

Discussion Paper

Local Government Culture Project

Department of Jobs, Precincts and Regions

December 2021



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Glossary of Acronyms

ASU	Australian Services Union
DJPR	Department of Jobs, Precincts and Regions
GEAC	Gender Equality Advisory Committee
IBAC	Independent Broad-based Anti-Corruption Commission
LG Act 2020	Local Government Act 2020
LGA SA	Local Government Association of South Australia
LGI	Local Government Inspectorate
LGMAP	Local Government Mayoral Advisory Panel
LG NSW	Local Government New South Wales
LGPro	Local Government Professionals
LGV	Local Government Victoria
MAV	Municipal Association of Victoria
VAGO	Victorian Auditor-General's Office
VCAT	Victorian Civil and Administrative Tribunal
VLGA	Victorian Local Governance Association



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Executive Summary

Introduction

The Local Government Culture Project aims to better understand the things that affect Councillor culture and conduct, and develop approaches that could improve culture and conduct. This would support creating a safer, more diverse, and representative local government sector.

This Discussion Paper has been developed based on research and input from key stakeholders from the local government sector. Its purpose is to summarise the culture and conduct issues that the sector is experiencing and provide some initial views on the reasons for them. This Discussion Paper does not provide solutions to these issues. Through exploring these issues in more detail, the Discussion Paper sets out 12 key questions that – if answered – will provide the sector with guidance on how to address the culture and conduct issues that exist.

Submissions are being sought to get wider views on the 12 questions, and these submissions are welcome from members of the public, organisations, and local government sector stakeholders. These submissions will be carefully analysed and used to inform a final report that will propose actions and activities that will help address Councillor culture and conduct issues.

Background to the issue

Local government is the part of government responsible for delivering many community services. Local governments consist of elected Councils, which have elected members (Councillors), and administration (Council employees). Councillors elect one of their own as a Mayor to lead their Council, and they also appoint a Chief Executive Officer, who is responsible for leading the administration of the Council. There are 79 Councils across Victoria, and these Councils employ nearly 38,000 staff. Local communities rely on Councillors to act in their interests and deliver community services in a responsible and sustainable way.

While most Councillors behave in a professional manner, there have been many cases of poor Councillor behaviour in recent times. Between 2016 and 2020, this poor behaviour required the State Government to become involved, including four anti-corruption investigations and five councils being dismissed. Poor Councillor behaviour can take different forms, and these can be directed towards the Mayor, other Councillors, council staff or members of the local community. Examples of poor behaviour include:

- bullying and harassment
- sexual harassment
- discrimination
- corruption.

Poor Councillor behaviour can have a range of negative impacts, such as:

- seriously affecting the health and wellbeing of those subject to poor behaviour
- creating a toxic work culture making it difficult for Councils to attract and retain talented staff
- impacting the ability of a Council to effectively perform its role and serve the needs of its community
- financial costs to Councils
- damaging a Council's trust and reputation.

Therefore, to have a local government sector that is working effectively, an environment needs to be created where poor behaviour is unlikely to occur and is quickly addressed when it does occur. This would reduce the number of poor behaviour incidents, reduce the impact when such incidents do occur, and prevent incidents from getting worse.

What the sector is saying

We have heard that while there are some things in place to prevent and address poor behaviour, there is room for improvement. Research and consultations undertaken to develop this Discussion Paper found three broad themes relating to poor Councillor behaviour:

1. *A lack of leadership experience and capability may be preventing some Councils from effectively working together to achieve their objectives.*

Laws make the roles of Councillors, Mayors, and Chief Executive Officers very clear. However, leaders with appropriate skills and experiences are better able to navigate their roles without resorting to poor behaviour. Strong leadership can have a positive impact on the culture and ways of working within a Council. We heard that leaders in local government can come into their roles with very different levels of leadership experience and capability.

2. *Councillors need to be supported throughout their journey from candidacy to appointment to ensure they properly understand and can execute their role.*

Training offered to Councillors before and after election is important in making roles, responsibilities, and expectations clear. This has been found to be particularly important given the increased use of social media by Councillors and its involvement in numerous poor behaviour incidents. We heard that existing training may not be enough to prevent poor behaviour incidents from happening.

3. *Early intervention and effective dispute resolution mechanisms are important for resolving issues and preventing the escalation of poor behaviour and its impacts.*

We heard that if poor behaviour incidents were able to be better managed by Councils, it could reduce the likelihood of escalation and the need for external intervention. We also heard that existing dispute resolution processes could be unclear or slow, or that people might have fears of what could happen if they raised concerns.

What do we need from you?

Based on the work done for this Discussion Paper, we are seeking input from members of the public, organisations, and local government stakeholders on the following 12 questions. These questions are grouped into the three broad themes described above.

Leadership experience and capability – these questions relate to how roles could be better defined and how leadership skills could be built and maintained	
Supporting leadership competencies and capabilities	Question 1: The Local Government Act 2020 defines leadership roles and responsibilities. Does this require further role clarity? If so, which aspects require clarification and how may this be achieved (including legislative and non-legislative mechanisms)?
	Question 2: Given the diversity and experience of candidates' backgrounds, how can the local government sector improve leadership capability and better cultivate an environment of transparency, honesty, integrity and trust?
	Question 3: How successful have any existing initiatives been to promote strong leadership and build trust? Please provide case studies or examples of good practice that have worked well and could be considered for broader implementation.
Operation of local government	Question 4: Mention is made through consultation of local government being a 'parliament of opposition as opposed to a diverse board of the community'. What needs to change to better align Councillors and Mayors to effectively achieve community-based objectives and better operate as a diverse board of the community?

Councillor journey – these questions relate to the support and training that could be offered to Councillors	
Training and professional development	Question 5: How could the candidate and induction training support be improved to ensure genuine engagement and sustained understanding of the role and responsibilities of Councillors?
	Question 6: How can the local government sector work to formalise a structured professional development pathway for Councillors and Mayors?
Social media	Question 7: How can awareness be raised on the best ways to harness social media to ensure a consistent management approach – covering monitoring, appropriate usage, and the consequences of negative usage?
	Question 8: Do you think that any amendments to the Local Government Act 2020 are required to deal with the usage of social media? How should social media harassment be defined and what mechanisms could be introduced into the Act?
Early intervention and effective dispute resolution – these questions relate to how poor behaviour can be dealt with when it arises	
Early intervention	Question 9: In the context of leadership, what needs to change to empower elected representatives, CEOs, and Council staff, to call out poor Councillor behaviour and misconduct without fear of retribution?
	Question 10: What can be done to better support dispute resolution at Councils?
Dispute resolution	Question 11: What types of early intervention mechanisms can be formulated and when? What do you think is an acceptable duration or timeframe for this intervention to fairly resolve a matter?
	Question 12: How can the process for misconduct and/or poor behaviour claims be improved, or more adequate penalties for misconduct and poor behaviour be incorporated in a more effective way?

Submissions can be made on either some of the above questions, or on all of them. Submissions can be made via an online form that can be accessed from www.localgovernment.vic.gov.au/council-governance/local-government-culture-project. The submissions can be either typed directly into the form or prepared in a separate document. Further information about making a submission is also available on this website.

How the project is being run

This project is being overseen by Local Government Victoria, a division of the Victorian Department of Jobs, Precincts and Regions. Local Government Victoria provides policy advice, oversees legislation and works with Victoria’s 79 local councils to support responsive and accountable local government services. Local Government Victoria appointed PricewaterhouseCoopers Consulting (PwC) – in partnership with academics – to undertake the Local Government Culture Project. The academic partners are Graham Sansom (University of Technology Sydney), Anona Armstrong (Victoria University) and Yongqiang Li (Victoria University).

This Discussion Paper was developed by PwC and the academic partners, making use of broader research and input from the sector. Sector stakeholders who were consulted as part of the development of this paper include:

- Municipal Association of Victoria (MAV)
- Victorian Electoral Commission

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- Local Government Inspectorate (LGI)
- Local Government Professionals (LGPro)
- Australian Services Union (ASU)
- Victorian Local Governance Association (VLGA)
- Gender Equality Advisory Committee (GEAC)
- Councillor Conduct Panel
- Chairs of the Panels of Administrators
- CEOs of local councils
- Mayors
- Local Government Mayoral Advisory Panel

Feedback is being sought on the 12 questions presented in this Discussion Paper in the form of submissions. These submissions will be examined in depth, and additional consultations with the local government sector will take place to discuss the findings. A final report to the Minister for Local Government will then be prepared based on the findings. It will set out proposed actions that could be taken by the sector to reduce poor behaviour incidents and better respond to them when they do occur.



1 Introduction

1.1 Context

Poor Councillor behaviour can have profound impacts on the local government sector. This includes difficulties in attracting and retaining a diverse pool of talented staff, impairing individual and Council performance and contributing to diminished public trust. In more extreme cases, poor Councillor behaviour and misconduct matters can result in the dismissal of a Council. For example, there were five occasions in the last local government term (2016 – 2020) alone where state intervention resulted in the dismissal of Councils. Investigations and reports by integrity bodies also exposed misconduct and poor behaviour in these instances.

Poor behaviour in the context of this Discussion Paper refers to behaviour that may not meet the threshold for misconduct, but that is not conducive to the performance of the role of the Councillor, such as aggressive body language or harsh language and tone of voice. Misconduct by Councillors is defined in the Local Government Act 2020 (LG Act 2020) as any breach of the prescribed standards of conduct included in the Councillor Code of Conduct. This includes, but is not limited to, the treatment of others, performing the role of Councillor and complying with good governance measures. Misconduct can also be demonstrated at further levels including *serious misconduct*, which comprises disruptive behaviour such as bullying of other representatives and Council staff, and directing of Council staff, and *gross misconduct*, which constitutes the more serious misconduct events and queries the suitability of the Councillor in question to hold their position. Depending on the type of misconduct displayed, the resolution process may require external intervention.



While the current system has a range of mechanisms in place to address unacceptable behaviour and misconduct, it appears these mechanisms are not sufficiently reducing either the frequency or impact of unacceptable Councillor behaviour. It is necessary to understand what enables Councillors to behave in unacceptable ways. Changes are required to empower the local government sector to prevent or proactively deal with this behaviour to minimise its harmful impact and prevent escalation.

1.2 Purpose of the Discussion Paper

This paper highlights the key preliminary insights, themes and ideas arising from consultation, desktop review and academic partner input in the context of influences on culture and conduct in the local government sector, with a particular focus on Councillor misconduct. The Discussion Paper seeks feedback on these insights, as well as further input and ideas from the local government sector and public more broadly. This feedback will inform the sector-led changes and considerations required to empower and enable a sustainable, respectful and inclusive culture in the local government sector.

The Local Government Culture Project has adopted a collaborative approach to engaging with stakeholders to maximise the amount of feedback received for consideration and to capture, theme and validate competing views or differing perspectives. This approach sought to achieve the following objectives:

- Identify the key relationships, dynamics and drivers of behaviour and conduct
- Understand the factors influencing conduct and culture and the perspectives of key stakeholders
- Suggest key enablers that may improve workplace culture, reinforce diversity, equity and inclusion, and further strengthen public trust in the local government sector and communities.

2 Current context and operating environment of local government

As a material component of the Victorian economy, the local government sector plays a critical role in creating, fostering, and delivering diversity, inclusion and equality at a community level by encouraging members from diverse communities to participate in local initiatives. This includes programs promoting social inclusion, social justice and human rights and prevention of violence. This is intended to foster and strengthen the support for diverse communities and backgrounds, and thereby ensuring all community members feel valued and respected.

Three levels of government exist in Australia to which elected representatives are voted into and work together to exercise law and enable people across Australia to work, live and participate economically and socially in their communities. These three levels of government – federal, state and local, have different levels of power and responsibilities, and each with their own decision-making bodies. These levels of government are reflected at a high level in Figure 1.

Figure 1: The three tiers of government in Australia: Federal, state and local government.



In the context of local government power and authority, under the LG Act 2020, Victorian local Councils can develop and utilise local laws which will enable them to address local issues and community needs, and continuously improve and maintain service delivery.

2.1 Current Context

There are 79 Councils across Victoria that make up the local government sector that are classified into cohorts, these being metropolitan, interface, regional cities, and rural Councils. Councils employ nearly 38,000 full-time equivalent staff, and are in place to support, manage and respond to the area-based needs of their local community. Many initiatives and services are therefore provided and delivered by local Councils or the local government sector more broadly to contribute to the economic, social and cultural development of their respective municipalities. Furthermore, services delivered by local Councils seek to respond to and maintain the wellbeing and infrastructure needs of their local community, which may vary between Councils. To enable local service delivery, most Council funding is derived from revenue sources such as the collection of rates, fees and fines with some funding also being provided by the state and federal governments. Through its service delivery and development, the local government sector contributes substantially to the Victorian economy. In

the 2020-21 financial year alone, Councils budgeted to spend \$9.6 billion on operating expenses and over \$3.5 billion on capital works.

The Minister for Local Government in Victoria works with the local government sector to ensure there is a representative, accountable, responsive, and contemporary system of local government. This is carried out by, for example, addressing sector concerns, delivering grant programs and recurrent funding for community infrastructure and services, and place-based responses to local needs and priorities. The Minister for Local Government provides one avenue which can advocate for the local government sector within the state government, another being local government peak bodies.

2.2 The Local Government Operating Environment

The Victorian Constitution 1975 declares local government as a “*distinct and essential tier of government consisting of 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*”. The LG Act 2020 further acknowledges local government in this context through its objectives, stating that “*Local Government continues to be constituted as a democratically elected tier of Government in Victoria*” (Section 4(a)), and that “*Councils are constituted as representative bodies that are accountable, transparent, collaborative, efficient and engaged with their communities*” (Section 4(b)).

Local government, like the federal and state governments, comprises governing bodies with democratically elected members (Councillors) and administration (Council employees). Every four years, local communities are responsible for electing Councillors for their respective Council, who they believe will best represent and respond to the current and emerging needs of their respective community. Local communities invest their trust in representatives of their community that they believe will conduct themselves in this role impartially and participate in good decision-making with the public’s best interest in mind.

Councillors are elected to positions responsible for the long-term strategic planning and decision-making required to enable the Council to achieve its community vision and strategic objectives. As a representative of the interests of the public and municipality, Councillors participate in decision-making and planning activities that contribute to the overall strategic direction and financial strategy of the Council.

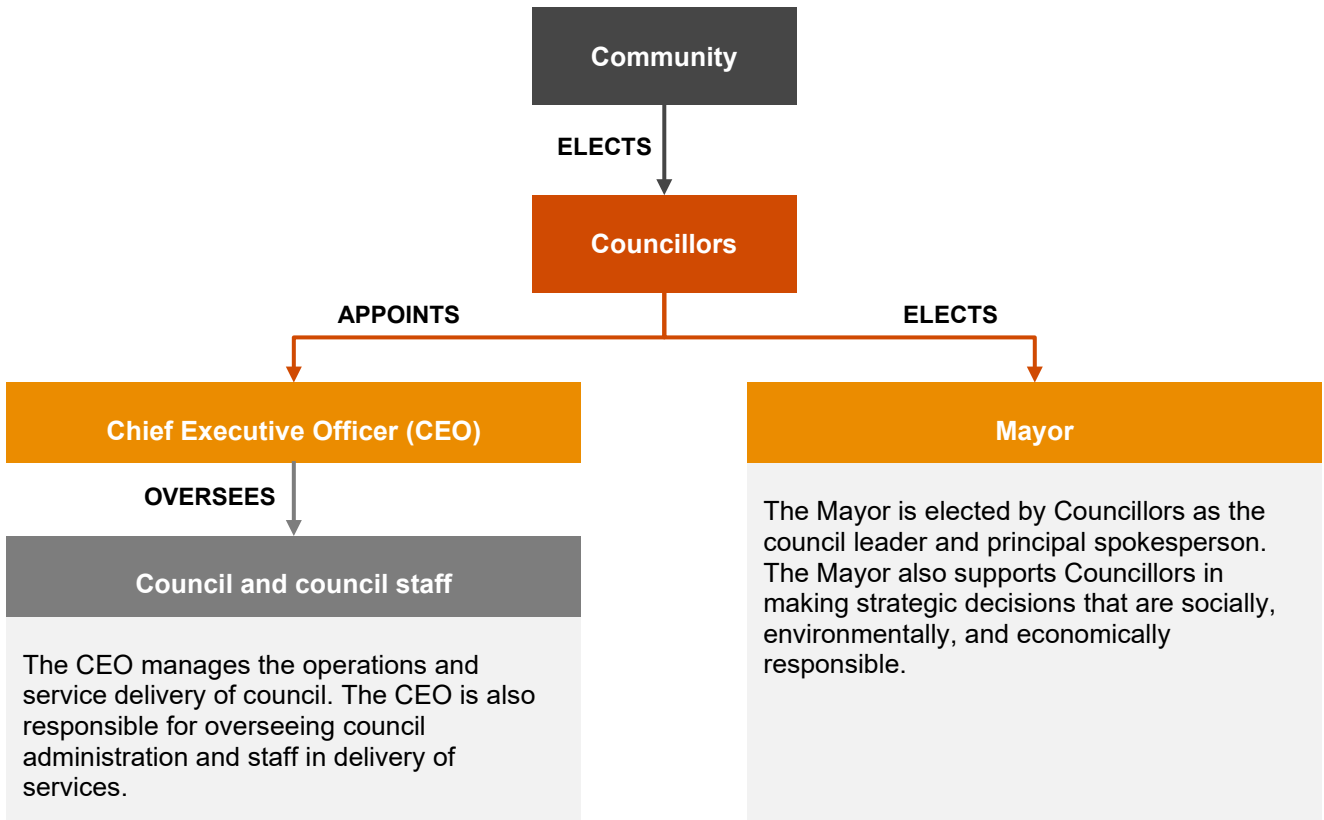
Councillors may be elected from a multi-member ward (of which Councillors will be elected from a ward alongside other Councillors), single-member ward (of which the Councillor will be elected as the only representative of their respective ward) or elected from across the whole municipality (unsubdivided).

Councillors are, in turn, responsible for appointing the Chief Executive Officer (CEO) for up to five years. Councillors also elect a Councillor as Mayor to be the principal spokesperson and, in most instances, lead their respective Council for up to a two-year term. It is common, however, for Mayors to change annually, with the exception for the City of Melbourne where the Lord Mayor is directly elected for a four-year period. The broad structure of a Council is illustrated in Figure 2.

The Council-appointed CEO is responsible for overseeing and driving the Council at an organisational level. This includes the day-to-day management of Council activities and services, as well as implementation of policies and decisions needed to achieve the Council’s strategic plan. The CEO also provides advice to Councillors on matters requiring their strategic decision. Some of the Councillor-CEO relationship tensions may be attributed to the advice Councillors rely on from the CEO and administration – by providing the advice required, the CEO may potentially be perceived as too powerful.

The relationship between Councillors, Mayors and CEOs is critical yet complex. In electing the Mayor and appointing the CEO, the nature of the relationships can be sensitive, particularly, for example, for a CEO anticipating reappointment or a Mayor anticipating being re-elected for another term. Relationship tensions are further exacerbated by the formation of voting blocs. Voting blocs are a group of individuals or voters with aligned motivations and interests, including political preferences, which may influence their voting pattern and generate allies. These can be driven by the division of ‘parties’ based on factors such as popularity or alignment of political views and agendas, and does little to facilitate management of poor behaviour.

Figure 2: Council structure overview. This figure was adapted from the council structure graphic available on Vic Councils – Council Structure.



3 Problem statement and background

3.1 Overview of the Issue

There is a clear and growing problem of poor and unacceptable behaviour in certain sections of the local government sector, particularly amongst some Councillors. The increasing number and severity of instances of poor Councillor behaviour and conduct precedes the last Council elections in 2020, of which more than 300 Councillors were elected for their first time. These instances adversely impact the relationships with and operations of Councils, thereby preventing Council staff and other elected members from effectively discharging their responsibilities and operating in the best interests of their respective communities.

Recent instances of Councillor misconduct and other forms of poor behaviour have resulted in the dismissal of five Councils¹ in the last Council term (2016 – 2020). Other significant interventions, including investigations into Councillor corruption and harassment of other elected representatives and/or Council staff, were also required during this period.

The current system has a range of mechanisms to address unacceptable behaviour. However, feedback from stakeholder consultations has anecdotally indicated that the conduct complaint process is 'lengthy and arduous', and does not enable Councils to implement measures or sanctions in a timely manner, or with the required consequences to effectively manage or sufficiently reduce either the instances or impact of unacceptable Councillor behaviour. To best sustain and serve the future needs of Councils and their elected representatives, this Discussion Paper seeks further insights into the adequacy of current mechanisms to manage complaints and deter poor behaviour from occurring in the first place.

Local government, as the closest level of government to the community, is the bedrock and vehicle for community representation. Community-centred and socially responsible decision-making and leadership to meet the needs of the municipality are therefore at the heart of maintaining public trust and support.

3.2 Why Does Conduct Matter in Local Government?

Councils play a critical role in providing the diverse services required to meet the needs of their local communities. To do so, Mayors and Councillors are placed in a position to understand, advocate and promote the strategic actions and decision-making required to meet the needs of their local communities. Their positions of leadership and authority underpin good governance and conduct in local government, and are critical to driving community-centred, responsible and sustainable strategies.

The reward for achieving public office is the exercise of power. "Power accrues to people who make correct decisions, are skilful at compromise and negotiation, and who can persuade people that they can be trusted with power and will use it in the public interest so that the society as a whole can benefit"². These attributes suggest that high levels of skills are desirable in elected officials. As such, having prior experience in a professional, executive and/or governance setting, are advantageous in working in a strategic environment requiring responsible decision-making, forward planning and, essentially, conducting a multimillion-dollar business.

Best practice and ethical conduct are important in local government, particularly among elected members of Council, to reassure the public and local community that their elected representatives are acting in their best interests. Results of a study looking at the determinants of public trust in English local government³ showed

¹ The five councils dismissed in the last Council term (2016 – 2020) were Greater Geelong City Council, Central Goldfields Shire Council, South Gippsland Shire Council, Whittlesea City Council and Casey City Council.

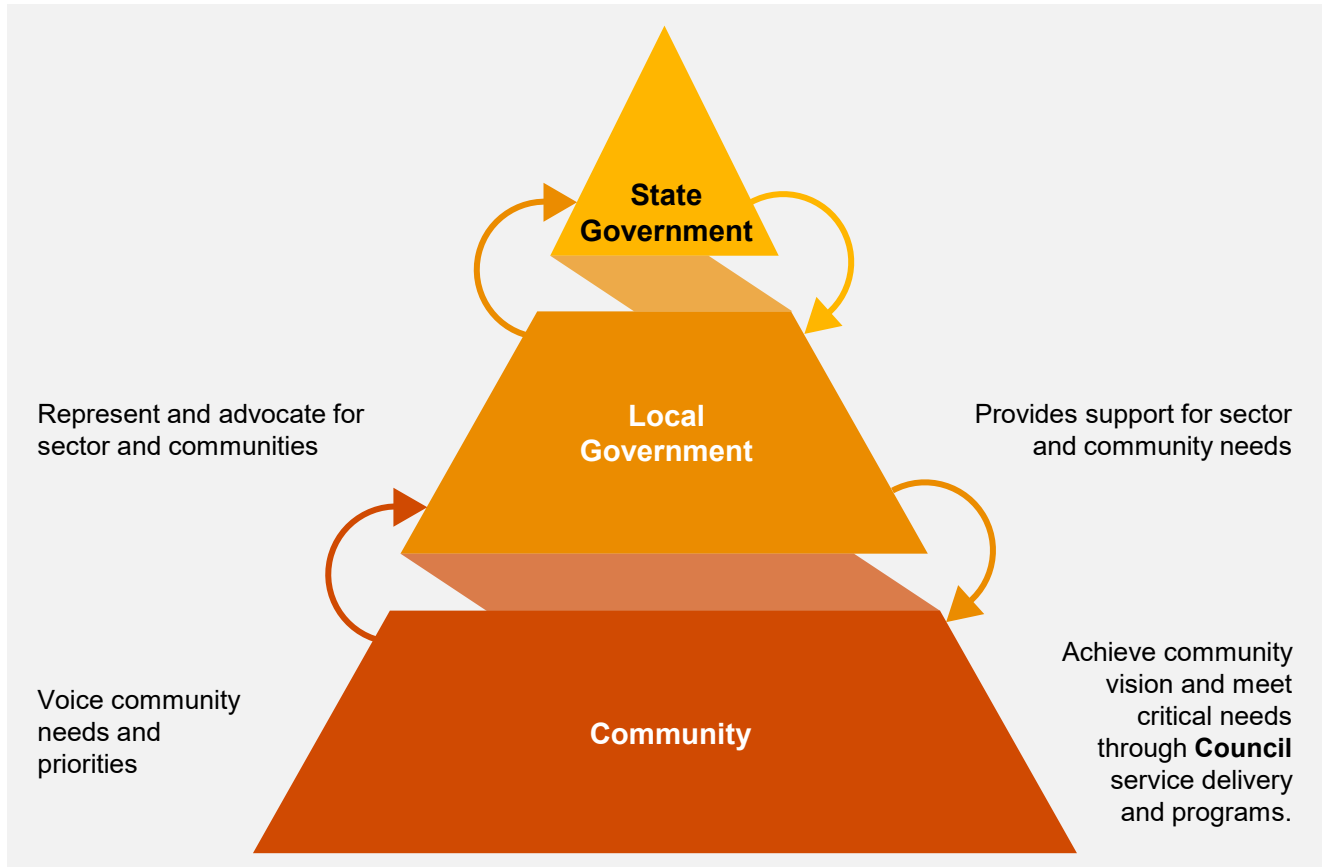
² Hall, K., Bucholtz, M. 'Gender Articulated: Language and the Socially Constructed Self' *Routledge* pp. 65

³ Downe, J. et al. 2013, 'The determinants of public trust in English local government: How important is the ethical behaviour of elected Councillors?' *Int. Rev. Adm. Sci.* 79(4): 597-617

that Councils with lower levels of Councillor misconduct and higher levels of good performance had, in general, higher levels of public trust.

Instances of poor behaviour and misconduct can substantially influence and disrupt the culture and working relationships throughout a Council. Councillors that demonstrate positive behaviours are critical to achieving an effective Council and strong working relationships with other Councillors and Council staff. They can also positively impact the public perception of Councillors and their respective Councils.

Figure 3: State and local government (through Councils and members of Council) partnership is required to address community needs and priorities.



The LG Act 2020 and other regulation and practice guides outline the minimum compliance and conduct requirements that Councillors need to meet. While this guidance seeks to improve accountability and service delivery across the sector, much more is required to achieve best practice conduct and governance in local government.

Further information on current statutory provisions and supports such as the LG Act 2020 can be found in Appendix A.

3.3 Impact and Consequences of Poor Behaviour and Misconduct

The impact of persistent poor behaviour and misconduct in local government is multifaceted. Poor behaviour and misconduct of a Council member, if allowed to persist without early or effective intervention, can render both the Council and the collective group of Councillors, dysfunctional. As misconduct and poor behaviour events escalate, by-products of these events emerge. Examples of this include negative publicity, diminished workplace relationships and public trust, negative impacts on health and wellbeing, increased workforce turnover, absenteeism and recruitment challenges, and the dismissal of Council.

The LG Act 2020 and the Local Government (Governance and Integrity) Regulations 2020 depict the standards of conduct and a Councillor conduct framework to support the management of Councillor conduct issues. However, organisational processes are equally important in contributing to and supporting an early intervention response. Persistent poor behaviour across the sector, however, may be indicative of an inherent gap or disconnect in the current system.

As outlined by the Victorian Charter of Human Rights and Responsibilities and Victorian Occupational Health and Safety Act and Regulations 2004, all Victorians have a right to freedom, equality and respect, and all employers have a responsibility to ensure the safety and fair treatment of their employees in any given workplace. Bullying, harassment or sexual harassment and discrimination are examples of unacceptable behaviour and treatment of which Councillors, Mayors, CEOs, and other staff can be subject to, and are indicative of a dysfunctional Council and/or damaged Council culture and governance.

As noted by the Australian Local Government Women's Association, '40% of women who decided not to run again said it was because of poor culture'. This, in essence, has the ability to affect the state government target of achieving a 50% gender split of Mayors and Councillors by 2025 and garnering the benefits of equality. Following the 2020 local government elections, 272 women were elected to Council which represented 43.8% of Councillors⁴.

A Commission of Inquiry into Greater Geelong City Council in 2016 investigated the breakdown of good governance and breach of Councillor Code of Conduct by the Mayor and several Councillors. The conduct perpetrated by the Mayor and Councillors subjected several Council staff to bullying and harassment, which resulted in substantial damage to their health and wellbeing to the point of resignation and physical relocation of two Council staff members. Consultations suggested that the complex Councillor – CEO relationship can interfere with the effective management of Councillor misconduct, particularly as the CEO is, technically, an employee of the Councillor.

Similarly, a Commission of Inquiry into South Gippsland Shire Council in 2019 reported Council staff being so emotionally impacted by conflict and misconduct to the extent of requiring medical treatment. These inquiries revealed that mechanisms to report and manage both bullying and harassment complaints by staff were not effective or timely, thereby leaving staff to feel defeated and helpless in seeking support, and with little faith in the system to appropriately respond to their complaints in a prompt manner.

Additionally, there appears to be hesitation towards holding unacceptable Councillor behaviour to account due to fear of conflict, intimidation or repercussion, as reported in the City of Casey's 2020 Monitor Report. The lack of confidence by Councillors and staff to have their complaints managed effectively or without fear of repercussion, combined with the breakdown of good governance as a result of inadequate leadership, enables poor behaviour by elected members to continue and become normalised. Where good governance practices and principles continue to be disregarded, particularly in Councils that are able to continue to function and deliver on their business responsibilities, a strong avoidance culture may then develop.

The number of inquiries and recent dismissal of Councils is a strong indicator that there is a need for greater early intervention and accountability to discourage poor behaviour by Councillors. Although the LG Act 1989 has been recently subject to an in-depth review, restructure and transformation and is now superseded by the new LG Act 2020, further refinements and reform may be required to improve good practices, effective leadership and accountability in the sector.

"Bullying, intimidation and exclusion are unacceptable behaviours in any workplace. An apparent embedded culture of a failure to challenge these Councillor behaviours and hold the responsible Councillor parties to account represents a serious governance failure at the Council.*"

*Gardner, L. 2020, 'City of Casey Municipal Monitor Report'

Preliminary insights revealed a need for earlier intervention and prevention efforts to manage Councillor misconduct.

⁴ Local Government Victoria, *Gender Equality in Local Government*, <https://www.localgovernment.vic.gov.au/our-programs/gender-equity>

3.4 Current and Past Actions to Address Poor Behaviour and Misconduct

Several actions have been carried out nationally to address Councillor misconduct and poor behaviour. Actions have sought to improve governance, conduct and accountability across the local government sector. Examples of actions that have been undertaken include revisions and amendments to key legislation relevant to the local government sector, or non-legislative endeavours by the local government sector to highlight, discuss and address Councillor misconduct and poor behaviour. Consultation has provided some examples of good practices currently undertaken by a number of Victorian Councils, including:

- The acknowledgement of the Councillor role being both a privilege and responsibility, and highlighting the definitions of principles and values.
- High Performance Training on Council values featuring a ‘High Performance Tool Kit’.

Further examples of potential internal and external initiatives to improve Council culture were also provided, some of which are already underway while others are for consideration. Some of these are noted below.

Internal initiatives:	External initiatives:
<ul style="list-style-type: none"> • Orientation, induction and training on responsibilities • Council values • Culture reviews • Zero tolerance to bullying • Performance reviews and performance management of Councillors • Standardising the core requirements of the Code of Conduct with an opportunity for the Council to have value add or ownership of certain sections • Code of Conduct mediation process for disruptive culture and behaviour • Stronger misconduct Code of Conduct processes 	<ul style="list-style-type: none"> • Pre-training programs for candidates • Formal mentoring system • Term limits – similar to a board environment • Workplace occupational health and safety (OH&S) • Modelling of ideals – parliament versus board • Refine and tighten definitions in the LG Act 2020 (such as that of ‘confidentiality’) • Anti-bullying assistance for Councillors • Conduct health check and an OH&S check • Councillor suspension • Appointment of a Municipal Monitor • Council dismissal

Feedback suggests that more could be done to prevent instances of poor culture and conduct, and minimise the need for external responses when events progress to a point of crisis. Ultimately, however, Councillors and Mayors need to exercise the leadership required to build an environment of trust and discourage incidents of misconduct through internal initiatives. This can only be achieved through shared values, leading by example and appropriate management of conflict.

Legislative reform may also have a role to play in addressing misconduct and poor behaviour. There is a balance between being too prescriptive and enabling the local government sector to have ownership of initiatives required under legislation. However, mandating processes and expectations to ensure alignment with legislative principles provides a mechanism to guide the local government sector towards achieving a desired level of good conduct. Limitations associated with legislative reform may, however, include the need to regularly review the legislative environment to ensure it remains contemporary. This would provide the tools to empower Councils and to sustainably meet the evolving needs of the community.

Past and current national legislative reform acknowledges that this approach alone will not fully address and resolve Councillor misconduct. Legislative reform approaches may seek to clarify and delineate the levels of behaviour and the appropriate managing bodies. Doing so would enable a clearer dispute resolution process, timely intervention and the provision/allocation of powers. Legislative reform approaches in other jurisdictions also explore establishing core capability requirements for elected representatives and transparency of their professional development journey.

A few examples of national legislative reform are highlighted in Appendix B.

4 Contributors to conduct and behaviour

In this section of the Discussion Paper, we introduce the questions that we are seeking submissions to respond to. The questions are highlighted in orange boxes throughout this section, with additional detail provided in the boxes after the questions. The questions are then concisely summarised in the next section of the Discussion Paper.

Twelve lines of inquiry – framed as questions – have been devised to guide this Discussion Paper as part of the consultation process. Through these 12 questions, the Project seeks broader input and ideas to inform the next steps and actions for consideration and development by the sector.

Much of the feedback and insights to date are anecdotal yet valuable in understanding the impacts of Councillor misconduct. However, focus needs to be placed earlier on addressing the underlying causes and issues that would minimise or prevent the occurrence of poor behaviour and misconduct. Mechanisms enabling earlier intervention for poor behaviour and misconduct incidents could reduce not only the level of impact or trauma on individuals involved, but also the cost to Council in terms of financial costs, time and resources. Failure to address poor behaviour or misconduct early on may result in the following types of outcomes:

- ongoing unacceptable and toxic culture or behaviour
- increased staff turnover and impact on recruitment or Council representation
- loss of a talented and suitable workforce
- impact on mental, emotional and/or physical health and wellbeing, including hospitalisation
- physical relocation of staff
- diminished trust in the system and local government sector
- costs and legal fees to Council
- diminished performance and effectiveness to meeting community needs
- dismissal of Councils.

Misconduct distracts Councils from their core role and diverts important community resources to conduct processes that would otherwise be spent on important community services.

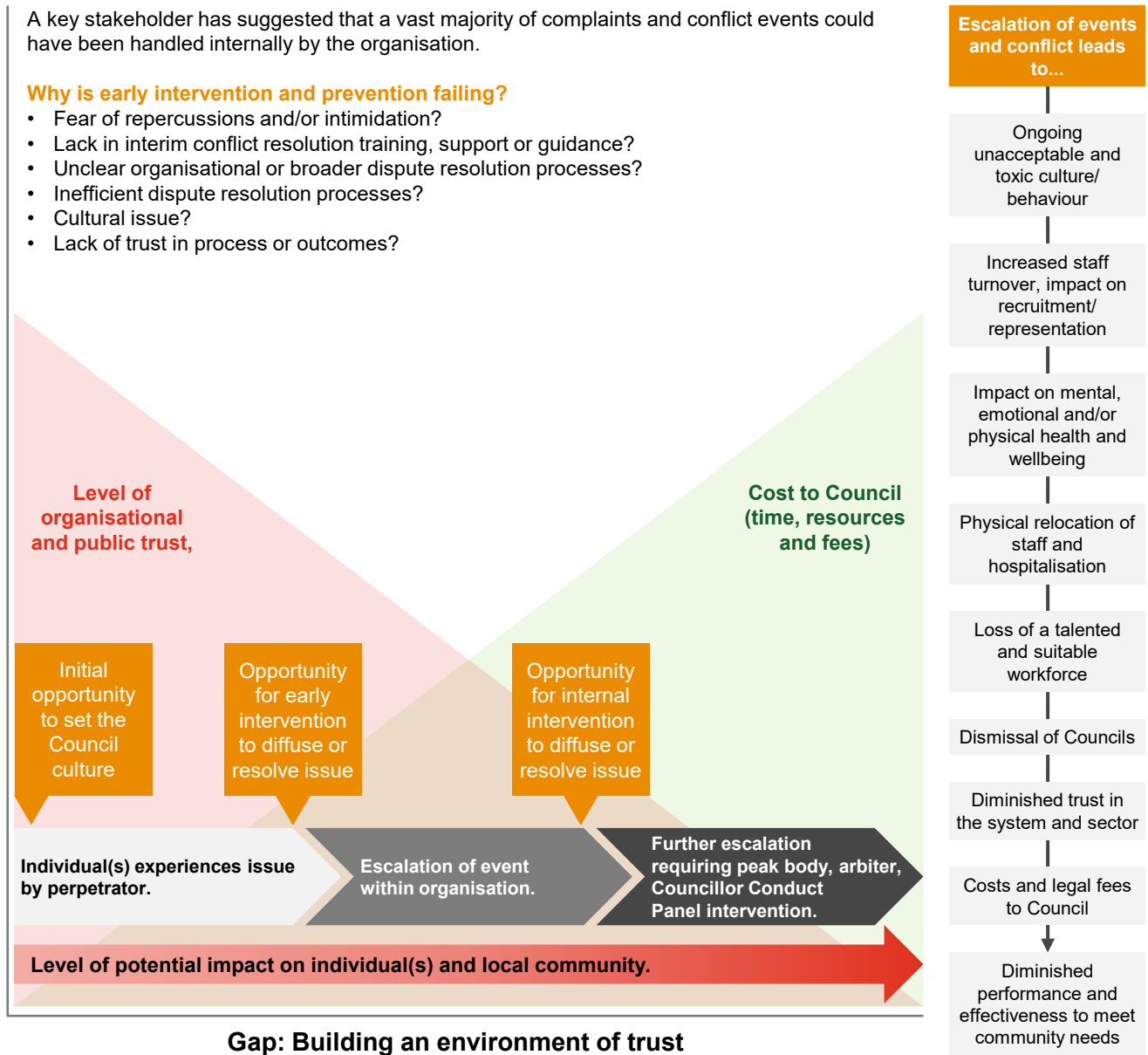
Consultations identified a need for more early preventative measures and intervention mechanisms when misconduct and poor behaviours occur and escalate. The inherent relationships between opportunities to intervene and failure to do so, and subsequent escalation of misconduct events and impacts are depicted in Figure 4.

Three potential contributors to culture and behaviour have been identified through consultation feedback and desktop review:

- leadership experience and capability
- Councillor journey
- early intervention and effective dispute resolution.

Insights from preliminary consultation revealed the need to build an environment of trust and leadership in order to address and deter instances of misconduct.

Figure 4: Escalation of events



4.1 Leadership Experience and Capability

4.1.1 Supporting leadership competencies and capabilities

The publication, ‘Vibrant Local Leadership’⁵, depicts local government as a “*pioneer of important social change*”, adapting and driving the development of services and initiatives to meet diverse needs of their local communities, and Councillors as the leaders of the locality. Local communities rely on Councillors and Mayors for leadership to strategically drive the vision of the municipality, and decision-making necessary to deliver community services sustainably and responsibly.

Leadership in the context of local government therefore surpasses the traditional definition of ‘being a leader’ or ‘leading an organisation’. Instead, leadership in local government comprises the responsibility of **cultivating an environment of trust through leadership competencies**, these being integrity, capability, positive intent, mutual respect and transparency. These continuously develop over time but engender trust and public accountability in communities. Effective community leadership will empower communities to determine their needs and involve them in building a shared community strategy and Council vision.

Although limited to Council employees, the 2019 IBAC Local Government Integrity Frameworks Review noted that those in positions of **leadership and authority are indeed responsible for setting the ‘ethical tone’ of an organisation**, as well as building integrity and corruption resistance within the respective organisation. Communication of expected standards of behaviour and values of all organisational staff, leading by example, and being held accountable for misconduct matters are critical for effective leadership.

Legislative reforms alone may not be sufficient in addressing Councillor misconduct and inappropriate behaviour.



Question 1: The Local Government Act 2020 defines leadership roles and responsibilities. Does this require further role clarity? If so, which aspects require clarification and how may this be achieved (including legislative and non-legislative mechanisms)?

Effective leadership requires the Mayor, Councillors and CEOs to work together to achieve a shared community-centred vision. The clarity of roles and responsibilities, and a clear delineation of boundaries enable these relationships to flourish. Preliminary consultations have also reinforced the importance of a Mayor’s leadership role and their relationship with Councillors and CEOs. However, depending on background and experience, leadership capabilities and effective working relationships may take some effort and time to develop. For example, a newly elected Mayor may rely heavily on an experienced CEO to assist in resolving issues relating to certain Councillor-based relationships or require support to navigate community leadership challenges. Legislative and training mechanisms currently exist to help address this, however the ultimate responsibility for leadership actions rests with the Mayor.

It is widely acknowledged that there will be disagreement in decision-making. However, it is important to understand how behaviours and conduct can negatively impact effective leadership and relationships between elected representatives and the CEO and their staff. Mutual agreement is not expected to exist across all circumstances. However, consultations strongly support the view that disagreement must be approached by all members in a constructive and respectful way, maintaining camaraderie. There is a general agreement arising from the consultations that more training and support in conflict management and dispute resolution may be required.

Based on the consultations, it is acknowledged that the LG Act 2020 and LG Governance and Integrity Regulations 2020 may be sufficiently clear in defining the roles and responsibilities of Councillors, Mayors and CEOs but could be better enacted by existing training mechanisms. The LG Act 2020 is an enabling legislative act, and has removed some prescriptive language to provide some level of ownership to the local government sector as to how principles are to be applied on a case-by-case basis.

Insights from consultations suggest the underlying issue may be less about clarity of current legislation and more about whether Councillors and Mayors have the requisite leadership competencies and capabilities to succeed in their roles. Critical to the ongoing learning and progression is the degree to which an elected representative understands their strategic and financial duties, Council and operational matters, conflict of

⁵ Office of the Deputy Prime Minister, 2005, *Vibrant Local Leadership*, <https://services.swale.gov.uk/meetings/data/Cabinet/20050323/Agenda/Annex%203%20for%20Item%207%20-%20D3649CAEBB1F4036A09CAC2C1D9840F3.pdf>

interest, and the relationships with and roles of other Councillors, Mayors and CEOs. This also includes the interaction and boundaries with other Council staff, which is managed by CEOs as detailed in the LG Act 2020. Consultation suggested that this can be disregarded by some Councillors who lack an understanding of their duties and potentially causing disruption as they involve themselves in operational matters. Gaps in this knowledge spectrum tend to challenge leadership and create relationship tensions.



Question 2: Given the diversity and experience of candidates' backgrounds, how can the local government sector improve leadership capability and better cultivate an environment of transparency, honesty, integrity and trust?

Feedback from the local government sector suggests there are broadly four general types of candidates, each with different levels of understanding of the roles and responsibilities of elected representatives. The four types are generalised as:

1. Single issue candidates
2. Candidates with broader political aspirations starting their career at a local government level
3. Candidates that run for election to promote their individual agendas
4. Candidates who want to contribute to the wellbeing of their community.

Within the four categories above, the pool of candidates may comprise individuals that have had little to no prior involvement or experience in leading a large-scale organisation or governance experience working in a board-type environment (for example, Council Chamber). Regardless of intentions, an elected representative's understanding of the specific functions and services that a Council provides is key in understanding how they need to "get on" with others and the boundaries that enable trust, respect and camaraderie between colleagues. Where individuals are not well informed on good practices, this can lead to an expectations gap and a low level of trust cultivated in that environment.



Question 3: How successful have any existing initiatives been to promote strong leadership and build trust? Please provide case studies or examples of good practice that have worked well and could be considered for broader implementation.

Preliminary consultations with a number of key stakeholders have suggested the consideration of a formal mentoring system in enabling sector-led, peer-to-peer support, as well as a platform to share good practice success stories and strengthen partnerships between roles. Implementing a formal mentoring system may support the significant learning curve many Councillors face upon commencing their position and may, if considered, be a system that could be extended to the mentoring and education of candidates. In doing so, there is a potential to cultivate good leadership practices aligning to the Councillor Code of Conduct and LG Act 2020 from the start. However, proper governance arrangements for this system should be carefully considered to ensure Councillors (or former Councillors) who are best placed to be mentors are put forward. It is worth noting a similar system may be beneficial for CEOs, particularly where leadership and governance capabilities are lacking, however this is out of scope for this Project and currently not for consideration.

4.1.2 Operation of Local Government



Question 4: Mention is made through consultation of local government being a *'parliament of opposition as opposed to a diverse board of the community'*. What needs to change to better align Councillors and Mayors to effectively achieve community-based objectives and better operate as a diverse board of the community?

Legislative arrangements and structures in the context of how local government is governed may contribute to problematic Councillor behaviour. Under existing legislative arrangements, it is often perceived that the governing body of Councillors operates similarly to a 'board of directors', collectively responsible for the management, governance and direction of an organisation, as opposed to a 'parliament'. However, as elected representatives, the institution within which Councillors operate and the requirements as defined in the LG Act 2020 contradict the understanding of how a board of directors should operate. This creates confusion around the realistic operation of Councillors once elected, as the local government election process is itself a parliamentary process.

The exercising of power and decision-making responsibilities of elected Councillors can be compared with the roles and responsibilities of a corporate board of directors. However, the method of election/appointment as a Councillor/board member creates an inherent difference in the operation and conduct of these two governance functions. Councillors are public officials elected through a democratic process and can be heavily influenced by political and policy views and perspectives. An appointment to a corporate board of directors is, on the other hand, typically based on an individual's skills and experience and his or her ability to complement the skills and experience of existing board members.

Feedback from stakeholder consultations and academic partners has suggested that:

- The potential for political bias or agendas of elected Councillors together with a potential skills or experience gap may impair the ability of Councillors to operate as a cohesive set of decision makers in the best interests of their local communities.
- Candidates and Councillors lacking the necessary skills, capabilities, or sound understanding of how local government operates may mimic parliamentary behavioural cues, particularly those with broader political aspirations or desires to use local government as a stepping stone into other tiers of government.

Councils, as bodies of elected representatives, are also required to meet and make decisions in an open, public session. However, unlike the state and federal elections, the local government election process and governance is not party-aligned or to represent a party, but to instead represent a community and their priorities. Consultation suggests that contrary to some expectations, there is misalignment of what Councillors perceive their privileges and powers comprise.

4.2 Councillor Journey

4.2.1 Training and professional development

Victoria holds local government Council elections every four years. This democratic process is open for participation by all eligible community members, providing them with the opportunity to represent, promote and influence changes and priorities in their respective municipalities. By standing for Council, potential candidates must comply with the candidate requirements as outlined in the LG Act 2020. This includes the completion of the mandatory candidate training developed and run by the Victorian Government, in order to nominate with the Victorian Electoral Commission. Local communities can then elect the candidates as Councillors who they believe will best represent and act in the interest of the community. The most recent general Council elections took place in October 2020.

Although a step in the right direction, pre-election and post-election training may need to be refined to enable more engagement and depth in learning material.



Question 5: How could the candidate and induction training support be improved to ensure genuine engagement and sustained understanding of the role and responsibilities of Councillors?

Mandatory local government candidate training is a new requirement set out in the LG Act 2020. The purpose of this one-hour candidate training is to educate and prepare candidates on the roles and responsibilities of Councillors, as well as the standards of conduct they are expected to adhere to, governance, conflicts of interest and decision making. The incorporation of mandatory candidate training into legislation was intended to ensure candidates are aware of and fully understand the nature of their legislated role for which they are running. It also intends to minimise unrealistic expectations and confusion, as well as misunderstanding of strategic responsibilities, if elected. Further to the delineation and clarification of roles, the provision of candidate training is an opportunity to outline the level of commitment expected if elected and what is reasonable. This includes not only time commitments, but where attendance is required at a minimum.

Although this mechanism was mandated to facilitate greater clarity and better understanding of roles and the sector more broadly, the online candidate training is applied at a basic level and is at risk of being completed as a 'tick box' exercise due to other priorities in the lead up to elections. For candidates campaigning for a single-issue policy or focussed on winning the election to leverage their position for individual agendas, these priorities may distract from genuine interest in understanding the strategic roles, responsibilities and expectations of a Councillor or the local government sector more broadly. Preliminary consultation suggests that although mandatory candidate training is a step in the right direction, the training itself may still be somewhat inadequate in achieving its purpose and meeting ongoing needs of encouraging the targeted participation of legitimate, community-focussed candidates.

The one-hour candidate training is not assessed or graded, only requiring completion for an individual to nominate. The time commitment and effort required to complete this training is small compared to, for example, the pre-election candidate training and information session provided by Local Government New South Wales (LG NSW)⁶. The LG NSW candidate training involves a two-to-three-hour session and is delivered via an interactive online approach or an in-house face-to-face approach.

Similarly, the LG Act 2020 states that the Councillor Induction Training is mandatory and must be completed by all Councillors within the first six months of taking the oath of office, and a declaration subsequently submitted. Induction training is crucial, particularly for newly elected Councillors, to access resources and modules that provide instruction and guidance on the importance of building relationships and culture, strategic versus operational thinking, decision-making, local laws, roles and responsibilities and key legislation. Councillors are required to complete the induction training amidst a flurry of other competing priorities and commitments once elected, including, for example, reviewing and adopting the Councillor Code of Conduct within a four-month timeframe following a general election (section 139 of LG Act 2020) and needing to strategically manage budget decisions.

⁶ Local Government NSW, *Pre and post 2021 election training*, https://lgnsw.org.au/Public/Events-and-Learning/Learning-Development/2021-Pre-and-Post-Election-Training/Public/Events/Learning-and-Development/Courses/2021_election_training.aspx?hkey=4ff591cd-9cb1-44a5-90e3-770deb34f900

Preliminary consultation therefore raised concern of newly elected Councillors being overwhelmed upon commencing, the retention of content from induction training being largely lost, and lack of understanding of their role in the long-term. Furthermore, whether there is regular ongoing training and at what frequency is at the discretion of the Council. It is, however, strongly suggested by the local government sector that induction training requires regular reinforcement and ongoing commitment, the absence of which would potentially enable Councillors to continue in their position while lacking the understanding and competencies to effectively perform in their role and manage critical issues.



Question 6: How can the local government sector work to formalise a structured professional development pathway for Councillors and Mayors?

Undertaking professional development to enable continuous learning and improvement is important in enabling Councillors to build the knowledge and skills required to effectively perform in their role and carry out their prescribed duties, as outlined in the LG Act 2020. This contributes to the effectiveness of which a Council operates, its service delivery and achieving its community and Council vision. Professional development opportunities for Councillors are provided through the Councillor Professional Development Program by MAV, and Council Professional Development modules by VLGA. Opportunities are also provided to those working at all levels of local government more broadly by LGPro. By undertaking professional development, Councillors demonstrate not only a commitment to building the necessary skills and knowledge, but also a dedication to ensuring they can effectively perform their role and make socially responsible and sustainable decisions to ensure the best outcomes for their community. The Office of Local Government in NSW coherently outlined the benefits of ongoing professional development for Mayors and Councillors, these are reflected below.

Benefits of ongoing professional development for Mayors and Councillors*:

- Mayors and Councillors representing their communities to the best of their ability
- Mayors and Councillors feeling confident and supported in their roles
- the governing body making decisions based on a full understanding of all the key issues and consequences
- improved performance of Council overall and greater understanding of, and compliance with, legal responsibilities
- better management of the Council's finances and resources
- Mayors and Councillors developing skills and knowledge that they can take into their personal and professional lives.

*Office of Local Government New South Wales, 2018, Councillor Induction and Professional Development Guidelines <https://www.olg.nsw.gov.au/wp-content/uploads/Councillor-Induction-and-Professional-Development-Guidelines-2018.pdf>

Unlike the local government sector in NSW, professional development is not mandated under the Victorian LG Act 2020. The Office of Local Government in NSW has issued guidelines under their current legislation to assist their Mayors and Councillors in ongoing professional development activities to enable compliance with regulatory requirements. Professional development in Victoria is instead voluntary and, in most cases, comes with a fee. Council budgets vary in nature and therefore preliminary consultation suggested a perceived risk that investing in the professional development courses to enhance roles could be scrutinised, and the use of rate payers' money seen as being misspent.

Through consultation it was suggested that a separate professional development or training 'fund' for Councils be established through state government to cover the costs of professional development opportunities. Although this may require certain eligibility criteria, it may enable Councillors and Mayors to upskill and further their knowledge without hesitation or fear that they may be 'misusing' rate payers' money. Furthermore, a recommendation to implement a public-facing 'points' or accreditation system would enable transparency and accountability of the training and professional development courses Councillors or Mayors undertake, and allow the public to have oversight of what they have 'invested' in. The intent behind this consideration is to encourage continuous improvement and upskilling of Councillors and Mayors, thereby enabling strategic and community-centred decision-making and leadership and the achievement of community goals and Council vision.

4.2.2 Social media

Social media usage within the local government sector is complex, and is difficult to effectively monitor and regulate. In this context, social media refers to the range of online websites and applications that enable the creation and sharing of content by a user to communicate and engage in social networking. When used appropriately, social media promotes public awareness, disseminates information immediately, and educates. Councillors and Council staff could leverage social media in a representative capacity of Council.

The movement from the pre-election to post-election environment should shift from competition to camaraderie.



Question 7: How can awareness be raised on the best ways to harness social media to ensure a consistent management approach – covering monitoring, appropriate usage, and the consequences of negative usage?

The rise in social media usage within the Victorian election context provides opportunity for positive interaction with the public and dissemination of messages. Conversely, the ease in use and access of social media enables the spread of misinformation, as well as targeted bullying and harassment of 'opposition'. The Victorian branch of the Australian Local Government Women's Association submitted an Inquiry into the Impact of Social Media on Elections and Election Administration⁷ in 2020 that touched on the inappropriate behaviour on and vindictive use of social media. The Inquiry's observations included the misuse of social media community or group pages to support candidates and belittle other election candidates, exposure of undisclosed conflicts of interest and incidents of brigading and malice. Such behaviours incite and cultivate a toxic, competitive environment, spread disinformation or, through targeted attacks on social media, skew public perception of certain candidates or Councillors.

The Local Government Inspectorate (LGI) issued a report regarding candidate and campaigner behaviour which depicted the 2020 election period as 'the most vindictive and vitriolic election' that experienced Councillors had participated in. LGI reported receiving 848 complaints during the 2020 Victorian Council election process, a 107% increase from the complaints received by LGI in the 2016 Council elections⁸. These complaints were made by both the public and candidates, with 266 of the complaints being in relation to candidates, rate payer groups or supporters and their use of social media to post about the elections.

There are other factors that influenced the stark increase in complaints from the 2020 Council elections. These are the impact of COVID-19, including the heightened anxiety, frustration and increased dependency on social media to campaign, participate in politics and access electoral information⁹, and the overall prominence of social media in modern culture. An inquiry into the impact of social media on the Victorian elections submitted by the Electoral Matters Committee¹⁰ and released in 2021 described the misuse of social media as contributing to 'increased polarisation and more partisan behaviour from other users'.

Similarly, a Victorian Electoral Commission inquiry¹¹ into the impact of social media on elections in 2020 suggested an underlying issue is the blurred boundary that exists between advertising and political commentary. Although the 2020 Victorian Council elections involved non-traditional approaches to campaigning given the COVID-19 enforced restrictions, the vindictive use of social media can significantly harm and detrimentally impact candidates and the public. Preliminary consultation revealed the level of impact may be heightened in regions with a smaller population where the opportunity for public encounters with candidates or Councillors is greater.

⁷ Tarlamis, L. 2020, 'Inquiry into the Impact of Social Media on Elections and Election Administration', Australian Local Government for Women's Association Victorian Branch, EMC Submission No. 120

⁸ Local Government Inspectorate, *Social media fuels rise in complaints during 2020 Council elections: Social media*, <https://www.lgi.vic.gov.au/social-media-fuels-rise-complaints-during-2020-Council-elections/role-media-elections/social-media>

⁹ Lucas, C. 2020, *The Facebook election: the vicious online battle for Dandenong Council*, <https://www.theage.com.au/politics/victoria/the-facebook-election-the-vicious-online-battle-for-dandenong-Council-20201016-p565su.html>

¹⁰ Parliament of Victoria, Electoral Matters Committee, 2021, *Inquiry into the impact of social media on Victorian Elections and Victoria's Electoral Administration*, <https://www.theage.com.au/politics/victoria/the-facebook-election-the-vicious-online-battle-for-dandenong-Council-20201016-p565su.html>

¹¹ Victorian Electoral Commission, 2020, *Inquiry into the impact of social media on elections and electoral administration*, https://www.parliament.vic.gov.au/images/stories/committees/emc/Social_Media_Submissions_2020/77_Victorian_Electoral_Commission_Submission_Redacted.pdf



Question 8: Do you think that any amendments to the Local Government Act 2020 are required to deal with the usage of social media? How should social media harassment be defined and what mechanisms could be introduced into the Act?

Misuse of social media is not limited to the election process but unfortunately continues post-election. Pre-election behaviour during campaigning is naturally competitive as candidates try to surpass other candidates, and robust political debate is both expected and accepted. However, the movement from the pre-election to post-election environment should shift behaviour from competition to camaraderie. The inappropriate use of social media is also a departure from the leadership qualities a Councillor or Mayor should be exhibiting once elected. Although the LG Act 2020 also outlines definitions and offences relating to, for example, misconduct, serious misconduct and sexual harassment, it does not include harassment in the context of social media usage as an offence.

Suggestions arising from preliminary consultations include incorporating harassment in the context of social media usage under legislative definition and as an offence to help deter the use of social media as a vehicle for poor behaviour. Such considerations may enable greater accountability and earlier intervention to prevent or minimise the vindictive use of social media. There is also an opportunity to promote the use of social media more strongly for positive purposes and to revitalise interactive community engagement through various platforms. However, guidelines on the use of social media would need to be clearly and explicitly identified.

Further information on the LG Act 2020 and a link to the LG Act 2020 itself are provided in Appendix A.

4.3 Early intervention and effective dispute resolution

4.3.1 Early intervention

The Councillor Code of Conduct outlines the standards of conduct expected. Following a general Council election, Councils must review and adopt a Councillor Code of Conduct. Councillors are required to review their Council's Code of Conduct and complete a written declaration that they adhere to the Code before and during their time in office. The Code must include mandatory standards of conduct, including:

- the treatment of others, including taking positive action to eliminate discrimination, sexual harassment and victimisation, and not engaging in abuse, obscene or threatening behaviour with members of the public, Council staff and Councillors
- performing the role of Councillor, including undertaking the training or professional development activities necessary to effectively perform their role
- complying with good governance measures including the policies, practices or protocols developed and implemented by the CEO in accordance with section 46 of the LG Act 2020 to manage the interaction between Councillors and Council staff
- not discrediting or misleading the Council or public.

Inherent and systemic tensions are drivers for the local government sector seeking early prevention or intervention support.

Although the majority of Councillors and Mayors conduct themselves in a manner that aligns to the standards above and in accordance with the Code of Conduct, the prevalence of Councillor misconduct is an emerging theme arising from literature, reports and the consultations held. In addition, proper conduct and behaviour is a responsibility of all Councillors and Mayors. The LG Act 2020 and Local Government (Governance and Integrity) Regulations 2020 provides guidance and arrangements to manage misconduct, serious misconduct and gross misconduct.

When there is a breach of the Councillor Code of Conduct, resolutions include internal arbitration processes, escalation to a Councillor Conduct Panel, appointment of a Municipal Monitor and/or involvement of external integrity bodies such as the LGI, the Victorian Ombudsman, Victorian Civil and Administrative Tribunal (VCAT), the Independent Broad-based Anti-Corruption Commission (IBAC), and Victorian Auditor-General's Office (VAGO). While these avenues exist, these become available only for misconduct, serious misconduct or gross misconduct events that are severely distressing, and provide a response rather than a preventative action. A fundamental gap that has therefore emerged through our initial consultations is the lack of adequate prevention and early intervention measures to stop poor behaviour.



Question 9: In the context of leadership, what needs to change to empower elected representatives, CEOs, and Council staff, to call out poor Councillor behaviour and misconduct without fear of retribution?

A key stakeholder has anecdotally suggested during consultation that a vast majority of complaints and conflict events could potentially be managed internally by the Council and not require external intervention. The escalation of conflict events to the point of requiring external intervention suggests that not enough is being done early enough to prevent the occurrence of unacceptable events (see Figure 4). As these events require intervention by independent or integrity bodies, the severity of impact and trauma on individuals increases dramatically. Drastic end results such as hospitalisation, physical relocation, high staff turnover, and diminishing public reputation and trust may occur, as the number of these incidents increase and escalate. The escalation of events to the point of crisis may also impact Councils' financial costs, time and resources, and/or its performance.

Consultation findings suggest that existing intervention and prevention mechanisms may lack effectiveness due to:

- fear of repercussion and/or intimidation
- lack in interim conflict resolution/management training, support or guidance
- unclear organisational or broader dispute resolution processes and tools
- inefficient dispute resolution processes

- existing organisational cultural issues
- lack of trust in the resolution process or inadequate outcomes.

Insights from consultation also suggest the need to consider ways in which CEOs, a position employed by Councillors, can be further empowered and protected in calling out and addressing Councillor misconduct given the nature of their appointment.



Question 10: What can be done to better support dispute resolution at Councils?

Consultation findings suggest that a lack of empowerment and reassurance to call out poor behaviour and misconduct may be a key gap that enables Councillor misconduct to continue. A 2020 Municipal Monitor Report for the City of Casey¹² revealed the governance failure that existed was due to an embedded culture of failure to effectively challenge Councillor behaviour and misconduct. There was a strong consensus arising from preliminary consultations that more mechanisms and opportunities to enable early intervention and prevention and more commitment and support from the Victorian Government were required. Considerations for more support drawn from consultations included potentially broadening the role of Municipal Monitors. Although the appointment of Municipal Monitors comes at a financial cost to the Council, there is an opportunity for Municipal Monitors to be appointed upon request by Council to provide a supportive and preventative function. This would support the management of perceived conflicts and governance issues before they escalate, instead of being appointed once these issues have fully materialised. Similarly, it was noted in consultations that a roaming monitor that can sit in at Council meetings without prior notice and observe interactions between Mayors, Councillors and CEOs may help address conduct concerns earlier.

¹² Gardner, L. 2020, 'City of Casey Municipal Monitor Report'

4.3.2 Dispute resolution



Question 11: What types of early intervention mechanisms can be formulated and when? What do you think is an acceptable duration or timeframe for this intervention to fairly resolve a matter?

There was consensus from consultations that the threshold required to be met and the effort needed to make an application for misconduct may be too high. The consultations also suggested that the process to escalate a complaint or an incidence of Councillor misconduct is slow, challenging and difficult to navigate.

It is worth acknowledging, however, that delays in addressing complaints in a timely manner can potentially be attributed to availability of the individuals involved and where fair hearing processes require collective participation and attendance, adequate time to prepare for cases.

Councillor misconduct matters requiring an internal arbitration process, which may involve the appointment of solicitors, can typically be resolved in approximately three months, such as the process decisions for Wyndham City Council (2021) and Hume City Council (2021). However, delays resulting from availability of people involved, attendance, adequate preparation and timely lodgement of paperwork may cause further delays. The internal arbitration process is a relatively new process which was introduced to provide an early intervention response. It may therefore take more time to determine its efficacy and efficiency, and to determine what refinements may be required, if any, to improve process performance. This Discussion Paper therefore seeks broader input and views on what is an acceptable duration for the investigation and dispute resolution process to fairly manage Councillor misconduct.



Question 12: How can the process for misconduct and/or poor behaviour claims be improved, or more adequate penalties for misconduct and poor behaviour be incorporated in a more effective way?

The consultations and desktop review considered more immediate, or interim, mechanisms to promptly make Councillors accountable for their misconduct and poor behaviour. This includes breaches of Councillor and Mayoral obligations as outlined in the LG Act 2020.

The consultations have revealed that time delays can also be attributed to personal disputes, complaints arising for political purposes, complaints lacking substance, or due to referral from one pathway or body to another. There is therefore concern as to whether worthwhile results are being delivered regarding outcomes and achieving good governance.

Interim findings suggest that Councils may be hesitant to escalate misconduct cases to an internal arbitration process as this could be viewed as a failure of Council. In part, this reluctance may be due to the impact on the Mayors' elected position, potential social media backlash and the protracted timeframe this takes to deal with a matter. Similarly, CEOs understand the complexities and sensitivities of the Councillor-CEO relationship. Their appointment was made and their potential reappointment will be made by Councillors who are, in effect, their employers. The sensitive relationship between Councillors and the CEO contribute to the tensions that drive the local government sector in seeking support, specifically, for early preventative intervention. Although the focus has been on eliminating misconduct, there is still a need for strong investment in processes to call out and manage this behaviour without fear of repercussion as well.

Insights revealed that dispute resolution processes were largely unclear and seen as 'too much for too little'.

4.4 Seeking your input

This Discussion Paper highlights three key areas that need to be addressed:

1. leadership experience and capability
2. the Councillor journey
3. early intervention and effective dispute resolution.

LGV and PwC are seeking broader local government sector and public feedback to further explore the issues presented and/or provide further ideas, case studies and insights for consideration. The lines of inquiry questions presented throughout this Discussion Paper are summarised in Section 5 – Summary of Questions.



5 Summary of Questions

Leadership experience and capability	
Supporting leadership competencies and capabilities	Question 1: The Local Government Act 2020 defines leadership roles and responsibilities. Does this require further role clarity? If so, which aspects require clarification and how may this be achieved (including legislative and non-legislative mechanisms)?
	Question 2: Given the diversity and experience of candidates' backgrounds, how can the local government sector improve leadership capability and better cultivate an environment of transparency, honesty, integrity and trust?
	Question 3: How successful have any existing initiatives been to promote strong leadership and build trust? Please provide case studies or examples of good practice that have worked well and could be considered for broader implementation.
Operation of local government	Question 4: Mention is made through consultation of local government being a <i>'parliament of opposition as opposed to a diverse board of the community'</i> . What needs to change to better align Councillors and Mayors to effectively achieve community-based objectives and better operate as a diverse board of the community?
Councillor journey	
Training and professional development	Question 5: How could the candidate and induction training support be improved to ensure genuine engagement and sustained understanding of the role and responsibilities of Councillors?
	Question 6: How can the local government sector work to formalise a structured professional development pathway for Councillors and Mayors?
Social media	Question 7: How can awareness be raised on the best ways to harness social media to ensure a consistent management approach – covering monitoring, appropriate usage, and the consequences of negative usage?
	Question 8: Do you think that any amendments to the Local Government Act 2020 are required to deal with the usage of social media? How should social media harassment be defined and what mechanisms could be introduced into the Act?
Early intervention and effective dispute resolution	
Early intervention	Question 9: In the context of leadership, what needs to change to empower elected representatives, CEOs, and Council staff, to call out poor Councillor behaviour and misconduct without fear of retribution?
	Question 10: What can be done to better support dispute resolution at Councils?
Dispute resolution	Question 11: What types of early intervention mechanisms can be formulated and when? What do you think is an acceptable duration or timeframe for this intervention to fairly resolve a matter?
	Question 12: How can the process for misconduct and/or poor behaviour claims be improved, or more adequate penalties for misconduct and poor behaviour be incorporated in a more effective way?

6 Submission details

6.1 Have your say

LGV and PwC welcome written submissions from the local government sector and the broader public that address the lines of inquiry and ideas raised in this Discussion Paper. Your feedback will inform the final report and recommendations on how to address misconduct and poor behaviour in local government.

The lines of inquiry are listed throughout the Discussion Paper and are summarised in Section 5. You can submit responses to some or all of the questions through the online form. You will be provided with the opportunity to respond to the questions directly through the form or upload a pre-prepared document as a response. Further information about making a submission is available here:

www.localgovernment.vic.gov.au/council-governance/local-government-culture-project.

6.2 Privacy

Personal information collected from submission authors is managed under the Privacy Act 1988. The Victorian Government will collect personal information from submission authors for the purposes of informing the Local Government Culture Project. Any personal information collected will only be used for this purpose.

By making a submission for the Local Government Culture Project Discussion Paper, you are consenting to the disclosure of your personal information by the Victorian Government. Personal information within your submission may also be disclosed by the Department of Jobs, Precincts and Regions in related reports of material published by the Department. All personal information will be de-identified if used in any reporting. Information can also be provided anonymously. The personal information collected will not otherwise be disclosed without your consent, unless authorised or required by law.

6.3 Freedom of Information

The Freedom of Information Act 1982 (FOI Act) applies to all documents in the possession of the Department. The FOI Act gives the Australian community access to information held by the government by providing for a right of access to documents. This includes any submissions provided to the Department on the Discussion Paper, including any submissions which have been provided on a confidential basis. A decision regarding access to documents under the FOI Act will be made by an authorised FOI decision-maker in accordance with the requirements of the FOI Act.

Submissions which are requested under the FOI Act may also be published on the department's disclosure log, in accordance with the publication requirements of the FOI Act.

6.4 Next steps

Written submissions provided by the closing date will be consolidated and analysed. Further consultations and workshops will also be conducted with key stakeholders following the closing date to gain additional insights. These will be consolidated into a final report for the Minister for Local Government.



Appendix A Current statutory provisions and supports

There are currently legislative mechanisms and provisions in place to guide the local government sector in understanding and determining its roles and responsibilities, including those of the elected members, Council administration and Council. These provisions also support the regulation and maintenance of governance, accountability and integrity, and transparency across the local government sector. LGV also provides advice and assistance to local Councils on local laws, including how to prepare and implement these laws in line with the LG Act 2020. A summary of some of these legislative frameworks are provided below.

Local Government Act 2020

The LG Act 2020 came into operation on 25 March 2020 to replace the former LG Act 1989, which was deemed outdated and prescriptive by Parliament. Becoming thoroughly familiar with the LG Act 2020 and the changes made may therefore take some time for the local government sector. The 1989 Act underwent a review given the changes to Victoria's local government system since its establishment. This includes the substantial reduction in the number of Councils¹³ and the need to introduce standards and principles that will underpin governance, accountability and transparency across the local government sector.

The LG Act 2020 is the principal legislative instrument for the Victorian local government sector. This principles-based Act provides a framework of which outlines roles and responsibilities, and the power and operations of Councils. The 2020 Act, compared to its predecessor, also outlines principles in relation to strategic planning, good practice, community engagement and transparency. These principles, if not met by Council or Council members, would require intervention by the Minister of local government or relevant integrity or peak bodies.

Another aspect of the Act that was refreshed in the 2020 version is the Councillor Code of Conduct. The Act requires that each Council its own Councillor Code of Conduct of which outlines the principles, standards and behaviours as reflected in the Act to guide Councillors and other elected Council members in achieving a high standard of conduct and undertaking their duties as prescribed in LG Act 2020.

Local Government (Governance and Integrity) Regulations 2020

The Local Government (Governance and Integrity) Regulations 2020 contains provisions to address governance and integrity in the local government sector. This includes Schedule 1 – Standards of Conduct referenced in section 139(3)(1) of the LG Act 2020, of which are the prescribed standards of conduct a Councillor must abide by in their role. These regulations also focus on Councillor conduct and induction training, lodging of personal interest returns and conflicts of interest requirements.

Local Government Act 2020 Implementation Guidance

Given the new requirements in the LG Act 2020, LGV has provided material and resources to support Councils in implementing these requirements. This includes information on transitional arrangements from LG Act 1989 to LG Act 2020, as well as guidance on Councils, Council decision-making, Council integrity, Ministerial oversight, electoral provisions, and COVID-19 temporary measures in line with LG Act 2020.

¹³ Blacher, Y. 2015, 'Local Government Act Review: Imagining Local Government in the 21st Century'

Councillor Conduct Framework

To support Council governance and integrity, and alignment to the LG Act 2020, the Councillor Conduct Framework provides guidance on the management of Councillor conduct and behaviour, and the management of Councillor conduct issues. This framework aims to enable timely intervention of Councillor misconduct and to resolve serious and gross misconduct through the appropriate processes or bodies, such as:

- Council Internal Arbitration Process to manage misconduct matters
- Councillor Conduct Panels to manage serious misconduct
- VCAT to manage gross misconduct.

Local Government Victoria has also worked collaboratively with Victorian local government peak bodies such as the VLGA, MAV and LGPro, as well as the Victorian Ombudsman to co-develop a number of guides and training programs to further support local government election candidates and Councillors in understanding their roles, responsibilities and expectations. While some of these are mandatory for the purposes of candidate nomination and induction, other supports have been established to enhance understanding of, for example, obligations and leadership, processes, and Council finances.

Local Government Candidate Training

The mandatory Candidate Training was developed by LGV on behalf of the State Government for all Victorians who wish to nominate as a candidate for Council elections. This one-hour training is a requirement of the LG Act 2020 to ensure candidates understand the roles and responsibilities of Councillors, as well as expectations on the standards of conduct, governance and decision making. The training also covers Council responsibilities and duties, conflicts of interest, and local government legislation and policies. Completion of the training is sufficient to nominate and is not graded.

Councillor Induction Training

As stated in the LG Act 2020, Councillor Induction Training must be completed by a Councillor within six months after a Councillor takes oath or affirmation of office, and a declaration made.

The Councillor Induction Training is a series of training videos developed by MAV, VLGA, and LGPro with input from LGV and the Gender Equity Commission. These training videos cover topics such as:

- Promoting gender equality
- Integrated approaches to strategic planning and reporting
- Engaging with Traditional Owners
- Leadership and integrity
- Roles and responsibilities
- Community engagement
- The LG Act 2020 as a principles-based legislation.

Failure to complete the training and make a declaration within six months will result in the Councillor's allowance being withheld until completed.

[Councillor Professional Development Program](#)

The Councillor Professional Development Program, developed by and offered through MAV, provides Councillors with a range of learning and development opportunities to upskill and strengthen their credibility, knowledge and confidence to perform effectively in their role. Courses offered through this program include, but are not limited to:

- presentation and public speaking skills
- social media
- sexual Harassment
- understanding Council finances


In general, courses are a few hours in duration and require payment upon registration.

[Councils and complaints – A Good Practice Guide 2nd edition 2020](#)



The Councils and Complaints – A Good Practice Guide (the Guide) is a standalone guide developed by the Victorian Ombudsman to support Councils in managing complaints. This comprises practical advice to build a positive culture and examples of good practices to adopt when managing complaints and based on context. The Guide also provides resources to adapt, a model complaints policy for Councils and a self-assessment tool.

Appendix B Past and current national legislative reform

A few examples of national legislative reform to address Councillor conduct and behaviour are highlighted below.

<p>Victoria</p> 	<p>In Victoria the LG Act 2020 was recently released, superseding the LG Act 1989 and is described as an ambitious and comprehensive reform replacing a fairly outdated and prescriptive iteration. The review process of the LG Act 2020 revealed that the new iteration would provide a framework for the conduct of Council businesses with principles underpinning good governance, and appropriate oversight by the Minister including the capacity to suspend and dismiss dysfunctional Councils and to directly intervene in the conduct of Councillors. Following more than 25 years since the last major review of the Act, reform was required to improve local government democracy, accountability and overall service delivery across the state.</p> <p>Changes that the LG Act 2020 introduce include the replacement of the Councillor Code of Conduct, which under the LG Act 2020 must include the standards of conduct that Councillors are expected to abide by. Breach of the standards of conduct, under the 2020 Act will require an internal arbitration process, a process of which is still relatively new and will take time to get accustomed to.</p> <p>Similarly, a new requirement under the Act includes the development and implementation of a Code of Conduct by the CEO that is applicable to all Council staff to ensure transparency and standards of behaviour.</p> <p>The LG Act 2020 also outlines public transparency principles for Council meetings and decision-making processes, including making these public except when the Council is dealing with confidential information as specified in section 57. In response to the pandemic, temporary provisions and amendments have been added to the LG Act 2020 to permit virtual meetings, of which there has been significant support due to flexibility and accessibility benefits. Live-streaming, minutes and agendas are also made publicly available to enhance transparency and accountability of Council meetings, conduct and decision-making.</p>
<p>South Australia</p> 	<p>The South Australian local government sector has a focus on undertaking necessary reform to enable continuous improvement to meet evolving and emerging needs, community standards and best practices. Its approach to reform is to be sensible, acknowledging that a solely legislative approach and intervention is not the answer to achieving strengthened operations and outcomes, however understanding that legislation needs to be updated regularly to provide and empower the local government sector with the tools and resources required to meet community needs. The Local Government Association of South Australia (LGA SA)¹⁴ acknowledges that Councils are ultimately accountable for the communities they serve, and being the closest level of government to communities, there is a heightened need for transparency and trust. As such, for example, the South Australian community is able to participate in annual and long-term planning processes.</p>

¹⁴ Local Government Association of South Australia, *A sensible plan for local government reform*, <https://www.lga.sa.gov.au/sa-Councils/about-local-government/localgovernmentreform>

	<p>In February 2019, LGA SA released a Briefing Paper outlining sector-driven reform plan focussed on key principles, including sustainability and efficiency, to achieve community benefit. The briefing paper included Code of Conduct reform, outlining the needs for stronger penalties or sanctions for misconduct, oversight body powers and powers to manage disruptive conduct at meetings. The plan to strengthen their Code of Conduct includes the clear delineation with the level of behaviour that should be dealt with at a local government level, and high-level matters being escalated to a managing body outside of local government. There is also the intent to provide Mayors with enhanced power to manage Council Chamber behaviour and bring order, but not deter respectful debate.</p>
<p>Tasmania</p> 	<p>A 2019 review¹⁵ of Tasmania’s local government legislative framework was undertaken to ensure the evolution of key legislation over time and enable Tasmania’s local government sector to be aligned with community expectations. This review proposed reform directions to improve Council governance, particularly in the areas of good governance and elected member development.</p> <p>These reform directions included proposing the legislation of Good Governance Guide principles to align with Code of Conduct behaviour and inform the functions and power of Council.</p> <p>Reform directions also included the establishment of core capability requirements for elected members of which may include ethical decision-making, a fundamental understanding of finances and budgets and meeting procedures. Training in relation to core capability was also proposed to be publicly reported to provide oversight and transparency of a Councillors’ professional development undertakings.</p>
<p>Western Australia</p> 	<p>In Western Australia, the Local Government Legislation Amendment Act 2019 was passed in June 2019 and introduced a new code of conduct, greater transparency, and elected member training. Regulations arising from the Amendment Act 2019 included the implementation of a Model Code of Conduct¹⁶ which was introduced in February 2021. This is a mandatory code of conduct for Council members and candidates. The Local Government Act 1996 requires that local government adopt the Model Code of Conduct and for these principles and behaviour requirements to be adhered to by all Council members. The purpose of this Model Code of Conduct is to set the expectation for professional and ethical conduct, not only for Council members but also local government election candidates, given their responsibility and duties to serving the broader community. The general principles set out in the Model Code of Conduct intend to guide behaviour, promote personal integrity and accountability, and ensure respectful treatment of others.</p>

¹⁵ Tasmanian Government, Department of Premier and Cabinet, 2019, *Review of Tasmania’s Local Government Framework*, <https://www.tasman.tas.gov.au/wp-content/uploads/2019/07/Reform-Directions-Paper-Phase-Two.pdf>

¹⁶ Government of Western Australia, Department of Local Government, Sport and Cultural Industries, *Model Code of Conduct*, <https://www.dlgsc.wa.gov.au/local-government/strengthening-local-government/public-consultations/local-government-act-review/priority-reforms/model-code-of-conduct>

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