

Reforms arising from the Local Government Amendment (Improved Governance) Act 2015

A guide for councils



Local Government Victoria

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While this document provides general guidance, the definitive statement of legal obligations is the law itself – particularly the relevant provisions of the Local Government Act 1989

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Purpose of the guide

This guide explains the changes to the *Local Government Act 1989 arising from the Local Government Amendment (Improved Governance) Act 2015* which was passed by the Parliament in October 2015. The Guide is designed to give councils, councillors, mayors and council administrations guidance about the implications of the changes and how to administer them. It also explains the nature and effect of these changed legislative requirements for the information of the wider Victorian community.

The changes explained in this guide anticipate a comprehensive review of the *Local Government Act 1989* commenced in 2015 and due to be completed in 2017-18. These immediate reforms are intended to improve the accountability of councillors. In particular they seek to encourage improved standards of behaviour in order to strengthen council governance. These reforms were considered too important to wait for the overarching Act review to be completed.

Similarly, following significant consultation with the sector a range of proposals for immediate improvements have been identified to support the integrity and efficient conduct of the 2016 elections.

Terminology

Arbiter – an independent arbiter appointed by a council to consider alleged violations of the council's councillor code of conduct by a councillor and make final determinations on them.

Chief Municipal Inspector (CMI) – head of the Local Government Investigations and Compliance Inspectorate.

Municipal monitor – a person appointed by the Minister for Local Government to monitor governance and provide reports to the minister.

Councillor conduct panel – a panel established by the Principal Councillor Conduct Registrar to hear applications of misconduct and serious misconduct.

Principal Conduct Officer – an officer appointed by each council to assist the council in the implementation of its councillor code of conduct, including conduct of the internal resolution procedure.

Principal Councillor Conduct Registrar - an employee of the Department of Environment, Land, Water and Planning whose role is to administer all councillor conduct panel processes and appeals of panel decisions.

VCAT – the Victorian Civil and Administrative Tribunal has responsibility for hearing applications for findings of gross misconduct.

VEC – the Victorian Electoral Commission is the statutory election service provider for all Victorian council elections and Victorian State elections.

Local Government Investigations and Compliance Inspectorate – an inspectorate responsible to the Special Minister of State, charged with investigating offences under the *Local Government Act 1989*.

A. Overview of major conduct framework reforms

Consultation with the sector, and recent examples of troubling behaviour by councillors, indicate the previous councillor conduct framework was not working effectively. As a result a number of reforms have been made to the framework.

The reforms outlined in some detail in this guide include:

- a description of the role of councillors in the *Local Government Act 1989* – to make sure councillors understand their role
- making signing the councillor code of conduct a qualification for being a councillor
- having effective enforcement mechanisms in councillor codes of conduct – including mandatory internal resolution procedures
- creating a Principal Councillor Conduct Registrar to manage councillor conduct panel processes and ensure only applications supported by evidence lead to panels being established
- providing more powers to councillor conduct panels – especially to hear serious misconduct matters and to suspend councillors for up to six months (previously these could only be heard by VCAT)
- giving the Minister for Local Government the power to appoint municipal monitors who are separate from inspectors of municipal administration, to monitor councils and report to the minister
- giving the Minister for Local Government the power, on the advice of a municipal monitor, to stand down an individual councillor prior to a panel or VCAT hearing, if their behaviour is a threat to health and safety, prevents council from functioning, or is inconsistent with the role of councillor
- giving the Minister for Local Government the power to direct improvements in governance on the advice of a municipal monitor or the Chief Municipal Inspector (CMI)
- providing a new role for the CMI in investigating allegations of misconduct, serious and gross misconduct by a councillor, making applications for a councillor conduct panel to make a finding of serious misconduct by a councillor and making applications to VCAT for a finding of gross misconduct by a councillor
- prohibiting the use of councillor discretionary or ward funds (from which councillors can make distributions at their individual discretion) by councils
- making it an offence for councillors to disclose confidential information, and improperly direct or influence council staff.

These changes are described in detail **Section A** of this Guide.

B. Overview of major electoral reforms

Reforms have also been made to the ways in which council elections will be conducted. These will come into force in time for the 2016 council general elections. Changes include:

- making the Victorian Electoral Commission the statutory provider for all council elections
- removing the requirement for an exhibition voters' roll
- preventing a person who is banned from being a company director, from being a candidate at an election or continuing as a councillor
- enabling a returning officer to remove a candidate found to be disqualified from the ballot paper
- requiring councils to have an election period (or 'caretaker') policy and clarifying limitations on publication of council documents during the election period.

These reforms are described in detail **Section B** of this Guide.

Section A: Major conduct framework reforms

1 Understanding the roles of councillors, mayors and CEOs

Role of a councillor

The role of a councillor is now defined in legislation to provide greater clarity and better understanding of what is expected of councillors.

Section 65 defines the role of a councillor. Councillors are elected to represent the interests of their community through participation in important local decisions.

The Local Government Charter sets out the objectives, role, functions and powers of a council in **Section 3D** of the *Local Government Act 1989* ('the Act'). But until now the role of a councillor has not been defined.

This is because **Section 3F** of the Act provides that the powers of councils are exercised by the council as a whole and not by individual councillors.

Defining the role of a councillor is intended to strengthen the Local Government Charter so that councillors have an understanding of what is expected of the council as a whole and what is expected of them as an individual member of the council. Clarity on the role has been sought by both candidates and elected councillors.

Defining the role will also provide more clarity for the public about what a councillor is expected to do.

Providing the role of councillor in the Act does not abrogate the general principle, and legislative requirement, that it is the council as a whole that makes binding decisions.

The Act provides two over-arching elements to the role of a councillor; participating in the decision-making that sets the strategic directions of the council and representing the local community in that decision-making.

Decision-making of the council

Council decisions can involve complex financial and legal issues and some decisions may be controversial in the municipality or to sections of the community.

It is important that each councillor actively participates in making decisions of council, including in setting strategic directions through the council plan. This also involves ensuring that they are informed and understand the issues involved in each decision made.

LOCAL GOVERNMENT ACT 1989

65 What is the role of a councillor?

- (1) *The role of a councillor is—*
- (a) *to participate in the decision-making of the council; and*
 - (b) *to represent the local community in that decision-making; and*
 - (c) *contribute to the strategic direction of the council through the development and review of key strategic documents of the council, including the council plan.*
- (2) *In performing the role of councillor, a councillor must—*
- (a) *consider the diversity of interests and needs of the local community; and*
 - (b) *observe principles of good governance and act with integrity; and*
 - (c) *provide civic leadership in relation to the exercise of the various functions and responsibilities of the council under this Act and other Acts; and*
 - (d) *participate in the responsible allocation of the resources of council through the annual budget; and*
 - (e) *facilitate effective communication between the council and the community.*
- (3) *The role of a councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer under Section 94A.*

Note

See Part 1A which sets out the Local Government Charter and in particular Section 3D which specifies the role of a council.

Representing the local community in decision-making

The democratic process results in people with a wide range of views and from different sections of the community, being elected as councillors.

In the electoral process candidates will take different positions on particular matters of interest in the community. However, once elected, all councillors have an overriding duty to act in the interests of the local community as a whole.

‘Local community’ is already defined in **Section 1A** of the Act as including:

- people who live in the municipal district,
- people and bodies who are ratepayers, and
- people and bodies who conduct activities in the municipal district.

Representing the local community in decision making requires councillors to weigh and balance all relevant factors without bias or prejudgement. They also need to take into account a range of diverse views and bring an open mind when making administrative law decisions that affect the rights and interests of others. Such decisions are subject to review and challenge (e.g. decisions made under the *Planning and Environment Act 1987*) and must be made in accordance with the requirements of the relevant legislation. They must in all circumstances comply with the requirements of natural justice.

What a councillor must do in exercising this role

The diversity of interests and needs of the local community

It is important that councillors consider all of the different impacts of a decision on the entire local community – whether this be the adoption of a particular policy, strategic objective or stand alone proposal.

This means they cannot limit their consideration to the interests and needs of those in their particular ward or those with whom they share particular interests. It is the responsibility of a councillor to ensure they are properly informed on issues of significance to their communities. This may involve reading relevant council reports, attending briefings and making an effort to hear from members of their community.

The principles of good governance

Councillors are expected to observe the principles of integrity and good governance. This must be done in all facets of the role – including decision-making, representing the community and in dealing with constituents.

Central to integrity and good governance are the principles of transparency and accountability. Transparency is achieved through following proper processes that are open to public scrutiny. Accountability is achieved through being accessible and responsive to the local community.

It is also important that councillors understand the legal obligations that accompany the role. This includes avoiding conflicts of interest (**Section 79**) and ensuring they not misuse their position for gain or to cause detriment (**Section 76D**). This requires councillors to exercise common sense in making judgements. They may need to seek legal advice when they are not sure of their obligations.

The strategic direction of the council

Councillors are in a privileged position to create a vision for their community. They do this by collectively creating a new council plan early in their term of office. The council plan sets out the strategic objectives for the municipality councillors collectively hope to achieve during their term in office. This provides the strategies and priorities for achieving these objectives and the overall framework in which decisions of council are made.

Councillors may have been elected on a single issue, or be more interested in one aspect of community life. However, once elected, all councillors have an obligation to be involved in all aspects of council activities.

Civic leadership

Being elected provides councillors with the opportunity to serve as leaders in their community.

This means councillors must be prepared to attend and participate in community meetings and forums, listen to community needs and propose ideas and solutions to community concerns.

It also means attending events aimed at celebrating important community milestones as well as being there for the community in adversity. These occasions provide an opportunity for councillors to facilitate understanding of and community support for council's strategic goals and objectives.

The responsible allocation of the resources of council

Councillors are responsible for ensuring the resources of council are allocated efficiently and effectively to meet the needs of the community. In doing so councillors are expected to balance the competing needs of different sections of the community in deciding on resource allocations within budget constraints. This requires an understanding of community needs alongside a commitment to sound financial management. It also encompasses ensuring the council remains in a sustainable financial position into the future.

Making effective judgements in this regard requires councillors to be well informed. While it is not necessary to be an expert on financial matters, it is important to listen carefully to advice, interrogate data and information and be conscious of the need to balance competing interests.

Effective communication between the council and the community

As elected representatives, councillors are expected to listen to and understand the views of people in the municipality. Councillors need to be available to their constituents - both individuals and community groups. This consultation should include both airing of community concerns and sharing public information about council activities and perspectives on issues.

Being accessible takes many forms. Regular 'listening posts', responding to calls from constituents, attending community meetings and taking back the views of the community to council are all a part of this role. It is vital that councillors are available to all members of the local community, not simply sectional interests.

Effective communication allows councillors to ensure that community views and needs are addressed in all strategic documents. It also means that members of the community are given the opportunity to inform council policy directions and initiatives.

What a councillor must not do in exercising this role

The role of a councillor does not include the performance of any of the specified functions of the Chief Executive Officer.

Section 94A of the Act provides that the administrative management of the council is the responsibility of the Chief Executive Officer ('CEO').

This means that councillors are not responsible for implementing council actions. They also have no authority to give directions to council staff. This is to facilitate effective administration and to avoid staff being subject to conflicting directions. Clear lines of managerial authority are critical. This is not to say councillors cannot express their views about administrative matters or implementation – but rather that they must do so through the CEO.

Therefore councillors must understand that all communication with council staff must be in line with the policies and protocols put in place by the CEO.

This is reinforced by the expansion of the role of CEO in **Section 94A** of the Act to include responsibility for managing interactions between councillors and staff. This extends to the CEO being responsible for developing, implementing and enforcing policies and protocols to manage interactions between councillors and staff.

Councillors who improperly direct or influence a member of council staff in the exercise of their duties will be in breach of Section 76E of the Act.

Functions of mayor

The functions of mayor are now defined in legislation to provide greater clarity and to reflect the role of mayor as it has evolved.

Section 73AA of the Act provides a non-exhaustive list of the functions of mayor.

Previously the Act identified only three functions differentiating the mayor from other councillors:

- as chairperson of meetings of council at which the mayor is present [**Section 73(2)**],
- having a casting vote where necessary [**Section 90(1)(e)**], and
- taking precedence at all municipal proceedings [**Section 73(1)**].

In practice the mayor is regarded by the community as leader of the council in a broader range of activities: in particular as the principle spokesperson and as advocate for council policies and decisions on any matter.

Mayors are expected to take on these roles by constituents, the media and often by other councillors and staff.

Some councils reflect this broader role in their local laws by providing additional power to the mayor in relation to meeting procedures. Many councils also give the mayor a role in trying to resolve conflicts between councillors in councillor codes of conduct.

Clearly articulating the functions of mayor in the Act, ensures both councillors and the community know what is required of the person elected to this position.

LOCAL GOVERNMENT ACT 1989

73AA Functions of mayor

The functions of the mayor of a council include—

- (a) providing guidance to councillors about what is expected of a councillor including in relation to the role of a councillor under Section 65, and the observation of the councillor conduct principles and the Councillor Code of Conduct by councillors under Sections 76B, 76BA and 76C; and*
- (b) acting as the principal spokesperson for the council; and*
- (c) supporting good working relations between councillors; and*
- (d) carrying out the civic and ceremonial duties of the office of mayor.*

What do the functions of mayor include?

Guidance to councillors

Explicitly stating the mayor is to provide guidance to councillors allows the mayor to play an important role in establishing and promoting appropriate standards of conduct. In the past many mayors have been asked to provide guidance to individual councillors about their role. Sometimes other councillors have refused to recognise the mayor as playing this role, especially when conflicts have arisen. The Act now makes it clear. This is also reinforced by the clear statement of councillor role now articulated in the Act.

Mayors have also been asked to provide advice to councillors about their conduct or behaviour. This may involve behaviour towards other councillors or it may involve conduct towards members of the public. Ambiguity associated with acceptable behaviour should be removed by all councillors signing a councillor code of conduct agreed by the council.

To date a mayor has had no express authority to require a councillor to discuss their conduct or behaviour. Although in practice many mayors have taken on the role. This aspect of the role is now formalised in the Act. The capacity to do so effectively is reinforced in that the mayor will now have the authority and the foundation of the agreed code as a basis for holding such conversations. More information on the code is included in part 3 of these guidelines.

Principal spokesperson for the council

Mayors are seen in the community as representing the council as a whole. They are often charged with speaking publicly on behalf of the council both in the media and at public events.

Mayors also have a leadership role in liaising with important stakeholders from the community, business and other tiers of government to promote the interests of the council and their local community. In doing so mayors should reflect the views of the council not individual views. Their responsibility is to articulate council policies and positions fairly and accurately.

Supporting good working relations between councillors

Good governance relies on good working relations between councillors.

The mayor, by virtue of the position, is expected to foster positive relationships between councillors. He or she is also in a position to encourage cooperation among councillors and promote unity. This does not mean that councillors cannot have different opinions or engage in political debate. However, personal abuse, bullying and intimidating behaviour are not acceptable and the mayor is now given the responsibility to be alert to these issues and to address them.

Differences of opinion should not prevent the orderly conduct of council business. Nor should they spill over into the public domain in a way that reflects on the capacity of council to govern on behalf of the community.

Promoting good relations between councillors before contentious issues arise increases the likelihood that these issues can be dealt with robustly but without becoming divisive in a way that damages the reputation of the council.

Civic and ceremonial duties

The mayor is expected to undertake civic and ceremonial duties during their term of the office. These duties are extensive and diverse and they differ from council to council.

However, all councils require the mayor to represent council at important civic functions in the municipality. These functions include celebrating significant occasions such as Australia Day and ANZAC Day. Mayors are also required to officiate at other local municipal events such as citizenship ceremonies and the presentation of council awards such as local Citizen of the Year.

On such occasions the mayor is expected to fulfil the requirements of the role diligently and responsibly. In doing so the mayor should not expect special privileges but should rather represent the Council in a respectful and dignified manner.

* The Lord Mayor of Melbourne City Council and the Mayor of Greater Geelong City Council have additional responsibilities under the *City of Melbourne Act 2001* and the *City of Greater Geelong Act 1993*.

Role of CEOs in support for mayors

Section 94A of the Act expands the functions of the CEO to specifically include the responsibility for supporting the mayor in the performance of his or her role. The expansion of the role of CEO also includes responsibility for managing interactions between councillors and staff. This means the CEO is responsible for developing, implementing and enforcing policies and protocols to manage interactions between councillors and staff.

The CEO in practice also supports the mayor to achieve a complete understanding of the full range of functions expected of them. However, in some instances other councillors have questioned why the CEO should treat the mayor differently. The Act now makes clear this is an expectation which lies squarely within the functions and responsibilities of the CEO. An example of such additional support may involve the CEO providing advice on the mayor's role at functions such as citizenship ceremonies, as well as at official meetings with other organisations where the mayor represents a council.

2. Hierarchy and definitions of misconduct

Section 3(1) provides new definitions creating a hierarchy for management of councillor conduct issues.

Reinforcing a hierarchy of conduct standards

The Councillor Conduct Framework is aimed at ensuring councillors conduct themselves in accordance with standards expected. This includes the standards councillors collectively set themselves in their councillor codes of conduct.

These reforms create a hierarchy for management of councillor conduct issues, with:

- councils dealing with breaches of councillor conduct codes
- Panels dealing with the majority of cases
- VCAT dealing with exceptional cases.

Section 3(1) provides new definitions. These new definitions for misconduct, serious misconduct and gross misconduct are summarised in the table below, along with the authority responsible for addressing the matter.

Degree of Seriousness	Definition	Responsible Authority
Conduct inconsistent with standards council has set itself	Breaches of Councillor Codes of Conduct	Council
Misconduct	Failing to comply with a council's internal resolution procedure, including failure to abide by any decision of council in relation to a breach of the code and repeated breaches of councillor conduct principles	Panel
Serious misconduct	Failing to comply with panel processes, bullying, improperly directing staff, releasing confidential information and repeated misconduct	Panel
Gross misconduct	Behaviour that demonstrates lack of character to be a councillor	VCAT

Bullying which is a form of serious misconduct is defined as repeated unreasonable behaviour that creates a risk to the health and safety of another councillor or a member of council staff. This is consistent with the definition of bullying used in the *Fair Work Act 2009* and by WorkSafe.

The new hierarchy for management of councillor conduct issues is designed to:

- reinforce the responsibility and authority of councils to manage breaches of agreed conduct through a mandatory internal resolution procedure
- only escalate management of misconduct and serious misconduct to panels when councils cannot resolve the matter internally
- give panels greater powers to manage and resolve misconduct and serious misconduct
- retain the capacity to manage gross misconduct through VCAT.

The ways in which this hierarchy of conduct standards is implemented and the respective roles of councils, panels and VCAT are discussed in more detail in parts 3 and 4 of the guide.

LOCAL GOVERNMENT ACT 1989

3(1) Definitions- How is misconduct , serious and gross misconduct and bullying is defined in the Act?

(1) In Section 3(1)

“misconduct by a councillor means any of the following—

- (a) failure by a councillor to comply with the council’s internal resolution procedure; or*
- (b) failure by a councillor to comply with a written direction given by the council under Section 81AB; or*
- (c) repeated contravention of any of the councillor conduct principles;”*

“serious misconduct by a councillor means—

- (a) the failure of a councillor to attend a councillor conduct panel hearing formed to make a finding in respect of that councillor; or*
- (b) the failure of a councillor to give a councillor conduct panel any information the councillor conduct panel has requested the councillor to give; or*
- (c) the failure of a councillor to comply with a direction of a councillor conduct panel; or*
- (d) continued or repeated misconduct by a councillor after a finding of misconduct has already been made in respect of the councillor by a councillor conduct panel; or*
- (e) bullying of another councillor or member of council staff by a councillor; or*
- (f) conduct by a councillor in respect of a member of council staff in contravention of Section 76E; or*
- (g) the release of confidential information by a councillor in contravention of Section 77.”*

“gross misconduct by a councillor means behaviour that demonstrates that a councillor is not of good character or is otherwise not a fit and proper person to hold the office of councillor;”

“bullying by a councillor means the councillor repeatedly behaves unreasonably towards another councillor or member of council staff and that behaviour creates a risk to the health and safety of that other councillor or member of council staff;”



New Councillor Conduct Framework

Applicant

Grounds

**Council
councillor,
councillors**



Misconduct

- Failure to comply with internal resolution procedure
- Repeated breaches of the councillor conduct principles



**Council
councillor,
councillors,
CMI**



Serious misconduct

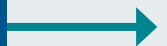
- Failure to attend panel, provide information to or comply with direction of panel
- Repeated misconduct after a finding of misconduct by the panel
- Bullying of councillor or staff
- Contravention of Section 76E or 77



**Principal
Councillor
Conduct
Registrar**



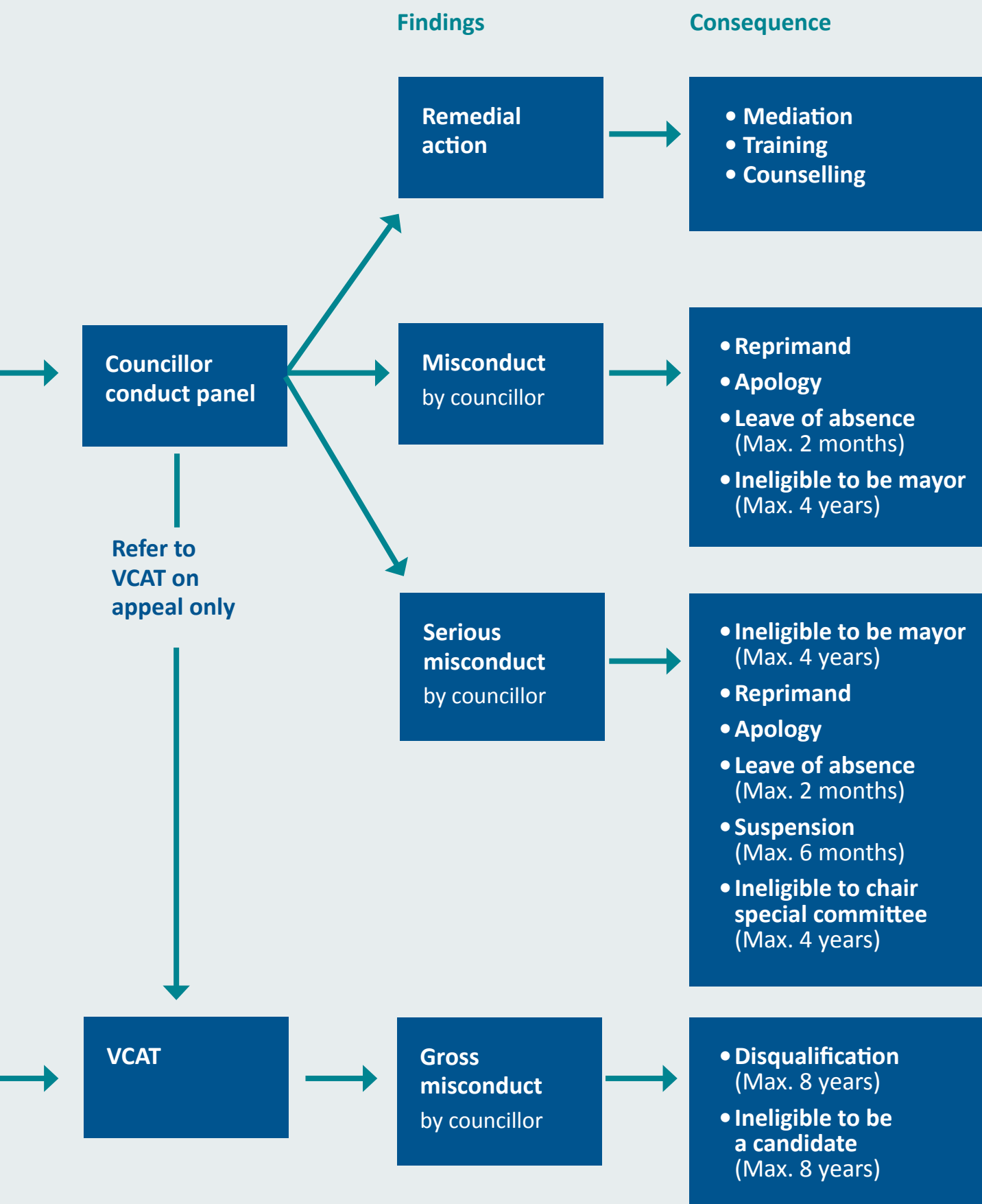
CMI



Gross misconduct

- Not of good character or fit and proper person to hold office of councillor





3. Supporting council management of councillor behaviour

The requirement that a person elected to be a councillor take an oath of office is not a new requirement. The Act has been amended, however, to provide the additional requirement that all incoming councillors must read their council's code of conduct and make a declaration that they will abide by it before taking (and remaining) in office.

Council role in enforcing councillor conduct

Until now, councils have had little capacity to manage and resolve issues arising from poor conduct by individual councillors. Councils now have a clear role in doing so through establishing and creating a compliance mechanism to achieve adherence to their own code of conduct. The Act now provides for an independent arbitration process, mechanisms for resolution and sanctions which councils can apply to address any failure to meet code standards.

Council code of conduct

Section 63 defines the conditions for the declaration to abide by a councillor code of conduct.

A councillor must read the councillor code of conduct and make a declaration that they will abide by the code. The declaration must be signed and witnessed by the CEO. If the councillor fails to do so within three months of being elected their position is declared vacated (**Section 64**). This means that failure to make a declaration to abide by the councillor code of conduct is now a ground for disqualification as a councillor. (**Section 29 (1)(ea)**).

Timing and process for developing a code

A council must review and make any necessary amendments to their councillor code of conduct within four months after these new requirements in the Act come into effect and within four months after a general election. This must be done by calling a special meeting solely for the purpose of reviewing the councillor code of conduct.

The councillor code of conduct is no longer required to include councillor conduct principles. This is because the principles are in the Act and as such councillors are already required to adhere to them.

Within one month of any amendment being made to a councillor code of conduct, all councillors must make a declaration stating that they will abide by the revised councillor code of conduct. Again this declaration must be signed and witnessed by the CEO. (**Section 76C**)

Public access

The councillor code of conduct must be made publicly available on the council's website. This must be done as soon as practicable after it is adopted.

LOCAL GOVERNMENT ACT 1989

63 Oath of office and councillor code of conduct

- (1) *a person elected to be a councillor is not capable of acting as a councillor until the person has —*
 - (a) *taken the oath of office specified in subSection (1A); and*
 - (b) *read the councillor code of conduct and, in accordance with subSection 3, made a declaration stating that they will abide by the Council of code of conduct.*
- (2) *The oath of office must be —*
 - (a) *made before the Chief Executive Officer; and*
 - (b) *dated and signed before the Chief Executive Officer; and*
 - (c) *recorded in the minutes of the council.*
- (3) *A declaration by a person elected to be a councillor under subSection (1) (b) must be —*
 - (a) *in writing; and*
 - (b) *witnessed by the Chief Executive Officer.*

Internal resolution procedure

Councils are now required to have in place an internal resolution procedure to address conduct that is in breach of the councillor code of conduct. The internal resolution processes must make clear how allegations of breaches of the code of conduct are to be handled. This gives councils significantly greater authority to shape and enforce acceptable standards of conduct by their councillors.

Independent arbiter

It is critical that when allegations of poor conduct are levelled against a councillor that these are fairly tested. Accordingly, the internal resolution procedure must include an independent arbiter who is able to consider alleged violations of the code of conduct and make final determinations on them fairly and without bias. Persons subject to allegations must be given an opportunity to be heard. Decisions by the arbiter must be supported by written reasons.

Sanctions for breaches of the code

Section 81AB specifies that councils may impose sanctions through their internal resolution procedure for breaches of their code. These must be voted on by council as a whole and they may include:

- Requiring an apology.
- Suspension from up to two council meetings.
- Direction that they not attend or chair an advisory or special committee for up to two months.
- Direction that they be removed from a position where they represent council for up to two months.

These sanctions are aimed at ensuring councillors know the consequences of their actions in breaching the standards of behaviour that they, as councillors, have adopted. The sanction framework is designed to assist councils assume responsibility for resolving behavioural and conduct issues occurring within the council.

The primacy given to councils addressing councillor conduct internally is reinforced by the way applications to establish panels are dealt with. The Principal Councillor Conduct Registrar is required to refer matters back to a council to resolve if the internal council code process has not been exhausted prior to an application for a panel.

Principal Conduct Officer

The Act creates a new position of Principal Conduct Officer which must be appointed by each council. The functions of the Principal Conduct Officer includes assisting the council in the implementation and conduct of the internal resolution procedure in their councillor conduct codes and assisting the Principal Councillor Conduct Registrar. (This is discussed in greater detail in Part 4.)

The Principal Conduct Officer will be appointed by the council CEO and must be either a senior council officer or the subject of a council resolution approving their qualifications for the role.

LOCAL GOVERNMENT ACT 1989

29 Disqualifications

(1) A person is not capable of becoming or continuing to be a councillor or nominating as a candidate at an election if—

....

(ea) he or she has failed to make a declaration stating that he or she will abide by the councillor code of conduct in accordance with Section 76C;....."

LOCAL GOVERNMENT ACT 1989

Principal Conduct Officer means the person appointed in writing by the Chief Executive Officer to be the Principal Conduct Officer for the Council under section 81Y

Section 81X Functions of a Principal Conduct Officer

A Principal Conduct Officer must—

- (a) assist the council in the implementation of, and conduct of, the internal resolution procedure of a council; and*
- (b) assist the Principal Councillor Conduct Registrar to perform the functions specified in Section 81T.*

Section 81Y Duties of the Chief Executive Officer in relation to councillor conduct panels

- (1) The Chief Executive Officer must appoint, in writing, an eligible person to be the Principal Conduct Officer.*
- (2) For the purposes of subSection (1), a person is an eligible person if—*
 - (a) the person is a senior officer (other than the Chief Executive Officer); or*
 - (b) the council resolves that the person is suitably qualified to perform the functions of the Principal Conduct Officer.*



If the internal resolution procedure fails

Failure by a councillor to comply with a council's internal resolution procedure or with a written direction given by the council at the conclusion of the internal resolution process will constitute misconduct under the new definition provided by the Act. This gives the council authority to enforce its code.

Misconduct will be dealt with by councillor conduct panels. Sanctions for misconduct include:

- reprimand
- a requirement for an apology
- enforced leave of absence for a maximum of two months, and
- ineligibility to be mayor for a period specified by the panel not exceeding the remainder of the council's term.

Stronger disqualification provisions

Section 29 has been amended to increase from seven to eight years the period for which a person is not capable of becoming or continuing to be a councillor if they are convicted of certain offences specified in that Section. A further amendment has reduced the threshold for disqualification to hold the office of councillor. Disqualification now applies to anyone convicted of an offence which is punishable upon first conviction for a term of imprisonment of two years or more (formerly five years or more). These changes reinforce the seriousness with which criminal behaviour and improper conduct will be treated under the Act.

This Section also allows for the disqualification of a councillor who fails to make a declaration that they will abide by the councillor code of conduct.

4. External management of councillor conduct

A new position of Principal Councillor Conduct Registrar will manage implementation of the new panel process including the establishment of panels. The role of registrar is similar to those applying for other disciplinary Tribunals and will ensure the system is open, transparent and understood by all affected.

Role of Principal Councillor Conduct Registrar

Overview

The legislation, whilst encouraging councils to self regulate, also improves the capacity of external authorities to enforce standards of conduct in the sector through more effective councillor conduct panels.

A Principal Councillor Conduct Registrar is created in the Department of Environment, Land, Water and Planning (DELWP). The registrar will be appointed by the Secretary of the department but will be separate from Local Government Victoria.

The registrar will take over the current role managing panel processes performed by the Municipal Association of Victoria (MAV). In part this responds to the increasing number of applications. This change has been made in consultation with and agreed by the MAV. It will also leave the MAV free to provide independent advice to councils about the process.

The registrar will publish guidelines about all panel processes to ensure these are understood by the sector. The registrar will also:

- maintain the list of panel members (who will be appointed by the minister)
- form appropriate panels to hear applications
- publish panel findings and decisions.

Panels must comprise a lawyer and a person with relevant expertise. Such expertise is broader than just local government knowledge and may include specialist knowledge in governance, ethics and probity.

LOCAL GOVERNMENT ACT 1989

81T Functions and powers of the Principal Councillor Conduct Registrar

(1) The functions of the Principal Councillor Conduct Registrar are to—

- (a) receive applications for the establishment of councillor conduct panels; and*
- (b) form councillor conduct panels by appointing members of the panel list to sit on councillor conduct panels; and*
- (c) provide general advice and assistance to members of the councillor conduct panel in relation to their functions; and*
- (d) publish any determination made by a councillor conduct panel and any reasons given for that determination; and*
- (e) keep copies of all documents requested by, and given to, a councillor conduct panel; and*
- (f) comply with any request made by the Chief Municipal Inspector or VCAT for copies of any documents given to or made by a councillor conduct panel; and*
- (g) set and publish a schedule of fees specifying the fees to be paid to members of a councillor conduct panel; and*
- (h) send notice to a council specifying the fees payable by the council following any councillor conduct panel hearing conducted for, or on behalf of, the council; and*
- (i) publish any guidelines in relation to councillor conduct panel procedures and processes that the Principal Councillor Conduct Registrar has determined to be necessary.*

(2) The Principal Councillor Conduct Registrar has power to do all things necessary or convenient to be done for or in connection with the performance of the Principal Councillor Conduct Registrar's functions under this Act.

Gatekeeper role

The registrar will streamline and expedite panel processes. If the application is supported by evidence the registrar will proceed to establish a panel. All applications to establish a panel to hear allegations of misconduct or serious misconduct must go to the registrar. The panel must be established if the registrar is satisfied that the application is not frivolous or misconceived or lacking in substance, is supported by evidence and council processes have been fully exhausted or are not appropriate.

Applications by the Chief Municipal Inspector (CMI) for the establishment of a panel must also be made to the registrar, in which cases, the registrar must establish a panel to hear the matter.

If the registrar has refused to establish a panel, a further application can be made regarding the same conduct with supporting evidence or following a further attempt by the council to resolve it.

Previously panels were established in response to applications and were required to make a finding, including in instances where the application was frivolous or without evidence. This could create reputational damage for the respondent despite them having no case to answer. There was no way of avoiding 'tit' for 'tat' applications.

This vetting process will ensure panels only hear applications for which there is evidence and that need to be dealt with at this level. **(Section 81C)**

Jurisdiction of panels

Panels will now be able to more effectively and authoritatively deal with the whole spectrum of councillor misconduct. In particular, panels will now be able to deal with allegations of serious misconduct. Previously applications for serious misconduct were required to go to a panel for confirmation that there was evidence of serious misconduct before being referred on to VCAT. Respondents in applications for both misconduct and serious misconduct could elect to forward their application direct to VCAT. Panels will now hear serious misconduct matters and have the power to impose the higher penalties that have until now been the preserve of VCAT, including:

- suspending a councillor from council for up to six months
- specifying that a councillor is ineligible to be mayor for up to four years, and
- specifying that a councillor is ineligible to chair a special committee for up to four years.

This makes panels the most authoritative body for dealing with all aspects of councillor misconduct, except for gross misconduct, which remains with VCAT. In keeping with the conduct framework commitment to principles of natural justice, panels will continue to have the discretion to allow legal representation at a hearing, however this is not encouraged.

LOCAL GOVERNMENT ACT 1989

81B Application to councillor conduct panel

- (1) A councillor conduct panel may hear an application that alleges misconduct or serious misconduct by a councillor.
- (1A) An application for a councillor conduct panel to make a finding of misconduct against a councillor may be made by—
- (a) the council following a resolution of the council to make an application to a councillor conduct panel under this subSection in respect of a councillor's conduct; or
 - (b) a councillor or a group of councillors.



Stronger powers for panels mean a stronger conduct framework

The new arrangement achieves a number of improvements. The registrar will have the power to refuse to establish a panel if there is no evidence of misconduct or if the complaint is vexatious or frivolous. Panels will no longer be able to be bypassed to VCAT. The extended definition of serious misconduct means panels will have the capacity to hear cases which were previously the preserve of VCAT.

The registrar will have the power to refer matters back to council if council processes have not been exhausted. Panels will be given the power to deal with serious misconduct and to impose higher penalties previously only available to VCAT.

Copies of panel determinations and reasons will now be supplied to the registrar once a panel has completed its hearing. The registrar will ensure that information on panel processes and decisions is easily available. This will improve the transparency and clarity of panel decisions.

All of these changes serve to reinforce the responsiveness, rigour and the transparency of the councillor conduct framework.

Jurisdiction of VCAT

VCAT will continue to hear allegations of gross misconduct. The Chief Municipal Inspector will be responsible for making applications to VCAT for findings of gross misconduct against councillors. These applications were formerly made by the Secretary of the Department (in practice, on the advice of the inspectorate). Decisions of a panel may still be appealed to VCAT.

5. Strengthening the powers of the Chief Municipal Inspector

The new legislation provides for a statutory role of Chief Municipal Inspector (CMI) as head of the inspectorate in the conduct framework.

Chief Municipal Inspector

The changes to the legislation place the Chief Municipal Inspector (CMI) on a clear statutory footing and assign the office new roles and powers. There are three distinct new roles for the CMI in respect to the councillor conduct framework:

- a new role in relation to serious misconduct
- a direct role in gross misconduct
- a role to provide advice to the minister in relation to governance (**Section 218A**)

The CMI now has the power to investigate and initiate applications for a panel to be established to investigate allegations of serious misconduct against councillors (**Sections 81(1B)(c) and 223A(2)(d)**). The CMI will now also be responsible for making applications to VCAT for findings of gross misconduct against councillors (**Sections 81E and 223A(2)(e)**). These applications were formerly made by the Secretary of the department.

The new office of the CMI will also have the power to suspend or stop consideration of matters by a panel in certain circumstances (**Section 81P(1)**). These powers were previously exercised by the Secretary.

Ministerial power to make a governance direction

The CMI will also have the authority to recommend that the minister make a governance direction in respect to a council. If the minister accepts the recommendation they may direct a council to improve its governance. If a council does not comply with a ministerial governance direction, this will be taken into account for the purposes of **Section 219** and used as evidence the minister can consider in exercising the power to suspend a councillor. Other powers assigned to the minister are discussed in Part 6 (below).

CMI prosecution of offences

The CMI will continue to investigate and prosecute offences under the Act including:

- failure of a candidate to lodge their campaign donation return
- failure by a councillor to lodge pecuniary interest returns
(These each carry penalties of up to 60 penalty units (or \$9,100.20 in 2015))
- failure by a councillor to declare conflicts of interest which carries a penalty of up to 120 penalty units (\$18,200.40 in 2015)
- misuse of position by a councillor, which is the most serious offence in the Act, and carries a penalty of 600 penalty units (\$91,002 in 2015) or imprisonment for five years or both.

New offences under the Act: improper direction and release of confidential information

New penalties have been added – 120 penalty units (\$18,200.40 in 2015) – making it now an offence under the Act to engage in:

- improper direction or influence by a councillor of a member of council staff (**Section 76(E)**)
- disclosure of confidential information by a councillor (**Section 77(1)**).

It will be up to the CMI to decide whether to prosecute a councillor for these offences or whether to seek a finding of serious misconduct by a panel. Councillors cannot be subject to both for the same conduct. Existing investigatory powers of inspectors of municipal administration are vested in the CMI and delegated to staff within the inspectorate who will retain the title of inspector of municipal administration. These include powers to require a person to produce any document, give reasonable assistance and answer questions under oath in relation to any possible breaches of the Act, and any matter relating to council operations, council elections or electoral matters. A person appearing before the CMI will continue to be entitled to be represented by another person. (**Section 223(B)**)

LOCAL GOVERNMENT ACT 1989

223A Appointment of Chief Municipal Inspector

- (1) *The Integrity minister may appoint a Chief Municipal Inspector who was employed under division five of part three of the public administration Act 2004.*
- (2) *The Chief Municipal Inspector has the following functions—*
 - (a) *to investigate and prosecute any possible offences under this Act; and*
 - (b) *to examine any possible breaches of this Act; and*
 - (c) *to investigate any allegations of misconduct, serious misconduct and gross misconduct by a Councillor;*
 - (d) *to make an application for a councillor conduct panel to make a finding of serious misconduct against a Councillor; and*
 - (e) *to make an application to VCAT for a finding of gross misconduct by Councillor; and*
 - (f) *any other function conferred on the Chief Municipal Inspector by or under this Act.*
- (3) *The Chief Municipal Inspector has all the powers necessary to perform the Chief Municipal Inspector's functions.*
- (4) *The Chief Municipal Inspector may, by instrument, delegate any power, duty or function of the Chief Municipal Inspector under this Act to any person who has, in the Chief Municipal Inspector's opinion, appropriate skills or knowledge to perform the power, duty or function other than this power of delegation.*
- (5) *A person delegated any power, duty or function by the Chief Municipal Inspector under subSection (4) is by virtue of the delegation an inspector of municipal administration.*

223B Powers of the Chief Municipal Inspector

- (1) *The Chief Municipal Inspector may examine, investigate and prosecute —*
 - (a) *any matter relating to a Council's operations or to Council elections or electoral matters; and*
 - (b) *any possible breaches of this Act.*
- (2) *The Chief Municipal Inspector may, by notice in writing, require a person to—*
 - (a) *produce any document (whether or not specifically identified in the notice) in the person's custody or control that relates to any matter that the Chief Municipal Inspector may examine or investigate; and*
 - (b) *give all reasonable assistance in connection with an examination or investigation; and*
 - (c) *appear before the Chief Municipal Inspector for examination on oath and to answer questions.*
- (3) *The Chief Municipal Inspector may administer an oath.*
- (4) *The Chief Municipal Inspector may take possession of any document produced under subsection (2) for so long as the Chief Municipal Inspector considers necessary.*
- (5) *However, while the Chief Municipal Inspector retains possession of such a document, the Chief Municipal Inspector must permit any person who would be entitled to inspect the document if it were not in the Chief Municipal Inspector's possession to inspect the document at any reasonable time.*
- (6) *A person appearing before the Chief Municipal Inspector is entitled to be represented by another person.*

The Chief Municipal Inspector may apply to VCAT for an order requiring a councillor convicted of an offence under **Section 29(2)** to take a leave of absence from the office of councillor.

6. Giving the minister new powers to intervene when required

The Minister for Local Government is empowered to appoint municipal monitors to monitor governance and provide reports to the minister who may, on their advice, issue governance orders to a council or stand down a councillor in certain circumstances.

Why new ministerial powers are needed

These new powers seek to balance the rights of councils to conduct their own affairs and the right of the State to ensure councils adhere to high standards of governance. This includes that all councillors' conduct is appropriate to their elected position. The minister's new powers will only be exercised on advice following an investigation by a municipal monitor.

In cases of serious or gross misconduct, the removal of a councillor is the only way to prevent more serious consequences for a council. The changes introduced to the Act give the minister new powers to stand down individual councillors in instances that are described below.

Ministerial power to appoint municipal monitors

Under **Section 223CA** the minister will now have a the power to appoint municipal monitors with a distinct and separate role to that performed by the CMI. This role is to monitor a council's governance as directed by the minister. Municipal monitors have the same powers as inspectors to require the production of documents and other information and to require witnesses to give evidence and answer questions under oath.

Section 223A(5) will require a council being monitored to meet the costs of a municipal monitor. This will serve as a further incentive to councils to address governance concerns before they come to the minister's attention.

Ministerial power to issue governance order

If a monitor recommends it, the minister can issue a governance direction to a council. Such an order can direct the council to take, or refrain from taking, specific action, to remedy identified governance deficiencies. A council's failure to comply with the governance order can be taken into consideration by the minister in moving to suspend or dismiss the council.

Ministerial power to stand down a councillor

The minister has another key tool to prevent poor councillor behaviour seriously impacting on a council as a whole. The minister is empowered to recommend an Order in Council to stand down a councillor against whom a complaint of serious or gross misconduct is made (**Section 219AF**). If a monitor confirms that such a councillor's conduct threatens someone's health and safety, is obstructing council business, or is not in accordance with the role expected of a councillor, that councillor can be stood down until the claim of serious or gross misconduct is heard by a panel or VCAT or for a period of six months. This period can be extended for a further six months by another Order.

In this situation a stood-down councillor will not be permitted to attend council meetings or council premises while waiting for the panel or VCAT hearing of the substantive matter. The councillor's allowance will be set aside during this period and either withheld if the claim of serious or gross misconduct is upheld, or paid to the councillor if no such finding is made.

These reforms significantly strengthen the minister's capacity to intervene early to prevent serious or gross misconduct by a councillor from undermining the good governance of a council.

LOCAL GOVERNMENT ACT 1989

223CA Municipal monitor

- (1) *The minister may appoint a person to be a municipal monitor to a council.*
- (2) *A municipal monitor is not, in respect of their office as a municipal monitor, subject to the **Public Administration Act 2004**.*
- (3) *A person who is appointed as a municipal monitor and who is not subject to the **Public Administration Act 2004** is entitled to be paid the amounts, and on the terms, fixed by the minister.*
- (4) *The minister must give the council written notice of any appointment of a municipal monitor made to it under subSection (1) which specifies the amounts the municipal monitor is entitled to be paid and the terms of the appointment.*
- (5) *The council must pay a municipal monitor the amounts specified in the notice under subSection (4).*

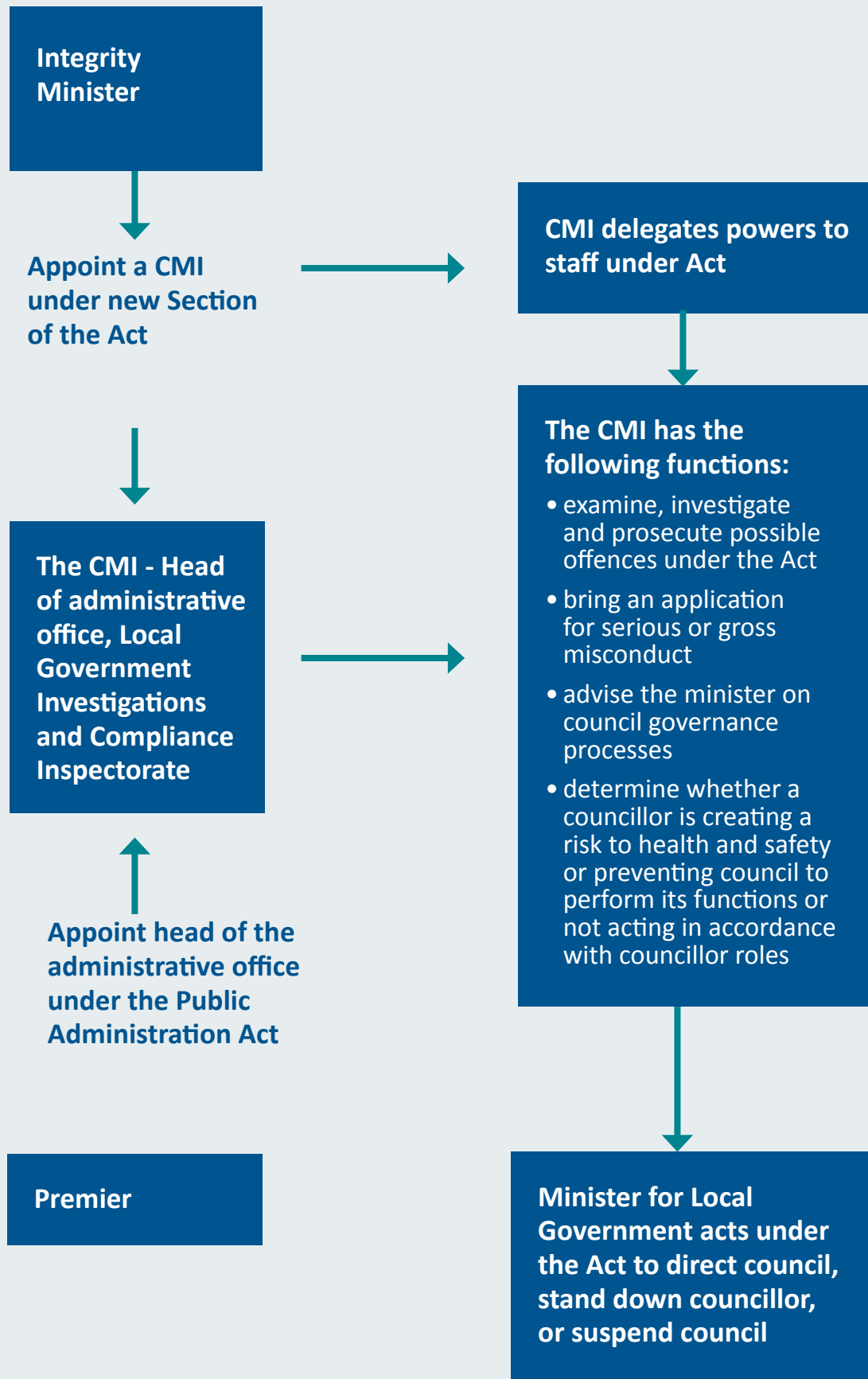
223CB Functions of municipal monitor

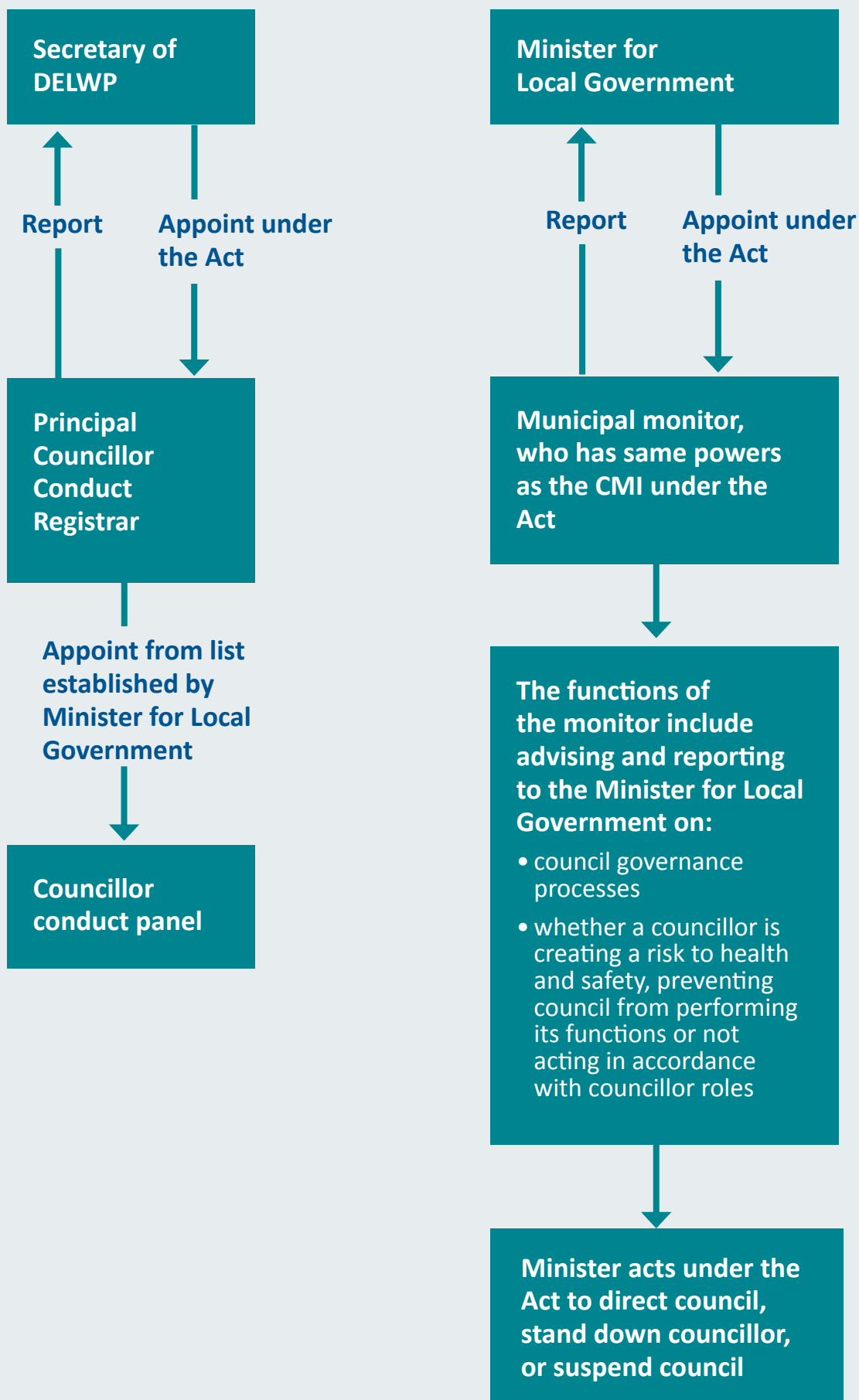
- (1) *A municipal monitor has the following functions—*
 - (a) *to monitor council governance processes and practices;*
 - (b) *to advise the council about governance improvements the council should make;*
 - (c) *to report to the minister on any steps or actions taken by the council to improve its governance and the effectiveness of those steps or actions;*
 - (d) *to investigate any referred complaint received from the minister under Section 219AB;*
 - (e) *to provide advice to, and prepare a report for, the minister in accordance with Section 219AC about a councillor in respect of whom a complaint has been made;*
 - (f) *to monitor and report to the minister on any other matters determined by the minister.*

223CC Powers of municipal monitor

- (1) *A municipal monitor may examine and investigate—*
 - (a) *any matter relating to a council's operations or to council elections or electoral matters; and*
 - (b) *a councillor on receiving a complaint in respect of that councillor from the minister under Section 219AB; and*
 - (c) *any possible breaches of this Act.*
- (2) *A municipal monitor may, by notice in writing, require a person—*
 - (a) *to produce any document (whether or not specifically identified in the notice) in the person's custody or control that relates to any matter that the municipal monitor may examine or investigate; and*
 - (b) *to give all reasonable assistance in connection with an examination or investigation; and*
 - (c) *to appear before the municipal monitor for examination on oath and to answer questions.*
- (3) *A municipal monitor may administer an oath.*
- (4) *A municipal monitor may take possession of any document produced under subSection (2) for so long as the municipal monitor considers necessary.*
- (5) *However, while a municipal monitor retains possession of the document, the municipal monitor must permit any person who would be entitled to inspect the document if it were not in the municipal monitor's possession to inspect the document at any reasonable time.*
- (6) *A person appearing before a municipal monitor is entitled to be represented by another person."*

Revised Inspectorate & Governance Frameworks





7. Miscellaneous Matters:

7.1 Ending discretionary funds

A ban on councillor discretionary funds now applies. Any council which retains a councillor discretionary fund will be in breach of the *Local Government Act 1989*.

Councillor discretionary funds, also often called ward funds, are budgetary allocations which allow individual councillors to allocate Council funds in their own right. Councillor discretionary funds are inconsistent with transparent financial decision making by councils and are no longer legal.

The following examples of councillor discretionary funds, all of which are banned, are provided to assist councils in determining whether or not a budgetary allocation or policy is, in fact, a councillor discretionary fund.

- a budgetary allocation for which applications can be made to council and which are then assessed by council staff and forwarded to councillors, where a single councillor may then personally approve the expenditure on specific projects
- a budgetary allocation to a group of councillors, such as where a councillor is given the discretion to personally nominate payment of a certain share of that allocation to specific projects or where an individual councillor can nominate payments from the allocation to specific projects by themselves
- a budgetary allocation which sets aside a specific amount for a particular councillor to nominate payments from specific projects and which council subsequently votes on without further advice to determine whether or not to make the nominated payment.

Councils are prohibited from adopting policies or making budgetary allocations where the underlying purpose is to allow an individual councillor to decide who should receive the funds. This extends to policies where council or a member of council staff technically has, in effect, a veto over that decision.

However, this should not be taken to mean the Act will prohibit councillors from proposing uses of council funds, for example at council meetings, where the allocation decision itself is being made by the council as a whole.

This reform will ensure all council expenditure is transparent, accountable and consistent with a council's strategic directions – and not left to the whim of individual councillors.

LOCAL GOVERNMENT ACT 1989

Section 195A Prohibition of councillor discretionary funds states that:

"A council must not adopt or implement a policy under which a councillor is allocated a fixed or other amount of funds for the purpose of enabling the councillor to nominate:

- (a) a particular person, body or organisation to whom the funds are to be paid; or*
- (b) a particular fund in respect of which the funds are to be supplied."*

7.2 Protecting the independence of audit committees

Audit committees play an important role in ensuring the financial probity of council policies and decisions. Many councils already employ the practice of appointing an independent chair of their audit committee. This is a means of providing confidence that probity conditions for financial decision-making are consistently met. The Act now requires that audit committees be chaired by an independent person. The role of audit committees is further strengthened by enabling the chair to have matters brought to council as a right, without requiring agreement by the Chief Executive Officer. This represents a further check and balance for financial probity and provides additional protection for council governance.

LOCAL GOVERNMENT ACT 1989

139 Audit committee

- (1) *A council must establish an audit committee.*
- (2) *An audit committee is an advisory committee.*
- (2A) *The chairperson of an audit committee—*
 - (a) *must not be a councillor; and*
 - (b) *must not be a member of council staff; and*
 - (c) *must be suitably qualified.*
- (3) *An audit committee must be constituted in the prescribed manner.*
- (4) *An audit committee has the functions and responsibilities prescribed for the purposes of this Section.*
- (4A) *Sections 76D, 79 and 81 apply to members of an audit committee as if they were members of a special committee of the council.*
- (5) *The minister may make guidelines for the purposes of this Section.*
- (6) *Guidelines made under subSection (5) must be published in the Government Gazette.*
- (6A) *The chairperson may require any report prepared by the audit committee to be listed on the agenda for the next ordinary meeting of the council.*
- (7) *A council may pay a fee to a member of an audit committee who is not a councillor or member of council staff.*

7.3 Abolishing the Docklands Committee

Part 4A of the **City of Melbourne Act 2001** has been repealed abolishing the Docklands Co-ordination Committee. The City of Melbourne has established the Docklands Community Forum, which provides an improved mechanism for consultation and decision making on matters relating to the Docklands Co-ordination Area. Its role has superseded the functions of the Docklands Co-ordination Committee.

Section B: Overview of electoral reforms

A number of electoral reforms will be implemented in time for the 2016 Victorian Council general elections, including:

- making the Victorian Electoral Commission (VEC) the statutory provider for all council elections
- preventing a person who is banned from being a company director, from being a candidate in an election or continuing as a councillor
- enabling a returning officer to remove a candidate found to be disqualified from the ballot paper
- removing the requirement for an exhibition voters' roll
- requiring councils to have an election period (or 'caretaker') policy and clarifying limitations on publication of council documents during the election period.



8. Making the VEC the statutory election service provider

“The strongest argument in support of the VEC being assigned the statutory provider function is the support to the integrity of the system served by appointing a single, independent, impartial and expert provider. In many respects, this is a judgement councils themselves have made in appointing the VEC as the provider over many years.”
(Local Government Electoral Review Stage 1 Report)

Confirming the VEC as the electoral commission for all future council elections

The Victorian Electoral Commission (VEC) has conducted all local government elections in Victoria since 2003. **Schedule 2, Clause 1** of the Act is amended to state that the VEC will be responsible for conducting all future council elections. This replaces the former arrangements where either the council (through its CEO) or any electoral commission in Australia engaged by the council could conduct elections.

The move confirms the VEC’s role, in the absence of interest from any other electoral commission. Between 1997 and around 2001 the Australian Electoral Commission competed with the VEC and councils to conduct elections. But the Australian Electoral Commission has not tendered to conduct any elections since that time and neither has any council sought to conduct its own election since then.

The Act makes clear in its definitions that the ‘returning officer’ responsible for conducting elections will also be the Electoral Commissioner or his or her appointee, instead of the council’s CEO or a person appointed by another electoral commission in Australia contracted by the council.

LOCAL GOVERNMENT ACT 1989

Clause 1(1) of Schedule 2

“(1) The Victorian Electoral Commission is responsible for conducting elections under this Act.”

No need to tender for election services

This reform removes the onerous requirement for councils to publicly tender for election services or seek an exemption from the minister where there has been effectively no market other than the VEC. This represents a significant reduction in the administrative burden on councils.

The VEC will still need to set appropriate fees for the delivery of the service. Councils will need to ensure they achieve value for money for this service.

VEC to prepare council electoral rolls

The final voters’ roll for council elections is compiled combining the current list of voters from the State roll with other categories of voters (such as property owners and corporation representatives) provided by the council’s CEO.

As a consequence of the VEC becoming the sole provider of local government elections, the ‘registrar’ responsible for preparing councils’ voters’ rolls will be the Electoral Commissioner or appointee, instead of the Council’s CEO (or another electoral commission in Australia appointed by the council to prepare the roll).

Section 24 of the Act is amended to transfer the responsibility for preparation and certification of the final voters’ roll from the council’s CEO to the VEC (which becomes the ‘registrar’).

The ability for the voters’ roll to be amended after it has been certified will remain, but the overall responsibility for the amendment is transferred to the VEC instead of the council’s CEO. However, the CEO retains the responsibility of approving any changes to the roll that relate to voters for which the council holds the relevant records, for example property owners.

The responsibility for providing copies of voters' rolls to candidates transfers from the council's CEO to the returning officer running the election (appointed by the VEC). However, the responsibility for making the voters' roll available in other cases (for example outside the election period) remains with the council CEO.

As it is now the VEC which prepares the final voters' roll (instead of the council CEO), it may charge the council for its costs in the roll preparation.

Ending the requirement for an 'exhibition' roll

In an arrangement unique to Victorian council elections, the exhibition roll was a preliminary version of the voters' roll made available in locations throughout the municipality for a five day period before the entitlement date (when the roll closes). This was designed to enable voters to check if they were enrolled.

Exhibition rolls have rarely, if ever, been inspected. Concerns have been raised about instances of them disappearing from their public locations, for example the VEC identified three such instances in the 2012 general election. This raises privacy issues regarding potential use of voters names and addresses for purposes unrelated to the election. Compiling the exhibition roll has also proven time and resource intensive for councils and the VEC. These rolls are not prepared for State or Commonwealth elections.

Voters are able to check their enrolment with the VEC or their local council at any time (the VEC now has an online service to do this). In any case, at council elections, the certified roll must be made publicly available for four weeks prior to election day and can still be amended any time before the election if there has been an error in preparation.

In addition, a person not on the roll can make an unenrolled vote at an election. If the returning officer is subsequently satisfied they have an entitlement to vote, the vote will be added to the count.

Councils are strongly encouraged to provide every assistance to those 'non state roll' voters seeking to clarify their entitlement to be enrolled on the 'CEO's list' prior to the entitlement date. State roll voters can continue to be directed to the VEC to check their enrolment status.

Councils will still be required to send the VEC a list of 'non-state roll' eligible voters well in advance of the entitlement date, to enable the VEC to match records and eliminate duplications. The VEC will advise when these lists are required. Councils will continue to provide updates to their voting records to the VEC after the entitlement date. Council CEOs must also continue to send information to voters whose applications expire before the general election, inviting them to re-enrol. This must be done 42 days before the entitlement date.

Ending the requirement for an exhibition roll will remove an impediment to efficiency in conducting council general elections, save councils time and resources and better protect voters' privacy.

Prosecuting persons for not voting

Previously a council could choose to engage any electoral commission in Australia to enforce non-voting or alternatively undertake the process itself. This has resulted in inconsistent treatment of non-voting across the State as different councils pursued enforcement against non-voters with varying degrees of rigour. Only a small number of councils proceed to prosecution in the courts - with most councils discontinuing enforcement at the end of the infringement notice stage. This has resulted in inequitable treatment of citizens and has also undermined the intended incentive to vote.

Section 40 of the Act makes the VEC (as 'prosecution officer') solely responsible for all aspects of the administration and enforcement of non-voting at council elections. This includes serving failure-to-vote notices, infringement notices and prosecuting offences in court.

Making the VEC the sole authority in enforcing non-voting for all councils will restore consistency to the process throughout Victoria.

Cost recovery

The Act allows the VEC, as sole provider of local government elections, to charge councils its reasonable costs for all aspects of running their election (which includes its costs in enforcing non-voting). The VEC will be required to pass all non-voting payments (including fines and court charges) received back to the relevant council.

The VEC will not be entitled to charge councils for costs it has incurred in prosecuting non-voting which it has been able to recover via the court process.

A new provision is also included in the Act to clarify what happens to nomination fees paid by candidates who subsequently do not receive the required 4% of first preference votes at the election, in order to be refunded the fee (under **Clause 24 of Schedule 2**). In these cases the VEC must refund the relevant fee to the council.

LOCAL GOVERNMENT ACT 1989

40A Victorian Electoral Commission's election and enforcement expenses

- (1) The Victorian Electoral Commission may send to each Council an account of the reasonable expenses incurred by the Victorian Electoral Commission—
 - (a) for conducting an election for the council; and*
 - (b) for the administration, enforcement and prosecution of any offence related to compulsory voting under this Act, the **City of Melbourne Act 2001** or the regulations.**
- (2) A council is responsible for the reasonable expenses of the Victorian Electoral Commission as specified in an account sent to the council under subsection (1).*
- (3) For the purposes of this Section, reasonable expenses that may be recovered from a council do not include any costs recovered under the **Infringements Act 2006** and passed on to the Victorian Electoral Commission under that Act (being an enforcement agency under that Act).*

VEC power to challenge the validity of an election

The VEC is currently able to seek an inquiry by the Court of Disputed Returns at State elections if it considers the integrity of the election been compromised. For some time the VEC has sought similar authority for council elections.

Section 45 of the Act has been revised to ensure that a returning officer will be entitled to request an inquiry into the validity of a council election at the municipal electoral tribunal in the same way as a candidate and voters may currently do. This is an important check to reinforce the integrity of council elections.

9. Reinforcing candidate qualifications and their enforcement

Conditions for nominating as a candidate and meeting qualifications criteria for candidacy have been reinforced and strengthened.

Candidates must be enrolled

In the past a candidate not on the council voters' roll could still nominate if they submitted a statutory declaration detailing the basis for their enrolment and the steps they had taken to enrol. Regardless of the content of the declaration (which may reveal that the candidate had no basis for being enrolled), the returning officer had no ability to challenge the nomination. This meant that the candidate could contest the election, potentially putting at risk the validity of the election result if they were subsequently found to be ineligible to run.

The Act now requires that a candidate may only nominate if they are included on the council's voters' roll. A candidate's nomination will be rejected by the VEC appointed returning officer if they are not found on the roll.

This amendment brings council elections into line with a similar requirement at State elections under the *Electoral Act 2002*.

Candidates for council to nominate in person

The Act was previously amended in 2008 to require candidates to nominate in person as a disincentive against significant numbers of dummy candidates being nominated by another candidate. The exception was if a candidate was not able to nominate in person, he or she could be nominated by a third party after submitting a statutory declaration stating the reasons why.

While the 2008 amendment has had a positive effect in decreasing large candidate fields, there are still instances of large numbers of candidates nominating in absentia (for example in 2012 Melton City Council had 16 candidates nominate in this way).

The ability for a candidate to nominate via a third party at a council election has been removed. All candidates must nominate in person before the returning officer. Requiring nominations in person on a 'no exception' basis is not considered onerous for genuine candidates and will act as a further disincentive against dummy candidates.

Disqualification for those prohibited from managing a corporation

It is not appropriate that an individual banned from managing a corporation should be allowed to act as a local government office holder with significant responsibility for public assets.

In addition to a range of existing circumstances where a person is disqualified from standing as a candidate or becoming a councillor (for example, having been convicted of certain offences, being an undischarged bankrupt) **Section 29** of the Act now disqualifies a person as a candidate or councillor if they are currently prohibited from managing a corporation.

LOCAL GOVERNMENT ACT 1989

29 Disqualifications

- (1) A person is not capable of becoming or continuing to be a councillor or nominating as a candidate at an election if—
(fb) he or she is disqualified from managing corporations under Part 2D.6 of the Corporations Act (Commonwealth).

New power for a returning officer to reject the nomination of a disqualified candidate

Clause 9A of Schedule 2 enables the returning officer to force the retirement of a candidate, removing the candidate from the ballot paper before an election.

A returning officer previously had no power to remove a candidate from a ballot paper when it was clear a disqualification existed but the candidate refused to retire. This situation occurred at the 2012 council general elections when a candidate refused to retire despite clear evidence he had been convicted of a relevant offence and had been advised by the VEC that he was ineligible to stand. Had this candidate attracted sufficient votes to affect the eventual election result the election would have been voided resulting in the expense of another election.

Should a returning officer believe a candidate may not be qualified or is disqualified from nominating under the Act, the returning officer must send a notice specifying the reasons for that belief and inviting a response as to why the candidate should not be prevented from contesting the election. If the candidate does not respond or provides insufficient reasons, the returning officer must either reject the nomination (if nominations have not yet closed) or advise the candidate that he or she has retired and provide the reasons why. The candidate will cease to be a candidate from the date the advice of the rejection or retirement is sent.

A returning officer would be expected to only exercise the power to enforce a retirement where clear evidence of a disqualification has been presented.

The process for dealing with ballot papers following a retirement remains the same as the current arrangements. The returning officer must give public notice if practicable, and the retiring candidate's name is either removed or discounted from the ballot paper, depending on the stage of election preparation.

Taken together these reforms will further strengthen the integrity of the nominations process and candidate qualifications.

10. Clarifying election period (caretaker) arrangements

Section 93B now requires all councils to adopt and maintain an ‘election period’ policy.

Establishment of clear and consistent election period policy

Existing provisions under Section 93A prohibit councils from making ‘major policy decisions’ during the election period – including decisions to award contracts beyond the threshold that requires a competitive tender process, decisions on certain entrepreneurial activities and decisions about the CEO’s employment and remuneration.

Councils will also now be required to have an ‘election period’ policy to be in place to ensure that councils publicly explain to their communities how they will conduct their business immediately prior to an election. This is to ensure council elections are not compromised by inappropriate electioneering by existing councillors and to safeguard the authority of the incoming council.

The policy must cover three matters as outlined below. Suggestions for matters that may be included are given under each. Councils are encouraged to consider other items to include in the policy to suit their circumstances.

1. Preventing inappropriate decisions and misuse of resources

Councils must provide details on procedures they will take to prevent ‘inappropriate’ decisions being taken during the election period. Inappropriate decisions are those that would affect voting at an election or decisions that may unreasonably bind an incoming council and could reasonably be deferred until after the election.

The policy could include a statement on how papers prepared for council or special committee meetings during the election period will be carefully vetted to ensure that no agenda item is included that could potentially influence voters’ intentions at the forthcoming election or could encourage councillor candidates to use the item as part of their electioneering. The policy could also give a commitment that all councillors will refrain from moving motions or raising matters at a meeting that could potentially influence voting at the election.

Careful consideration should be given as to what decisions at council or special committee meetings should be made in the 32 days leading up to the general election, so that the authority of the incoming council is not unreasonably compromised. Given the relatively short period, it is expected that councils should be able to either reschedule most decisions until after the new council commences its term, or if that is not appropriate, bring decisions forward so they are determined before the election period starts.

Councils could list in their policy the types of decisions that will be avoided completely. Examples of such decisions include allocating community grants or other direct funding to community organisations, major planning scheme amendments and changes to strategic objectives and strategies in the council plan. The policy could also give a commitment that any other decision will be considered only if absolutely necessary for council operational purposes or pursuant to a statutory requirement.

Alternatively, the council could determine that it will not conduct council meetings at all during the caretaker period, unless exceptional circumstances warrant.

The policy must further outline procedures to address how the council will avoid misuse of council resources during the election period, specifically to prevent their use for electioneering by candidates. Council resources can include staff, property, equipment and stationery.

2. Limiting public consultation and council events

The election period policy must outline procedures the council will undertake to limit public consultation and the scheduling of council events during this period.

Consultation is an integral part of councils’ policy development process and operations, however, there are concerns that consultation undertaken close to a general election may become an election issue in itself and influence voting. Issues raised through the consultation and decisions that follow may also unreasonably bind the incoming council.

The scheduling of council events in the lead up to elections also frequently raises concerns over their potential use by sitting councillors for electioneering purposes.

Policies could state that public consultation on proposals and council events will not take place at all during the election period. They could alternatively provide that if consultation must be undertaken or an event held during this time, the council must justify to the community the special circumstances making it necessary and how the risks of influencing the election will be mitigated or prevented.

3. Equitable access to council information

There has been a perception that councillor candidates may have unfair access to council held documents to use in their campaigning. These are not freely available to other candidates. While this is not an issue at many councils, concerns have been raised in some instances that councillor candidates can ask for and obtain information not directly related to performing their role but for election purposes.

Policies could make it clear to the community that councillor candidates will be treated in the same way as other candidates with respect to access to council held information. The policy could provide that councillors may continue to automatically access council held documents during the election period, but only as is necessary for them to perform their current role and functions. It could also provide that any document made available to councillors will also be made available to candidates.

The policy should document how applications for access to council information by all parties will be processed. This could be a process whereby information made available to one candidate is published so that it is accessible to everyone else.

Timing of new election period policy

For the 2016 general elections, the election period policy must be adopted by the end of March 2016. For subsequent general elections, it must be reviewed not later than twelve months from the commencement of the election period for the next election. The election period begins 32 days prior to a general election – this is the period in which the policy applies.

The election policy must be transparent and accessible. This means it must be made public on the council's website and available in hardcopy for public inspection. All councils must ensure that copies are given to each councillor.

These requirements are expected to achieve greater consistency and rigour in council procedures and reduce ambiguity and confusion surrounding caretaker arrangements in the 32 days leading up to the conduct of general elections.

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93B council to adopt an election period policy

- (1) A council must prepare, adopt and maintain an election period policy in relation to procedures to be applied by council during the election period for a general election.*
- (2) A council must prepare and adopt an election period policy as required by subsection (1)—*
 - (a) by 31 March 2016; and*
 - (b) following the general election on 22 October 2016, continue to maintain the election period policy by reviewing and, if required, amending the policy not later than 12 months before the commencement of each subsequent general election period.*
- (3) An election period policy must include the following—*
 - (a) procedures intended to prevent the council from making inappropriate decisions or using resources inappropriately during the election period before a general election;*
 - (b) limits on public consultation and the scheduling of council events;*
 - (c) procedures to ensure that access to information held by council is made equally available and accessible to candidates during the election.*
- (4) A copy of the election period policy must—*
 - (a) be given to each councillor as soon as practicable after it is adopted; and*
 - (b) be available for inspection by the public at the council office and any district offices; and*
 - (c) be published on the council's Internet website maintained under Section 82A.*
- (5) In this Section—*
inappropriate decisions *made by a council during an election period includes any of the following—*
 - (a) decisions that would affect voting in an election;*
 - (b) decisions that could reasonably be made after the election.*

Clarifying the council prohibition on publishing or distributing material likely to influence voting

The Act prevents a council from publishing or distributing material likely to influence voting at the election during the ‘election period’ (commencing 32 days before election day). The council’s CEO must also certify that documents produced during this period by the council are not electoral material. Confusion over the intent of this provision has created inconsistency in its application.

The Act makes clear that documents published before the election period commences (but still available after commencement, for example on the Council’s website) do not require certification and are not caught by the prohibition. It also clarifies that statutory documents permitted under legislation (such as rate notices, food premises registrations and parking fines) may continue to be disseminated by councils during the election period without limitation.

Councils should nevertheless carefully vet their existing publications and online information before the election period starts and, where appropriate, temporarily withdraw any material that might reasonably influence the election. State government departmental websites state that existing information is not updated or new information added during its caretaker period. Councils may wish to adopt this practice.

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55D Prohibition on council

- (1) A council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer.*
- (1A) For the purposes of subsection (1), the publication of a document of a kind specified in that subsection does not include—*
 - (a) publication of any document published before the commencement of the election period; and*
 - (b) publication of any document required to be published in accordance with, or under, any Act or regulation.*

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