul Roche, Manager Sustainable Business Practices, LGV
Rod Leith, Contract Manager, Ballarat City Council
Tim Frederico, Director Corporate Development, Frankston City Council

Financial decision-making and accountability

Colin Morrison, Director Governance and Funding Programs, LGV
Daryl Whitford, Director City Governance and Information, Hume City Council
Dave Barry, CEO, Alpine Shire Council
Hannah Wood, Legislation Analyst, LGV
Jude Holt, Director Corporate Services, Loddon Shire Council
Kevin Leddin, Director Corporate Strategies, Warrnambool City Council
Mark Grant, Director Sector Performance, LGV
Michael Concas, Senior Legislative Analyst, LGV
Paul Roche, Manager Sustainable Business Practices, LGV
Richard Morrison, Contract and Project Coordination Manager, Bendigo City Council
Sam Rumoro, Melbourne City Council
Shan Thurairajah, Finance Manager, Melton City Council
Shaun Collins, Coordinator Procurement, Wyndham City Council
Thor Hansen, Manager Contracts & Purchasing, Casey City Council

Offences and Breaches

Aaron Hollow, Manager Statutory Services, East Gippsland Shire Council
Aeron Rice, Local Government Inspectorate
Andrew Lyons, Legal and Governance Officer, Greater Bendigo City Council
David Durose, Local Laws Coordinator, Melton City Council
David Walker, Local Government Inspectorate
John Baring, Senior Legislative Analyst, LGV
Kim Wood, Chief Legal Counsel, Melbourne City Council
Megan Kruger, Governance Coordinator, Southern Grampians Shire Council
Zane Gaylard, Senior Legislative Analyst, LGV

Appendix 5:

Dates and venues of community forums

Community forums were held to hear community views about the act review in nine locations across Victoria during February and March 2016:

Wangaratta	Wednesday 17 February 2016
Swan Hill	Wednesday 17 February 2016
Shepparton	Thursday 18 February 2016
Warrnambool	Tuesday 23 February 2016
Horsham	Wednesday 24 February 2016
Dandenong	Wednesday 2 March 2016
Sale	Wednesday 2 March 2016
Melbourne CBD	Tuesday 8 March 2016
Sunshine	Thursday 17 March 2016
Maryborough	Wednesday 23 March 2016

Appendix 6:

Commissioned research

Campbell Duncan	The 1989 Act The rights of ratepayers Legislative framework for the making of local laws
Graham Sansom	Towards Victoria's new Local Government Act: experience and ideas from other jurisdictions
Ian Killey PSM	Conflict of interest and Winky Pop
Jim Gifford	Conflict of interest in local government Council committees Transparency and confidentiality
John Comrie	Streamlining council financial requirements
Jude Munro	Council operations
Julie Lawler	Experience in Queensland – local government legislative reform
Yehudi Blacher PSM	Imagining local government in the 21st century

Appendix 7:

Acts and regulations assigning local government responsibilities

As of 1 January 2015 there were 126 Victorian Acts that assigned responsibilities to local governments. They were:

Aboriginal Lands Act 1970
Associations Incorporation Reform Act 2012
Border Railways Act 1922
Building Act 1993
Building Regulations 2006
Carers Recognition Act 2012
Catchment and Land Protection Act 1994
Cemeteries and Crematoria Act 2003
Charter of Human Rights and Responsibilities Act 2006
Child Wellbeing and Safety Act 2005
Coastal Management Act 1995
Conservation, Forests and Lands Act 1987
Conveyancers Act 2006
Country Fire Authority Act 1958
Credit (Administration) Act 1984
Crimes Act 1958
Crown Lands (Reserves) Act 1978
Cultural and Recreational Lands Act 1963
Disability Act 2006
Domestic Animals Act 1994
Domestic Animals Regulations 2005
Drugs, Poisons and Controlled Substances Act 1981
Electricity Safety Act 1998
Emergency Management Act 1986
Environment Protection Act 1970
Equal Opportunity Act 2010
Equipment (Public Safety) Act 1994
Estate Agents Act 1980
Fences Act 1968
Fire Services Property Levy Act 2012
Food Act 1984
Forests Act 1958
Freedom of Information Act 1982
Gambling Regulation Act 2003
Graffiti Prevention Act 2007
Health Services Act 1988
Heavy Vehicle National Law Application Act 2013

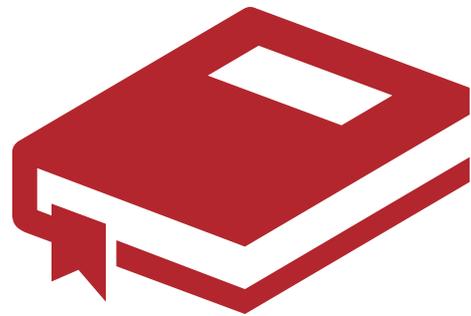
Housing Act 1983
Impounding of Livestock Act 1994
Independent Broad-based Anti-corruption Commission Act 2011
Infringements Act 2006
Interpretation of Legislation Act 1984
Land (Reservations and other Matters) Act 1997
Land (Revocation of Reservations) Act 2012
Land Act 1958
Liquor Control Reform Act 1998
Local Government Act 1989
Major Sporting Events Act 2009
Major Transport Projects Facilitation Act 2009
Metropolitan Fire Brigades Act 1958
Motor Car Traders Act 1986
Municipalities Assistance Act 1973
Nudity (Prescribed Areas) Act 1983
Pipelines Act 2005
Planning and Environment (Planning Schemes) Act 1996
Planning and Environment Act 1987
Privacy and Data Protection Act 2014
Protected Disclosure Act 2012
Public Health and Wellbeing Act 2008
Public Records Act 1973
Residential Tenancies Act 1997
Road Management Act 2004
Road Safety Act 1986
Safe Drinking Water Act 2003
Second-Hand Dealers and Pawnbrokers Act 1989
Sex Work Act 1994
Sheriff Act 2009
Subdivision (Fees) Interim Regulations 2014
Subdivision (Procedures) Regulations 2011
Subdivision Act 1988
Summary Offences Act 1966
Transport Integration Act 2010
Urban Renewal Authority Victoria Act 2003
Valuation of Land Act 1960
Victoria Grants Commission Act 1976
Victorian Civil Administrative Tribunal Act 1998
Victorian Funds Management Corporation Act 1994
Water Act 1989

As of 1 January 2015, the Victorian Government required local governments to prepare 19 plans. Table 6 shows each plan and the Act or Regulations that require it.

Table 6: Plan Required Of Local Governments By Victorian Acts And Regulations

ACT/REGULATION	PLAN
Catchment and land protection Act 1994	<i>Roadside weed and pest animal management plan</i>
Coastal Management Act 1995	<i>Coastal Action Plan</i>
Coastal Management Act 1995	<i>Management Plan</i>
Country Fire Authority Act 1958	<i>Municipal fire prevention plans</i>
Disability Act 2006	<i>Disability Action Plan</i>
Domestic Animals Act 1994	<i>Domestic Animal Management Plan</i>
Electricity Safety Act 1998	<i>Municipal fire prevention plans</i>
Emergency Management Act 1986	<i>Municipal emergency management plan</i>
Planning and Environment (Planning Schemes) Act 1996	<i>Planning Scheme</i>
Planning and Environment (Planning Schemes) Act 1996	<i>Municipal Strategic Statement</i>
Public Health and Well Being Act 2008	<i>Municipal Health and Well being plan</i>
Public Health and Well Being Act 2008	<i>Council Plan or Strategic Plan</i>
Road Management (General) Regulations	<i>Road Management Plan</i>
Road Management Act 2004	<i>Road Management Plan</i>
Water Act 1989	<i>Water Management Plan</i>

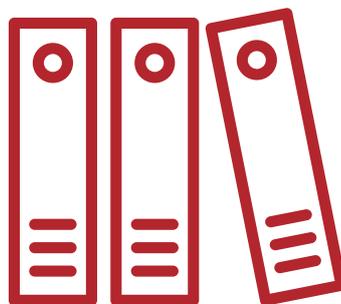
Glossary, acronyms and initialisms



Glossary, acronyms and initialisms

- Administrator** Officer appointed by the Governor in Council on recommendation of the minister in situations where the council has been suspended or a new or reconstituted council has been established
- ASIC** Australian Securities and Investment Commission
- Best value** Principles defined in the Act for achieving value for money
- CEO** Chief executive officer of a council
- CIV** Capital improved value
- CMI** Chief Municipal Inspector is the title conferred on the person leading the Local Government Investigations and Compliance Inspectorate
- Community plan** A long-term plan setting out the aspirations of a community
- Council plan** A four-year plan setting out the strategic objectives of a council
- Differential rates** Rates levied at different values for different classes of land, such as farm land, urban farm land or residential use land
- LGPro** Local Government Professionals
- LGV** Local Government Victoria
- Local government panel** Panel appointed by the minister to carry out a review and advise the minister on matters relating to councillor allowances, local government restructuring and any other matters
- MAV** Municipal Association of Victoria
- Ministerial exemption** Process to provide for circumstances where the minister may determine that compliance with the requirements of the Act is not required
- Municipal charge** A charge levied against all ratepayers as a general contribution to the administrative cost of the municipality
- Municipal monitor** Inspector of municipal administration appointed by the minister to observe governance practices at a council and report back to the minister
- NAV** Net annual value
- Partial preferential voting** Voters are required to express a number of preferences equal to number of councillor vacancies
- Prescriptive provisions** Provisions in the Act that set out rules that councils, councillors and staff must follow
- Regional library corporation** A group of councils that have entered into an agreement to provide library services to local libraries in the municipalities of the member councils
- Service rates or charges** A service rate or annual charge levied by a council for a specific purpose such as water supply, refuse collection and disposal, sewage services or other prescribed purposes
- Special rates or charges** A council can declare a special rate or charge to pay specific council expenses which are deemed to be of special benefit to the people required to pay it
- Strategic resource plan** A plan setting out the resources required to meet the council plan
- State** The State of Victoria
- SV** Site value
- The Act** *The Local Government Act 1989*
- Unsubdivided** A council not divided into wards
- The minister** The Minister for Local Government
- VCAT** Victorian Civil and Administrative Tribunal
- VEC** Victorian Electoral Commission
- VLGA** Victorian Local Governance Association

Bibliography



Bibliography

- Australian Tax Office, TR 2011/4 Income tax and fringe benefit tax: charities
- Blacher, Y 2015, *Local Government Act Review: Imagining Local Government in the 21st Century*
- Carson, L & Gelber, K 2001, *Ideas for Community Consultation: A discussion on principles and procedures for making consultation work - A report prepared for the NSW Department of Urban Affairs and Planning*
- Community Opinion Survey on the Local Government Electoral System 2013, cited in Department of Transport Planning and Local Infrastructure Victoria 2014, *Local Government Electoral Review Stage 1 Report*
- Comrie, J 2016, *Local Government Act Review: Streamlining Council Financial Requirements*
- Deloitte 2015, *Building the Lucky Country: The Purpose of Place Reconsidered*, at <http://www2.deloitte.com/content/dam/Deloitte/au/Documents/Building%20Lucky%20Country/deloitte-au-purpose-of-place-btlc-5-091015.pdf>
- Department of Environment Land Water and Planning 2015, *Reforms arising from the Local Government Amendment (Improved Governance) Act 2015: A guide for councils*
- Department of Environment Land Water and Planning 2015, *Review of the Local Government Act 1989 Discussion Paper*
- Department of Transport Planning and Local Infrastructure Victoria 2013, *Local Government Electoral Review Discussion paper*
- Department of Transport Planning and Local Infrastructure Victoria 2014, *Local Government Electoral Review Stage 1 Report*
- Department of Transport Planning and Local Infrastructure Victoria 2014, *Local Government Electoral Review Stage 2 Report*
- Department of Transport Planning and Local Infrastructure Victoria, *2014 Statewide Community Satisfaction Survey*
- Duncan, C 2015, *Local Government Act Review: The Rights of Ratepayers*
- Duncan, C 2015, *Local Government Act Review: History of the Local Government Act 1989*
- Duncan, C 2016, *Local Government Act Review: Legislative Framework for the Making of Local Laws*
- Gifford, J 2015, *Local Government Act Review: Conflict of Interest in Local Government*
- Gifford, J 2015, *Local Government Act Review: Council committees*
- Gifford, J 2015, *Local Government Act Review: Transparency and confidentiality*
- Killey, I, 2016, *Local Government Act Review: Conflict of Interest and Winky Pop – Options Paper*
- Lawler, J 2015, *Local Government Act Review: Experience in Queensland*
- Moran, T, Munro J and O'Brien F 2016, *Commission of Inquiry into Greater Geelong City Council*
- Munro, J 2015, *Local Government Act Review: Council Operations*
- QDOS Research, 2016, *Local Government Act 1989 Review Community Attitudes Research*
- Sansom, G 2016, *Local Government Act Review: Towards Victoria's New Local Government Act – Experience and Ideas from Other Jurisdictions*
- Tan, SF and Artist, S 2013, *Strategic Planning in Australian Local Government: a comparative analysis of state frameworks*

