

Submission to the

Local Government Act review

Directions Paper

**September 2016**

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This submission has been endorsed by the MAV Board for lodgement with Local Government Victoria in response to the Local Government Act Review Directions Paper. .

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# Introductory comments

Thank you for the opportunity to provide a submission on behalf of the Victorian local government sector on the Directions for a new Local Government Act. I trust the sector’s views will be afforded due consideration.

The discussion paper and the directions paper are critical of the current Act. They have described the Act as, amongst other things, being outdated and flawed, lacking coherence and having technical shortcomings. These views are not shared by the sector. The opportunity to conduct a comprehensive review of the Act was widely supported by the sector as an opportunity to provide greater autonomy to councils, remove some of the layers of prescription and make some further improvements. The current Act has evolved considerably over the years as evidenced by the number of amendments that have been made to it. Many of these amendments have been in response to emerging issues and community expectations. In many respects the changes to the Act have kept pace with contemporary expectations. Generally, the sector does not believe the current Act is “broken”. The fact that the directions paper envisages transferring many of the provisions in the current Act to the new Act with little or no change seems to support this view. It is considered that there are many parts of the existing Act that have stood the test of time and/or have kept pace with contemporary society. We caution on not throwing the baby out with the bath water.

Undoubtedly, the sector accepted the State’s rhetoric, which reflected the expectations of the sector of an Act with broad enabling powers, greater autonomy for councils and less inappropriate prescription. The directions paper has fallen well short of providing a solid base for this result. Although it removes some provisions that are redundant or of little value, these provisions are generally of low impact in terms of council resources. On the other side of the ledger, the directions paper now proposes a significant increase in statutory requirements and greater prescription in a number of areas. And these requirements and prescription are, in some cases, high impact in terms of resources and of questionable value to councils and the communities they serve.

We are very concerned that in an extremely tight fiscal environment underpinned by rate capping, further requirements and inappropriate prescription proposed in the directions paper will add substantially to council costs without any increase in the efficiency of council operations. The cost of compliance should be a practical consideration wherever additional requirements and/or prescription are proposed.

While we recognise that this is a directions paper and much of the detail will need to be developed, in a number of cases we are reluctant to support a general direction without knowing the detail.

We believe that considerably more consultation on a number of issues is required. This is particularly so in relation to the rating provisions and on those items where the detail is still to be clarified and developed. Notwithstanding this, the timetable for this review provides 9 months (2017 – Q1-3) for drafting of exposure draft bill and three months (2017 – Q4) within which to conduct consultation on the exposure draft bill, get Government approval of the Bill and introduce the bill to parliament. The timetable should be reviewed to enable meaningful consultation on the draft bill to occur so that the strategic, administrative and cost consequences of the detailed provisions may be subject to appropriate scrutiny and review.

# Chapter 2: Contemporary Councils Capable of Meeting Future Challenges

**Proposed Direction 1 – Legal characteristics**

1. *Require councils to take the following overarching principles into account when performing their functions and exercising their powers:*
   * *The need for transparency and accountability*
   * *The need for deliberative community engagement processes*
   * *The principles of sound financial management*
   * *The economic, social and environmental sustainability of the municipality*
   * *The potential to cooperate with other councils, tiers of government and organisations*
   * *Plans and policies about municipality, region, state and nation*
   * *The need for innovation and continuous improvement*
   * *Any other requirements under the Act or other state or federal legislation*

Commentary:

It is proposed that councils take these overarching principles into account when performing their functions and exercising their powers. The set of principles and the provisions for the role of a council will replace the charter provisions in the current Act. One of the principles is the “need for deliberative community engagement processes”. This is commented on later in this submission. It is considered that this principle should simply reflect the need for appropriate community engagement processes. It is also considered that the fourth dot point should include cultural sustainability. This is commented on further in relation to proposed direction 145.

MAV position:

The proposed overarching principles be supported subject to the principle relating to community engagement being amended to “the need for appropriate community engagement processes” and the inclusion of cultural sustainability in the fourth dot point (refer also to proposed direction 145).

**Proposed Direction 2 – Councils’ role**

1. *Provide that the role of a council is to:*
   * *Plan for and ensure the delivery of services, infrastructure and amenity for its municipality, informed by deliberative community engagement*
   * *Collaborate with other councils, tiers of government and organisations*
   * *Act as an advocate for its local community*
   * *Perform functions required under the Act and any other legislation*

Commentary:

This provides a limited perspective of the role of a council, focussing on the service delivery function rather than the primary governmental role that positions local government as the provider of leadership within the municipality.

In conjunction with the “overarching principles”, this limited descriptor is intended to replace the charter provisions in the current Act. Feedback is supportive of the existing charter, particularly the recognition of local government as government. It is proposed that the existing description in the Charter be retained.

Again, it is considered that the word “deliberative” in relation to community engagement is not required in this context.

MAV position:

That the proposed role of a council reflect the current role as described in the Charter, with a focus on the role of local government in providing leadership within each municipality. Any description of “community engagement’ should not include ‘deliberative’.

## Proposed Direction 3 – Councils’ powers

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

Commentary:

This is an overarching provision that specifies councils have the powers described in the Act and in other legislation. This is intended to overcome any confusion between the current provisions which mix general and specific powers.

Councils currently prepare and execute comprehensive instruments of delegation and sub-delegation in order to effectively manage decision-making functions. Often such instruments contain a range of delegations and sub-delegations which would fall within the parameters of Section 3E(1)(h) but have no specific head of power within an Act or local law. Consequently the removal of the general power in Section 3E(1)(h) may diminish certainty of council’s powers. Reference should also be made to council’s powers under local laws.

MAV position:

That this proposal be supported, subject to specific reference to a general Council power to delegate council powers and functions.

## Proposed Direction 4 – Mayors leading councils

1. *Make the following reforms to the election of mayors:*
   * *Elect all mayors for two-year terms*
   * *Retain election of the mayor by their fellow councillors for most councils*
   * *Provide the minister with power to approve the direct election of mayors for councils where:*
     + *The size of the council is sufficient to support the additional costs of direct election*
     + *The significance of the council in its own terms or in terms of the region in which it is situated supports a directly elected mayor*
     + *Community consultation provides evidence of strong support for a directly elected mayor, recognising the additional costs to the community*

Commentary:

The current Act provides for councils to elect a mayor for a two year term if they so choose. Councils can also elect a mayor for a one year term and then elect the same person for additional consecutive terms. Electing a mayor for a two-year term may discount well-credentialed councillors who are not prepared or able to commit for a two-year term. For example, those who need to take leave of absence from their employment, reduce their work hours or make other arrangements so as to be available to properly discharge the role of mayor. There is a real risk that it might entrench the semi-retired into the role at the expense of younger people, those with young families and those with limited employment flexibility. This would hardly be representative of the communities they serve. It is considered that the current legislative provisions provide the flexibility for a council to elect a mayor for a one-year term, to evaluate their performance in the role and consider whether to re-elect the person for a further term(s).

It is considered that the election of mayors by their fellow councillors should be retained. The directions paper does not present any compelling arguments for the direct elections of mayors from the community. It is considered that any consideration of direct election of the mayor for other than the City of Melbourne should be subject to the development of a research paper and extensive consultation with the sector and the wider community.

MAV position:

That:

* That the proposal to elect mayors for two year terms be opposed and that the retention of the existing provisions be supported
* That the current provisions for the election of mayors by their fellow councillors be retained and that any consideration of direct election of mayor be subject to an in-depth consideration of the proposal including extensive consultation with the sector and the wider community.

## Proposed Direction 5 – Mayoral role and powers

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

Commentary:

The directions paper makes the point that “In any new Act, it is clear that a mayor should not be expected to have powers that negate the democratic responsibilities of other councillors for decision-making”. It is also considered that any changes should not add to any further confusion in the community about the role and powers of the mayor. In these contexts, it is not considered appropriate or necessary for the mayor to lead community engagement or to report on the implementation of the council plan. Implementation of the council plan should be reported on in the annual report. The council should decide how it will communicate the council plans over and above through the Council’s annual report. All councillors should have the opportunity to participate in community engagement processes as they see fit.

Most, if not all, CEO’s report to their council on the implementation of decisions and are assessed on this in their performance reviews. The proposition that CEO’s have a legislative obligation (which appears under the mayoral role and powers) to report to council on implementation of council decisions made over an unspecified period, without a rationale being provided in either paper, is not supported. The regularity and form of any reports should be a matter for council determination and not the subject of legislative provision.

Appointees to external committees are representatives of the council. They should be chosen by, and have the support of, the council.

The role of the mayor in supporting councillors and promoting their good behaviour is supported. This would also make it clear that it is not the responsibility of the CEO to become involved in these matters, except through the function of supporting the mayor in the discharge of his/her role.

Some councils already have a power in their local laws for the mayor (chair) to remove a councillor for disruptive behaviour. It is considered that while this is supported in principle it should be confined to exceptional circumstances with appropriate safeguards, including a review process, to ensure that it is not used for political purposes.

In relation to the proposal for the mayor to mutually set council agendas with the CEO, firstly, this conflicts with the proposed requirement of the CEO to *consult* with the mayor. Secondly, the CEO should be able to bring matters before the council without the prospect of intervention by the mayor, whatever the motivation. The mayor and councillors liaise with the CEO on a regular basis on what items are listed to come to council. The mayor and councillors have other avenues to bring matters before the council should they wish to do so.

It is proposed that the mayor be informed by the CEO before the CEO undertakes any significant organisational restructuring that affects the council plan. This is presented as being a power or responsibility of the mayor yet it is merely a requirement that the mayor be ‘informed’ of a particular circumstance. It is still intended that the CEO be responsible for establishing an organisational structure and for all matters related to staff. The directions paper states that “it would support the mayoral office if the CEO was required to engage with the mayor before making certain types of major decisions about the organisation”. It is difficult to understand the objective of this requirement and it has the potential to blur the lines of accountability. This proposed direction is not supported.

The proposal for the mayor to lead and report on the oversight of the CEO’s performance reflects the arrangements that currently exist in most councils. This proposal should be supported. The proposal that the mayor be the spokesperson for the council and represent it in the conduct of civic duties also reflects current practice and should be supported.

MAV position:

That:

* The proposals for the mayor to lead community engagement or to report on the implementation of the council plan are not supported
* Appointments to chairs of committees and external committees should have the support of the council and should be made by the council
* The proposition that the CEO report on the implementation of council decisions is more appropriately a matter for individual councils and does not warrant legislative provision
* The proposal for the mayor to support councillors and promote their good behaviour is supported
* The power for the mayor to remove a councillor from a meeting for disruptive behaviour is supported, in principle, subject to appropriate safeguards and review processes
* The proposal for the mayor to set council agendas with the CEO is opposed as it potentially exposes an administrative function to interference
* The proposition that the mayor be informed by the CEO before the CEO undertakes any significant organisational restructuring that affects the council plan is opposed because it blurs accountability lines
* The proposal that the mayor oversees the CEO’s performance review and is the spokesperson and civic representative is supported

## Proposed Direction 6 – Mayoral allowances

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

Commentary:

Currently the upper limit for mayoral allowances is set according to which of the three categories a council is in. It is considered that a review of mayoral allowances might be opportune given the time commitments required for the discharge of the mayoral role. The opportunity should also be taken to review the allowances of councillors.

MAV position:

That the proposed review of mayoral allowances be supported and that this be done in conjunction with a review of councillor allowances.

## Proposed Direction 7 – Local Government Mayoral Advisory Panel

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

Commentary:

It is proposed that the mayoral advisory panel be made a statutory advisory board to the minister consisting of at least 5 mayors appointed by the minister. The panel is currently comprised of mayors who are selected by the Minister. The proposed formalisation of an advisory board that is hand-picked by the Minister and not necessarily representative of the sector is strongly opposed. It is considered that a panel is no substitute for sector engagement on issues through local government membership bodies. The MAV is a legislative body with a mandate to represent and advocate on behalf of the sector. The Minister should be consulting with the MAV rather than an unrepresentative advisory panel.

MAV position:

That:

* The formalisation of the mayoral advisory panel is strongly opposed as it is politically appointed and unrepresentative of the local government sector
* The Minister conduct consultation through the Municipal Association of Victoria as the representative sector body

## Proposed Directions 8 & 9 – Deputy mayor

1. *Require all councils to appoint a deputy elected in a manner consistent with the mayor. That is:*
   * *Where councillor elect their mayor, councillors elect the deputy mayor for the same two-year period*
   * *Where the mayor is directly elected, a deputy mayor is jointly elected with the mayor on the same ticket*
2. *Consider deputy mayoral allowances in light of the expanded role of the deputy mayors.*

Commentary:

The directions paper suggests that it may be useful for the mayor to have a designated deputy in certain circumstances (e.g. takes leave, absent from a meeting, cannot attend civic functions or resigns or is disqualified from office). It is considered that the earlier submission for a comprehensive review prior to considering directly elected mayors should be expanded to include a review of the deputy mayor proposal. It is also considered that councils should continue to have the discretion to decide whether or not to appoint a deputy mayor. The issue of replacing a mayor who resigns or is disqualified is procedurally straightforward where the mayor is elected by the fellow councillors - a replacement can be elected quickly. It only becomes time consuming and expensive where the mayor is popularly elected. The appointment of deputy mayors varies across the sector. Some councils have chosen to appoint deputy mayors while others have elected not to do so. It is considered that councils should have full discretion as to whether or not to appoint a deputy mayor and to decide on whether an allowance is warranted.

MAV position:

That:

* Support for the retention of the current provisions for the election of mayors by their fellow councillors be restated until a full and comprehensive review of the pros and cons of the direct election of mayors is undertaken.
* The election of a deputy mayor for a two-year term be opposed for the same reasons as the election of a mayor for two-years, on the basis that this should be at the discretion of the council
* Where a council resolves to appoint a deputy mayor, the council should have full discretion to decide whether or not the deputy mayoral allowance (specified for that council) is warranted in the circumstances
* The position of deputy mayor should not be mandated and councils should continue to have the discretion to decide whether or not to appoint a deputy mayor

## Proposed Directions 10, 11 &12 – Councillors

1. *Require councillors to actively participate in engagement processes mandated by the Act.*
2. *Require councillors to recognise and support the role of the mayor specified in the Act.*
3. *Provide that councillors are entitled to all relevant entitlements consistent with other significant public offices (such as for disability support, maternity leave and childcare).*

Commentary:

Councillors are elected representatives. They should engage with the community through a variety of mechanisms to assist them to inform themselves and to perform their role. Councillors should also be accessible to the community. Notwithstanding this, it is not clear what the implications of direction 10 which requires councillors to actively participate in engagement processes mandated by the Act actually involves. As elected representatives, councillors should determine how they will engage with the community and their accessibility. In addition, where a councillor expresses a view, as part of community engagement on an administrative process they may be in breach of the requirement to keep an open mind and as a consequence, be perceived as biased. In all circumstances, Councillors are expected to make decisions after understanding the entire spectrum of views and the information provided to them and the proper discharge of this role is more important than a legislative expectation that councillors ‘actively participate’ in engagement processes.

Direction 11 requires councillors to recognise and support the role of the mayor. Again, it is unclear how this can be required and how it would be demonstrated and assessed. While the sentiment may be laudable, its legislative value is unclear. How, for instance, would a councillor support the role of mayor where he or she alleges that the mayor has failed to comply with an obligation imposed on him or her?

Councillors should be supported in all facets of their role and should enjoy the same entitlements as other elected representatives. This was the subject of an MAV State Council resolution in May 2016 to advocate to the State Government to have maternity and paternity leave entitlements for Victorian councillors recognised and incorporated into the Local Government Act 1989 and the new Local Government Act. This direction is fully supported.

MAV position:

That:

* The participation of councillors in engagement processes should be at the discretion of individual councillors and the role of councillors should be separate to the role of participants
* The general sentiment that councillors recognise and support the role of the mayor be supported subject to the intent of the provision being clarified
* The extension of support common to other senior public offices to councillors be fully supported.

## Proposed Direction 13 – Chief Executive Officer

1. *Require the CEO to provide support to the mayor by:*
   * *Consulting the mayor when setting council agendas*
   * *Keeping the mayor informed about progress implementing significant council decisions, including reporting on implementation when asked to do so*
   * *Providing information the mayor requires to meet the responsibilities of the role*
   * *Informing the mayor before making significant organisation changes that affect the council plan*
   * *Supporting the mayor in their leadership role (such as by ensuring adequate council resources and access to staff for the proper conduct of council meetings and for civic engagements).*

Commentary:

This direction provides for consulting the mayor when setting council agendas. This conflicts with direction 5 which provides for the mayor to mutually set council agendas with the CEO. As with direction 5, this is considered to be an administrative function of the CEO. While communication between the CEO and the mayor and councillors may well involve discussion of agenda items, this should not be a matter for legislation. This might be something for consideration in guidance notes.

It is considered that the CEO should keep the mayor and councillors informed on the implementation of significant council decisions. This proposed direction is at cross purposes with the second dot point of proposed direction 5 which requires “the CEO to report to the council about the implementation of council decisions”. Councils can, and do, legitimately direct the CEO to do this. It does not warrant legislative force.

The provision of information to the mayor that is required to meet the responsibilities of the role is fully supported.

In relation to the requirement to inform the mayor before making significant organisational changes that affect the council plan – the objective is unclear and the proposal blurs the accountability line.

Support for the mayor to perform their leadership role is, and should, continue to be a function of the CEO.

MAV position:

That:

* The setting of council agendas is considered to be an administrative function of the CEO and any consultation arrangements that occur between the CEO and the mayor do not warrant legislative provision (noting the discrepancy with the second dot point of proposed direction 5)
* The proposition that the CEO keep the mayor and councillors informed on the progress of implementing significant decisions is fully supported in principle, but the need to legislate the requirement is not considered to be warranted
* The requirement to provide the mayor with information to meet the responsibilities of the role is fully supported
* The proposal that the CEO be required to inform the mayor before making significant organisational changes is opposed because there is no clear objective and it blurs the accountability line
* Supporting the mayor in their leadership role is fully supported.

## Proposed directions 14, 15 & 16 – CEO remuneration and contract management

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

Commentary:

Direction 14 provides for councils to have a CEO remuneration policy. This is considered to be a positive transparency mechanism and is supported. The proposition that the audit and risk committee monitor and report on the council’s performance against the remuneration policy is also considered to be a sound independent review. The audit and risk committee under the current Act is an advisory committee to council. It can request reports, monitor performance and make recommendations. It has no power to commission reports or conduct reviews. The proposed monitoring and reporting on compliance with the CEO remuneration policy is only one item in an expanded role envisaged for the audit and risk committee which may detract from the key audit and risk role and require members with additional expertise. There are concerns at the capacity of some audit committees to attract the level of expertise required to perform the expanded role. There are also financial implications associated with the expanded role.

Direction 16 requires the mayor to get independent advice in relation to overseeing recruitment, contractual arrangements and performance monitoring. It is considered that this should not be a requirement but at the council’s discretion depending on individual council circumstances, including the level of available expertise.

MAV position:

That:

* That the requirement to have a CEO remuneration policy be supported
* The requirement that the audit and risk committee monitor and report on a council’s performance against the remuneration policy be supported in principle
* The expanded role envisaged for the audit and risk committee be further considered in relation to workload, member expertise and cost while acknowledging that the role of the audit and risk committee, is advisory only and that it’s role is compliance rather than policy
* The requirement for a council to obtain independent advice in relation to CEO matters be at the discretion of the council instead of being mandated

## Proposed Directions 17, 18 & 19 – Council decision-making – removing unnecessary prescription

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

Commentary:

Key council meeting procedures should be consistent across councils so that the community can understand the processes when dealing with different councils. The current provisions have worked well across the sector. It is considered that the current provisions should be included in the new Act.

While the notion of high level principles is supported, the current provisions provide an appropriate statutory framework for open and accountable meeting arrangements. Councils currently adopt meeting procedure local laws that are consistent with the current legislative provisions.

MAV position:

That the retention of the existing provisions for council decision-making processes is supported because:

* They have generally served the sector well by providing a statutory framework for meeting procedures that are consistent across the sector and support good governance practice
* The statutory framework provides a high level of autonomy within which councils can tailor their detailed decision-making arrangements.

## Proposed Direction 20 – Giving primacy to open decision-making

1. *Include in the new Act that a council may determine that information is confidential if:*
   * *It affects the security of the council, councillors or council staff*
   * *It would prejudice enforcement of the law*
   * *It would be privileged from production in legal proceedings*
   * *It would involve unreasonable disclosure of a person’s personal affairs*
   * *It relates to trade secrets or would disadvantage a commercial undertaking*

Commentary:

The intent of this direction is that as an organisation serving the public, councils should avoid dealing with matters in confidence unless exceptional circumstances require confidentiality. Transparency in decision-making should continue to be a hallmark of local government. It is considered that this proposed direction needs further consideration. It removes the ability for a council to go into closed session to debate the merits of dealing with a matter in closed session. It is also unclear whether the fifth dot point would enable councils to deal with the acceptance of tenders and contractual matters in a confidential session. If the consequence of these provisions is open tendering, this may result in tenderers being reluctant to tender for local government work or increased costs for councils.

MAV position:

That the proposed direction be supported in principle subject to further consideration of the treatment of acceptance of tenders and the ability for a council to debate the merits of dealing with a matter confidentially in closed session.

## Proposed Directions 21 & 22 – Committees making delegated decisions

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

Commentary:

Councils can currently delegate a wide range of decisions to committees that may be made up of any combination of councillors, council staff of members of the public called special committees. In practice many special committees are either committees of councillors or are small local community committees that manage local halls and reserves. The intent of this direction is to reflect actual practice and to minimise risk exposure of community committees that operate remotely from the council. It is considered that approval of the committee rules on an annual basis is not warranted given the resources required. It is suggested that a review frequency of two years would equally achieve the objective.

MAV position:

That proposed directions 21 and 22 be supported in principle, subject to the reviews being required every 2 years and not annually.

## Proposed Directions 23 & 24 – Simplifying committee types

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

Commentary:

The proposal to apply legislative provisions to decision-making committees (special and administrative committees) is supported in principle. Advisory committees and the like should be established and conducted at the discretion of council. It is unclear what conflict of interest provisions would apply to those types of committees that are currently termed ‘assemblies of councillors’. It is considered that a person who has a conflict of interest in a matter should not be able to participate and vote on a matter in an advisory committee or similar type committee.

MAV position:

That directions 23 and 24 be supported in principle subject to further clarification in relation to the application of conflict of interest provisions to advisory committees.

## Proposed Directions 25, 26 & 27 – Council staff

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

Commentary:

The directions paper asserts that many of the provisions relating to staff duplicate other legislation. While this may be so, it is considered that the provisions relating to the appointment of the CEO and contractual arrangements for senior officers should be retained in the new Act. Only those provisions where there is clear duplication should be removed.

Direction 26 proposes that the CEO establishes a workforce plan. This is a sound governance practice and should be supported. The workforce plan may need to be changed as a result of council decisions on service provision and budget. It is not clear how staff consultation would work in these situations. The development of a workforce plan is consistent with the role and functions of the CEO in the Act, that is the CEO is responsible for all matters to do with staff. It is not considered appropriate that the plan can only be changed in consultation with staff or that there is a role for the mayor. Staff consultation will occur through the EB provisions and not the workforce plan. The mayoral consultation requirement creates an illusionary mayoral role and further serves (as mentioned earlier) to blur the accountability lines.

While direction 27 is reasonable, it is a matter than would be covered in a council’s EBA and does not require legislative provision.

MAV position:

That

* The removal of those staffing matters that are duplications of other legislation be supported in principle
* The provisions relation to the CEO and senior officers in relation to contracts be retained in the new Act
* The requirement for the CEO to establish a workforce plan is supported in principle subject to removal of the requirements that it can only be changed in consultation with staff, and reference to consultation with and the plan being available to the mayor
* Direction 27 is not considered warranted as its intent will already be covered in a council’s EBA provisions.

## Proposed Directions 28 to 33 – Local laws

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

Commentary:

The directions paper identifies the key issues as being the quality of some local laws and the inconsistency of local laws with differences between councils with regard to content and enforcement mechanisms. Differences in content between council local laws often reflect local issues that arise in one council to a greater of lesser extent than in another. The current arrangements allow councils to target local issues of concern. Notwithstanding this, the sector has supported the development of best practice local laws for some time. This would provide a sound basis for councils to tailor the best practice content to local circumstances. The requirement that a council certify that a local law meets the principles set out in the Act, after receiving advice from an appropriately qualified person, will incur further costs. In the interests of reducing costs and achieving consistency, it is considered appropriate that the Victorian Government Solicitor perform this function. The issue of the value of a penalty unit has been a concern to the sector for many years as in many situations it is no longer an effective deterrent. A number of submissions have been made to the government to review the value of a penalty unit. This is strongly supported.

MAV position:

That proposed directions 28 to 33 be supported in principle with strong support for:

* the development of best practice local laws
* The local law certification process being carried out by the Victorian Government Solicitor at no cost to councils
* urgent review of the value of a penalty unit

# Chapter 3 – Democratic and Representative Councils

## Proposed Direction 34 – Determining council numbers accounting for population growth

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

Commentary:

This is proposed to respond to rapid and sustained population growth in some municipalities. While the directions paper mentions the range of the bands in other jurisdictions, it does not provide any arguments to justify and support the effectiveness of additional numbers of councillors. It is considered that the number of councillors should not purely be based on voter numbers but that consideration should also be given to the number of councillors that supports effective team dynamics. Local government contrasts with other levels of government in that there is no government and opposition. It is considered that it is premature to form a view on this proposed direction in the absence of further research on the effectiveness of councils with higher numbers of councillors (both in terms of representation and team dynamics) and further consultation with the sector.

MAV position

That direction 34 be the subject of further research and consultation with the sector prior to any increase in the maximum number of councillors

## Proposed Direction 35 – consistency in determining councillor numbers

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

Commentary:

It is considered that because of the variety of local government areas, there should be flexibility in determining the number of councillors based on local circumstances in conjunction with a review of the ward structure. The proposed direction limits this flexibility. The formula that the VEC currently uses in its reviews could form the basis for further discussion in relation to current range of electoral structures.

MAV position:

That proposed direction 35:

* be opposed on the ground that it does not provide sufficient flexibility for the number of councillors to reflect local circumstances
* further consultation take place on the current formula applied by the VEC

## Proposed Direction 36 – Simpler and more consistent electoral structures

1. *Allow for one of two representative structures – unsubdivided or entirely uniform multi-member wards to be applied in each municipality* ***(Option 1)*** *Allow for one of three representative structures – unsubdivided, entirely uniform multi-member wards or entirely single member wards – to be applied in each municipality* ***(Option 2)****Initially this would require the VEC to conduct representation reviews to arrive at new council structures for the first council elections after the Act is enacted.*

Commentary:

There are currently five structural models available under the existing legislation. The VEC currently determines the structure by undertaking a representational review and recommending a structure to the minister. The directions paper states that the strength of the current arrangements is that it allows for the structure to be adapted to suit local circumstances and to account for communities of interest. The counter argument in the directions paper is that the weakness of the range of structures is that inconsistencies can lead to community perceptions of arbitrariness and that councils with both single and multi-member wards require two different ballot counting systems for the same election which may contribute to a community perception that votes are treated inconsistently. It is considered that the ability to apply a structure that better suits local circumstances and community interest should outweigh arguments based on community perception. It is proposed that the flexibility afforded by the current range of options should be retained in the new Act.

MAV position:

That options 1 and 2 be opposed in favour of the current range of electoral structures being retained in the new Act.

## Proposed Direction 37 – Rationalising electoral representation reviews

1. *Subject to fixing councillor numbers by formula and reducing the range of representative structures, conduct future electoral representation reviews by exception when the minister directs the VEC to conduct a review on the basis of:*
   * *Evidence of a marked increase in population in a municipality*
   * *A request to the minister from a council or member of the community supported by evidence of the need for a review*
   * *In response to a recommendation from the VEC*
   * *On any grounds determined by the minister published in the government gazette*

Commentary:

The proposition that representation reviews be conducted by exception (rather than every twelve years) when there are grounds for doing so is supported. The proposed direction ties the reviews to the proposed formula for fixing councillor numbers and reducing the range of representative structures. Undertaking representational reviews by exception does not need to be tied to the other proposals. Subdivision reviews (which focus on ensuring that the number of voters represented by each councillor per ward do not vary by more than 10%) should continue to be conducted as and when required.

MAV position:

That:

* The conduct of representational reviews by exception be supported (irrespective of whether fixing councillor numbers by formula or a reduction in the range of representative structures are adopted)
* The arrangements for subdivision reviews continue in line with the arrangements set out in the current Act.

## Proposed Direction 38 – Aligning ballot counting systems and reducing informality in voting

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

Commentary:

In May 2016, the MAV State Council passed a resolution to call on the State Government to request the Victorian Electoral Commission to report on the feasibility of implementing an optional preferential system based on senate reforms for elections with more than one vacancy. The directions paper supports unsubdivided and multi-member wards structures. This option would enable a single ballot-counting system to be possible. This would also enable partial preferential voting across the board. MAV has, elsewhere in this submission, opposed reducing the electoral structures to unsubdivided and multi-member wards only. The argument for partial preferential voting is that it reduces the number of informal votes. This is a positive objective and should be supported. It is not clear how this process would work in relation to a countback to fill a casual vacancy.

MAV position:

That partial preferential voting be supported in principle subject to clarification of the arrangements that would apply in single member wards and in relation to a countback to fill a mid-term vacancy.

## Proposed Direction 39 – Reflecting independent candidacy in filling casual vacancies

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

Commentary:

Under the current system only the votes that elected the vacating councillor are counted. While this system might be suitable for the legislative council it is not suitable for local government. This proposal was advocated in the earlier MAV submission and provides for an improved democratic process for local government elections. It is fully supported.

The question of whether there is an intention to apply a countback system to a vacancy in a single member ward has been raised as it is not addressed in the Directions Paper. It is considered that any casual vacancy that occurs in a single member ward should continue to be filled by the conduct of a by-election as provided in the current Act.

MAV position:

That proposed direction 39 be supported for filling casual vacancies for multi-member wards

## Proposed Direction 40 – Streamlining organisation of electoral provisions

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

Commentary:

The current electoral provisions are scattered throughout the Act, schedules to the Act and in Regulations. The objective of consolidating the electoral arrangements in a single location is supported. What is unclear is which provisions in the current electoral regulations will not be retained.

MAV position:

That proposed direction 40 be supported in principle subject to clarification of which provisions in the current electoral regulations are not proposed to be retained.

## Proposed Direction 41 – Modernising the council franchise

1. *Make the entitlement to vote in a council election to be on the register of electors for the Victorian Legislative Assembly (the state roll) for an address in their municipality. Grandfather the voting entitlement of existing property-franchise voters in that municipality. Institute compulsory voting for all enrolled voters.* ***(Option 1)*** *Maintain the existing franchise but cease automatic enrolment of property owners and require these voters to apply to enrol for future council elections if they choose to do so. Institute compulsory voting for all enrolled voters.* ***(Option 2)***

Commentary:

The current arrangements provide automatic enrolment of voters on the state roll, automatic enrolment of two owners of rateable property not resident in the municipality and on application for non- Australian citizens, up to two occupiers who are ratepayers and a representative of a corporation owning or occupying property.

The two options provide for a diminution of the current electoral franchise for local government. The current franchise provides for those people who are stakeholders in the local community to cast a vote. The proposed direction disenfranchises these stakeholders, including property owners and local employers. The proposal would enable people who have moved into a rental property for 3 months prior to council elections to vote but would disenfranchise property owners and businesses who, arguably, have a greater stake in the municipality.

It is considered that local government is best served by all stakeholders having an opportunity to vote in council elections. For this reason, both options 1 and 2 are opposed and retention of the existing franchise is supported.

MAV position:

That options 1 and 2 of proposed direction 41 be opposed because they disenfranchise key stakeholders in the municipality and that retention of the franchise provisions in the current Act be supported.

## Proposed Directions 42 & 43 – Enforcing candidate qualifications

1. *Require the VEC to revise the candidate nomination form to require candidates to explicitly state that no disqualification conditions apply to them.*
2. *Require a council CEO to complete a police check and a check of the Australian Securities and Investments Commission (ASIC) register of person disqualified under the Corporations Act 2001 for elected candidates within 3 months after the general election* ***(Option 1)*** *or  
    Require each candidate to submit a completed ASIC and police check when nominating* ***(Option 2)***

Commentary:

The proposed directions are designed to prevent ineligible candidates from taking office should they be elected. Direction 42 would require candidates to explicitly focus on the various grounds for disqualification and state that they do not apply to them. This is considered reasonable and is supported.

Direction 43 has two options. The first requires the CEO to undertake police and ASIC checks. The other requires all candidates to submit them at the time of nomination. The first option is a further requirement and financial impost on councils. It also means that by the time an ineligible candidate is detected, their participation in the election has affected the outcome of the election. The second option requires all candidates (not just successful candidates) to submit this documentation. This may have the effect of discouraging some eligible, legitimate candidates. If the objective is to prevent an ineligible candidate, elected as a councillor, from continuing as a councillor then option 1 is the preferable approach.

MAV position:

That:

* The revised nomination form be supported
* In relation to proposed direction 43, option 1 is supported

**Proposed Direction 44 – Achieving consistency in voting method**

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

Commentary:

Of the 78 councils going to elections in 2016, 72 councils are conducting postal elections. 6 councils are conducting attendance elections. The directions paper sets out arguments in support of uniform postal voting across the sector. These relate to participation rates, voting formality and cost. It also puts the case that uniform voting would support a transition to electronic voting. The issues with the 2016 census would suggest that electronic voting is some way off.

This has been a vexed question for the sector for some time. The MAV has consistently maintained that councils should have the flexibility to use the system that they consider best suits their municipality. This position is maintained.

MAV position:

That the retention of postal and attendance voting in the new Act be supported.

# Chapter 4: Councils, Communities and Participative Democracy

## Proposed Directions 45 to 50 – Community engagement on strategic and financial plans

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

Commentary:

The directions paper states that the current Act provides limited submission rights to the public about specific activities such as council plans and budgets. It mentions the submission arrangements for special rates and charges and regional library corporations. It contends that the current consultation arrangements are relatively passive: they are about informing the community or seeking comment on a position already largely determined. It states that leading councils are undertaking deliberative community engagement processes which allow their communities to shape policy and resource allocation. One example is the development of 10 year community plans through deep, deliberative engagement with the local community.

Proposed direction 45 provides for including deliberative community engagement as a principle in the Act and including it in the role of a councillor. As mentioned earlier, councils should have the discretion to determine appropriate community engagement arrangements relevant to the specific circumstances. Prescription of deliberative community engagement is strongly opposed. The extension of this to elected representatives is not considered appropriate. (Refer to comments in relation to proposed direction 10)

Proposed direction 46, to require a council to prepare a community consultation and engagement policy, to inform the council plan and 10 year community plan, is reasonable and should be supported.

Proposed direction 47 takes the community consultation and engagement policy a step further by requiring a council to conduct a deliberative community engagement process to prepare its council plan and to reflect how the council plan reflects the outcomes of the community engagement process. Directions 46 and 47 provide for further prescription in how a council should operate. As a level of government in its own right, councils should have the discretion to determine appropriate levels of consultation for the range of plans, policies and strategies they are required to adopt. Parts of the directions paper express dismay at the compliance mentality inherent in certain provisions of the current Act, however these directions are further compliance requirements. The fact that a number of councils currently apply deliberative community engagement suggests that councils can and will use these methods where they believe they will add value. Deliberative community engagement can be time consuming and costly. Councils should be able to consider these issues in the context of their overall operations and decide on how their resources are best utilised.

Proposed direction 48 is a further layer of inappropriate prescription. It provides for regulations to further prescribe what should be covered in an engagement strategy. This is considered overly prescriptive and unnecessary.

Proposed direction 49 is to require a council to complete its council plan by 31 December in the second year of its term, recognising the time required to conduct a deliberative community engagement process. This will mean that a new council will not have a community plan in place for well over 12 months. The budget that the council will develop after the elections will not be based on any council plan. This disconnect between the budget and the council plan is unworkable. It is likely that the mid-year budget review (scheduled for when the council plan will be completed) will need to be amended to reflect the new council plan. This is likely to have implications for existing budget funding commitments. Overall, it highlights that the requirement for a community engagement process that will take in excess of a year to complete, and will have significant implications for the first twelve months or more of a new council without a council plan and a budget designed to implement the council plan. This proposed direction is strongly opposed as poor governance.

Require the mayor to report to the community each year about how the council plan has implemented the council’s priorities as directed through the deliberative community engagement process. This process will give the community the impression that the mayor is responsible for implementing the council plan. The papers have suggested that there is a misconception in the community about the role and powers of the mayor. This proposal will simply add to this misconception. It is considered that the council should report in its annual report on the implementation of the council plan and any community priorities. The current proposals would also mean that the mayor report on the carryover council plan from the previous council. There would be no council plan to report on for the period from July to December of the second year of the council term. The mayor in the second term will be reporting to the community on a council plan that will cover 6 months and will not be synchronised with the budget for that year. This needs further consideration by the government.

MAV position:

That:

* The principle of including deliberative community engagement is strongly opposed. The principle should refer to appropriate community engagement.
* The requirement for councillors to participate in deliberative community engagement is unnecessary and an inappropriate prescription on an elected representative and is opposed
* The requirement for a council to prepare a community consultation and engagement policy to inform the four-year council plan and 10 year community plan is supported
* Proposed direction 47 requiring a council to conduct a deliberative community engagement process to prepare its council plan is opposed on the grounds that it is over-prescriptive and should be a matter left to the council to consider in the preparation of its community consultation and engagement policy
* The proposed regulations (under proposed direction 48) are opposed on the grounds that they are over-prescriptive and unnecessary
* Proposed direction 49 requiring a council to complete its council plan by 31 December in the second year of its term be strongly opposed because:
  + It will result in a council being without a council plan for 6 months
  + It creates a disconnect between the council plan and the council budget
* Proposed direction 50 requiring the mayor to report to the community each year about the council plan is opposed because:
  + It will give the misleading impression to the community that the mayor is responsible for delivering the council plan (This should more appropriately be addressed in the council’s annual report)
  + It is unworkable for the 6 month period when the council will not have a council plan.

## Proposed Directions 51 to 53 – Transparency in public information related to council operations

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

Commentary:

Proposed direction 51 requiring the publication of documents and registers on the council’s website is supported in principle. There are potential issues with personal information for councillors and officers (address information) that is contained in these registers. The proposed direction also captures not only the registers required to be available under the Local Government Act but those required to be held under other legislation. The practicality, costs and implication of publishing these registers on the website needs further consideration.

The publication of the CEO’s remuneration policy on a council’s website is also a transparency initiative and is supported.

While the intent of publishing information relating to a council’s operations and administration is supported in principle, it is difficult to comment in the absence of the detail of any regulations and best practice guidelines. The City of Melbourne model seems to be advocated without any evidence demonstrating that their publication of statutory and voluntary registers online responds to community demand, need or expectation. The regulatory burden of maintaining public registers is not insignificant and the City of Melbourne approach should not be arbitrarily deemed best practice without first identifying community needs and expectations in order to conduct a proper cost-benefit analysis. There may be significant resource implications for some councils depending on the requirements. Depending on the resources involved, a cost benefit analysis may not warrant or justify these proposals.

MAV position:

That:

* Proposed directions 51 and 52 be supported as sound governance and transparency measures subject to
  + appropriate safeguards for personal information
  + further consideration being given to registers maintained pursuant to legislation other than the LGA
* Proposed direction 53 be the subject of further analysis (community demand, need or expectation and cost-benefit analysis)and subsequent consultation with the sector on the measures implemented by the Melbourne City Council and the resources required to implement such measures

## Proposed Directions 54 & 55 – Consistency in complaint handling

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

Commentary:

This proposal has arisen out of a recommendation from the Ombudsman. The definition of a “complaint” would not be universally supported by all councils. The addition of the provision that the customer has been directly affected is an improvement over the Ombudsman’s definition. If a council is to have a complaints policy, it makes sense to have a definition of a “complaint”. The definition should be further refined in discussions with the sector.

Proposed direction 55 requires a council to develop a customer complaints policy and include an avenue for independent review. Some council’s already have an avenue for internal review by a person who is not involved with the matter. A requirement for independent review will have resource implications for councils. It is considered reasonable for councils to have a customer complaints policy. The content of the policy should be a matter for the council. An avenue for independent review already exists through the Ombudsman’s office. The proposed direction exempts policy and statutory decisions of the council from the complaints policy. The exemption should be broadened to encompass all decisions of the council.

MAV position:

That:

* The definition of complaint should be subject to further discussions with the sector while acknowledging that the requirement that the customer be directly affected is an improvement over the Ombudsman’s definition
* Proposed direction 55 for a council to develop a customer complaints policy be supported subject to no prescription in relation to policy content (independent review) and all decisions of the council being exempt from the policy

# Chapter 5: Strong Probity in Council Performance

## Proposed Directions 56 & 57 – Standards of conduct – councillor conduct framework

1. *Incorporate the current councillor conduct framework largely unamended in the Act, including*
   * *The definitions*
   * *The principal requirements imposed on councils and councillors, relevant statutory officers, principal councillor conduct registrars*
   * *The role and powers of the minister and ministerial monitors and the Chief Municipal Inspector (CMI)*
2. *Include in Regulations all the processes specified in the current councillor conduct framework*

Commentary:

The directions paper acknowledges that the current councillor conduct framework largely came into effect on 1 March 2016 and, at the time of preparing the paper, had not applied for long enough to assess its effectiveness to determine if some aspects could be improved. The proposed direction is to incorporate the framework largely unamended in the Act and to include the processes in regulations. It is agreed that there has been insufficient time to review the effectiveness of the current framework. At this time, the MAV supports the retention of the current framework; however, if shortcomings with the framework become obvious over the course of this review, further consultation should be undertaken with the sector to make amendments as part of the review of the Act.

MAV position

That retention of the current councillor conduct framework be supported in principle at this time subject to further review of the provisions if shortcomings become apparent during the course of the review of the Act.

## Proposed Directions 58 & 59 – Release of confidential information

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

Commentary:

The intent to protect and discourage the unlawfully disclosure of confidential information is strongly supported. The directions paper draws a distinction between what is termed “more serious” breaches and “less serious” breaches. Depending on which category the breach falls into, different treatments will apply. While the principle is supported, more detail is required to understand how the provisions will operate in practice. It is unclear as to what investigative arrangements will apply where a council officer is accused of unlawful disclosure of confidential information.

MAV position:

That the proposed directions be supported in principle subject the provision of more detail on the distinction between “more serious” and “less serious” breaches and the proposed investigative arrangements which would apply in relation to an officer suspected or accused of unlawfully disclosing confidential information (perhaps arrangements applicable to the public service might provide a useful model).

## Proposed Directions 60, 61 & 62 – Conflicts of Interest

1. *Provide that a conflict of interest exists where:*
   * *The councillor or a person with whom they are closely associated stands to gain a benefit or suffer a loss depending on the outcome of the decision (a “material conflict of interest”)*
   * *The councillor has, or could reasonably be taken to have, a conflict between their personal interests and the public interest that could result in a decision contrary to the public interest*
2. *Make a breach of conflict of interest subject to disciplinary action for serious misconduct through a councillor conduct panel, at the discretion of the CMI. The maximum penalty a councillor conduct panel can impose for serious misconduct is six month suspension from office and loss of a councillor allowance for that period*
3. *Retain the capacity to prosecute a person in court for a conflict-of-interest breach when it involves failure to disclose a “material conflict-of-interest”. This is a criminal offence with a maximum fine of 120 penalty units and an associated disqualification from being a councillor for 8 years*

Commentary:

The conflict of interest provisions have been changed a number of times over the years. Each change requires councillors, council staff and the community to understand and become familiar with a new set of rules. The current provisions have evolved in response to the variety of issues that have arisen over the years. Anecdotal feedback from the sector suggests that the current provisions are operating effectively. It is considered that the current provisions (with some minor amendment) should be retained.

It is not clear what constitutes “closely associated” in the proposed direction 60. It also provides that the person “stands to gain” a benefit rather than their being a reasonable prospect of that occurring. If proposed direction 60 is to proceed it should be subject to further discussion and refinement with the sector.

Proposed direction 61 vests the discretion to prosecute through a councillor conduct panel in the CMI. There should be clear guidance on the circumstances for a prosecution. It is also of concern that a councillor conduct panel can impose a 6 month suspension on a councillor. The effect of this is that the community does not have one of their representatives for a period of 6 months. The community has been quite vocal about the lack of representation when a casual vacancy has occurred and not been filled. This would present a similar situation. Further consideration needs to be given to this proposal.

The capacity to prosecute a person for a conflict of interest breach under the current or proposed provisions should be retained.

MAV position:

That:

* The current conflict of interest provisions be retained in the new Act with any changes following consultation on the detail with the sector
* If the government intends to proceed with proposed direction 60, that further detailed consultation take place with the sector
* In relation to proposed direction 61, concern be expressed at the discretion afforded the CMI and the representational implications for the community of having a councillor suspended for 6 months
* The retention of the capacity to prosecute a person for a conflict of interest breach is supported

## Proposed Direction 63 – Misuse of position

1. *Retain the current legislative provision on misuse of position.*

Commentary:

The directions paper notes that no compelling suggestions for improving the current misuse of position provision were advanced in the submissions on the discussion paper. It is considered that the current provisions are sound and should be retained.

MAV position:

That the current legislative provisions on misuse of position be retained.

## Proposed Direction 64 – Improper direction

1. *Retain the current legislative provisions on improper direction, noting they will be supported by the further legislative measures to clarify the roles and responsibilities of councillors, mayors and CEO’s set out in chapter 2.*

Commentary:

The directions paper states that the prohibition on councillors directing council staff is essential to the proper and effective function of a council. Retention of the current provisions is supported.

MAV position:

That the retention of the current legislative provisions on improper direction be retained.

## Proposed Direction 65 – Chief Municipal Inspector enforcement

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

Commentary:

The Local Government Amendment (Improved Governance) Act 2015 assigned the Chief Municipal Inspector new roles and powers. The proposed direction, to retain the current role, functions and powers in the new Act, is supported.

MAV position:

That retention of the existing role, functions and powers of the CMI and the inspectorate in the new Act be supported.

# Chapter 6: Ministerial Oversight of Councils

## Proposed Directions 66 & 67 – Structure of the sector

1. *Include in the Act principles to apply to a proposal to create a new municipality, that:*
   * *Each new municipality shall be viable and sustainable in its own right*
   * *The allocation of revenues and expenditures between municipalities being separated shall be equitable for the residents of each municipality*
   * *The views of the communities affected by the restructuring shall be taken into consideration*
   * *Each new municipality shall have sufficient financial capacity to provide its community with a comprehensive range of municipal services and to undertake necessary infrastructure investment and renewal*
2. *Other than the proposed direction above, retain the current provisions (in part 10A) about altering external municipal boundaries.*

Commentary:

Part 10A of the Act sets out the requirements for changes to municipal districts. These involve the establishment of a panel to undertake any proposed restructure reviews. Proposed direction 66 provides principles to be applied to the creation of a new municipality. It is considered that the principles are reasonable and the current provisions of Part 10A should be retained.

MAV position:

That proposed directions 66 and 67 be supported.

## Proposed Directions 68 to 70 – Governance interventions

1. *Retain the power of the minister to:*
   * *Appoint a municipal monitor in a manner and with the role and powers as currently set out in the Act*
   * *Issue a governance direction to a council, noting that other powers of the minister to direct councils (such as the power to direct a council to submit financial statements under section 135) be included in this general power*
   * *Stand down a councillor as currently set out in the Act*
2. *Empower the minister to recommend that a councillor be suspended by an order in council where the councillor is contributing to or causing serious governance failures at a council. This power to only be exercisable in exceptional circumstances in that:*
   * *The councillor has caused or substantially contributed to a breach of the Act or Regulations by the council or to a failure by the council to deliver good government and*
   * *A council (by resolution), a municipal monitor, the CMI, the Ombudsman or the Independent Broad-based Anti-corruption Commission have recommended that the minister suspend the councillor on these grounds and*
     + *The council, the municipal monitor, the CMI, the Ombudsman or the Independent Broad-based Anti-corruption Commission have satisfied the minister that the councillor has been provided with detailed reasons for the recommendation and was given an opportunity to respond to their recommendation and*
     + *The minister is satisfied that if the councillor is not suspended that there is an unreasonable risk that the council will continue to breach the Act or continue to be unable to provide good government for its constituents.*
3. *Retain the provisions in the Act about the suspension and dismissal of a council in their current form, including the provisions allowing appointment of administrators.*

Commentary:

The directions paper makes the point that earlier and more targeted interventions by the minister may be more effective in addressing the sorts of governance issues that ultimately result in a council’s dismissal. The Local Government Amendment (Improved Governance) Act 2015 implemented several reforms to address governance and conduct issues earlier to reduce the likelihood of a council facing dismissal.

Proposed direction 68 proposed that the power of the minister to appoint a municipal monitor, issue a governance direction and to stand down a councillor be retained. This is supported.

Proposed direction 69 empowers the minister to suspend a councillor. The direction proposes that it only be exercised in exceptional circumstances and appears to provide robust and adequate safeguards. This direction is generally supported. Notwithstanding this, it is considered that there should be procedural fairness provisions built into the process, which might include the right of a councillor to seek legal representation.

Proposed direction 70 retains the provisions relating to the suspension and dismissal of a council. Retention of these provisions is supported.

MAV position:

That proposed directions 68, 69 and 70 be supported subject to the inclusion of appropriate procedural fairness provisions, including the right of appeal or review, in relation to the suspension of a councillor under proposed direction 69

## Proposed Direction 71 – Commission of Inquiry

1. *Streamline the minister’s power to conduct inquiries into councils into a single power to appoint commissions of inquiry consisting of one or more commissioners to inquire into and make recommendations to the minister about any matter as requested by the minister. This will include, but not be limited to:*
   * *Governance issues*
   * *Financial probity issues*
   * *Disputes between councils and between councils and other parties.*

Commentary:

The current Act provides the minister with a range of mechanisms (boards of inquiry, commissions and local government panels) to conduct inquiries into councils. The proposal seeks to streamline these arrangements vesting these powers in a commission to undertake the various inquiry types set out in the current Act. This proposal is supported.

MAV position

That proposed direction 71 to provide for commissions to be appointed to conduct the range of inquiry types set out in the current Act is supported.

## Proposed Directions 72 & 73 – Minister’s power relating to CEO employment

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

Commentary:

It is proposed to amend the minister’s power to forbid a council from employing a new CEO or entering into a new contract with an existing CEO to provide that the power can only be exercised on the recommendation of a municipal monitor or the CMI. This is an improvement on the existing provisions and should be supported.

The provisions relating to senior officers provide for contractual arrangements, similar to those in the private sector, to apply to designated senior officers. It is considered that these accord with contemporary management practices and should be retained.

MAV position:

That:

* The retention and amendment of the minister’s powers in relation to CEO contracts is supported
* Removal of the provisions relating to senior officers be opposed and that the requirement for senior officers to be employed on contracts be retained in the new Act.

## Proposed Direction 74 – Minister’s power to set a cap on rates

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

Commentary:

The principle of consolidating legislation applying to local government in one place is strongly supported. This should not be taken in any way that the Fair Go Rates System is supported. The MAV, other industry bodies and individual councils have made their opposition to rate capping very clear. The Fair Go Rates System is in direct conflict with the notion of broad enabling powers and greater autonomy for local government. The current system requires the community to support a council’s application to exceed the rate cap. A system that requires the community to actively support the application of increased rates is fundamentally flawed. Notwithstanding this, the fact that some exemptions were provided to councils demonstrates the inherent shortcomings of this system. Rate capping is still strongly opposed by the sector for the reasons previously enunciated.

MAV position:

That the proposed direction be opposed on the basis that the continued operation of the Fair Go Rates System is strongly opposed.

## Proposed Directions 75 & 76 – Minister’s power to make regulations and issue guidelines

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

Commentary:

The powers to recommend regulations and issue guidance currently reside in the Act and their inclusion in the new Act should be supported. Providing the minister with the power to relieve a council of requirements to follow processes set out in Regulations is a new initiative to recognise that the objectives of the Act may be achieved other than by following the regulations. It begs the questions about why such processes need to be specified in regulations at all rather than relying on the requirements of the Act. Notwithstanding this, as the processes are likely to continue to be specified, a process to enable the minister to relieve councils of regulatory compliance requirements is supported. (Refer also to commentary on proposed direction 142 regarding operational practicalities.)

MAV position:

That:

* The retention of the minister’s power to recommend regulations and to issue non-regulatory guidelines is supported in principle subject to such power being limited to making regulations and issuing guidelines on those matters where specific provision has been made in the Act and after consultation with the sector. This should generally be in line with those powers set out in the current Act.
* The power for the minister to relieve a council of requirements to follow processes set out in Regulations is supported in principle subject to the necessity for processes to be set out in regulations to be closely scrutinised as to whether they are needed. (Also refer to commentary on proposed direction 142)

## Proposed Directions 77 to 79 – Ministerial exemptions

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

Commentary:

In relation to proposed direction 77, the changes proposed in Chapter 8 will involve a council in developing a procurement policy and monitoring its compliance through the audit and risk committee. This change will render the need for ministerial exemption obsolete.

It is considered that senior officers should continue to be employed on contractual arrangements as set out in the current Act. These arrangements have proved to be effective over time and there is no compelling argument advanced to change these provisions. It is recommended that this proposed direction be opposed consistent with the earlier opposition to proposed direction 25.

Proposed direction 79 proposes that an alternative method be explored in relation to a majority of councillors declaring a conflict of interest on a planning scheme amendment. While there is no objection to exploring alternatives, a meaningful submission cannot be made until a proposal is developed.

MAV position:

That:

* As the proposed Chapter 8 changes in relation to procurement policy are supported, the removal of the requirement for ministerial exemption is also supported
* Proposed direction 78 be opposed on the grounds that the current arrangements in relation to senior officer contracts have proved to be effective and there are no compelling arguments to change these arrangements
* No objection be offered in relation to the exploration of an alternative method as proposed in proposed direction 79, subject to further sector consultation on the details of any new proposal.

# Chapter 7 – Integrated Planning

## Proposed Directions 80 & 81 – Integration of strategic plans and reports

1. *Include an integrated strategic planning and reporting framework in the Act that identifies the four-year council plan as a council’s central strategic planning instrument, and also requires long-term (10 year) plans – being a community plan, financial plan and asset plan – and short-term (1 year) reporting documents – being the budget and annual report (containing all performance reporting).*
2. *Include in Regulations and guidelines details about the information a council will include in each plan.*

Commentary:

The introduction to this section states that “the new Act should support council autonomy. To achieve this, we must remove most of the detailed prescriptive processes from the Act and replace them with principles-based provisions setting out outcomes that councils must deliver.”

In relation to proposed direction 80, it is considered that this should be supported in principle, however, some of the process and detail around these arrangements will be further commented on under other directions.

Proposed direction 81 provides for the inclusion in Regulations and guidelines details about the information a council will include in each plan. This is in direct conflict with the purported intent to support council autonomy and to remove detailed prescriptive processes in favour of principles-based provisions. It is proposed to support these objectives.

MAV position:

That:

* Proposed direction 80 be supported in principle subject to the further qualifications set out below
* Proposed direction 81 be revised to accord with the objectives set out in the introduction to this chapter, i.e. to support council autonomy and to remove unnecessary detailed prescriptive processes and replace them with principles-based provisions.

## Proposed Directions 82 to 85 – Council and community plans

1. *Require:*
   * *A council to prepare and adopt a four-year council plan by 31 December of the second year after a general election*
   * *Preparation of the council plan to be informed by the deliberative community engagement process described in Chapter 4*
   * *The council plan to include information about services, infrastructure and amenity priorities for the council term.*
2. *Remove the requirement to submit a copy of the council plan to the minister and replace it with a requirement to publish it on the council website and to have the mayor report annually to the community on the achievement of the council plan.*
3. *Require a council to prepare and adopt a rolling community plan of at least 10 years by 31 December of the second year after a general election to guide strategic planning and inform the preparation of the council plan. Require preparation of the community plan to be informed by the deliberative community engagement process that also underpins the council plan.*
4. *Set out in Regulations and guidelines what is to be included in the community plan, including a community vision statement.*

Commentary:

It is proposed that the positioning of the 4 year council plan as the central council strategic planning document be continued to be supported. This submission has already identified the shortcomings with deferring the council plan to 31 December of the second year after a general election (refer to proposed direction 49). To not have the primary strategic planning document adopted until well into the second year of the council term (and still not synchronised with the council budget) is completely unacceptable and poor governance.

As mentioned in relation to proposed direction 81, it is considered that the purported intent to support council autonomy and to remove detailed prescriptive processes in favour of principles-based provisions should be supported. The proposition that councils should be required to undertake a deliberative community engagement process conflicts with these objectives. The specification of deliberative community engagement processes is the direct causation for the date for the adoption of the council plan to be pushed out to 31 December. The disconnect between the budget and council plan is a fatal flaw with this proposal. The budget for the period commencing 1 July after the council elections will not be synchronised with the council plan. This is an unacceptable outcome

Removal of the requirement to provide the minister with a copy of the council plan (proposed direction 83) is fully supported, albeit a minor issue in the overall scheme of things. The earlier position outlined in relation to proposed direction 5 is restated, essentially that the council plan is the product of the council and should be reported on in the annual report.

The proposition that councils develop a rolling community plan of at least 10 years by 31 December of the second year after a general election is reasonable (proposed direction 84). Many councils already have a long-term community plan. There is no need for the community plan to be developed to inform a council’s council plan from the outset. Once the community plan has been developed, the council can take into account the outcomes of the community plan in its annual reviews of the council plan. The community engagement process for the community plan should be in accordance with a council’s adopted community engagement policy, leaving the discretion to conduct a deliberative community engagement process to the council to decide. This accords with the preamble to this Chapter.

Proposed direction 85 is to set out in Regulations and guidelines what is to be included in the community plan, including a community vision statement. Again, this is in conflict with the purported intent to remove detailed prescriptive processes.

MAV position:

That:

* The proposition that a council adopt a four-year council plan by 31 December of the second year after a general election be opposed because a council will be without a council plan for 6 months of its council term and because of the disconnect it causes with the council
* The current timetable for the adoption of the council plan be retained in the new Act
* The prescription of a deliberative community engagement process in the preparation of the council plan be opposed because it will result in a delayed council plan and a disconnect between the council plan and budget. A council should have full discretion in the development of its community engagement policy and have discretion to undertake a community engagement process during the life of the council plan (as part of its annual review of the council plan) as it sees fit.
* Dispensing with the requirement to provide a copy of the council plan to the minister in favour of publication on a council’s website be supported
* In relation to proposed direction 84, the adoption of a community plan of at least 10 years by 31 December of the second year after a general election is supported noting that there is no imperative to develop a community plan at the same time a council plan is developed. As with the council plan, a council should have full discretion in the development of its community engagement policy to incorporate a deliberative community engagement process.
* Proposed direction 85 be opposed on the grounds that it is in conflict with the stated intent to support council autonomy and remove detailed prescriptive processes in favour of principles-based provisions.

## Proposed Directions 86 to 91 – Longer-term financial and asset planning

1. *Require all councils to prepare and adopt a rolling financial plan of at least 10 years by 31 December of the second year after a general election, in accordance with the principles of sound financial management, and for council to review and approve this plan annually.*
2. *Remove the requirement for a council to prepare a strategic resource plan.*
3. *Require the financial plan to:*
   * *Guide financial planning and inform the council plan*
   * *Provide the community with prescribed information about the human resource and capital works assumptions and decision-making underlying financial forecasts*
   * *Be informed by the deliberative community engagement process.*
4. *Require all councils to prepare and adopt a rolling asset plan of at least 10 years by 31 December of the second year after a general election, in accordance with the principles of sound financial management, and for a council to review and approve this plan annually. This plan will guide asset planning and inform the council plan.*
5. *Require the asset plan to include information about new assets, asset retirement, maintenance and renewal requirements for each class of infrastructure assets and to be informed by the deliberative community engagement process.*
6. *Set out requirements for what is to be included in the financial and asset plans in Regulations and guidelines.*

Commentary:

The proposed financial plan and asset plan would bring Victorian councils in line with other Australian state jurisdictions. Many Victorian councils already have these plans in place. Proposed direction 86 would require a council to adopt a rolling financial plan of at least 10 years by 31 December of the second year after a general council election, in accordance with the principles of sound financial management. While the general principle of a 10 year financial plan is supported, it is incongruous that a financial plan should be adopted in December out of phase with the budget cycle. The financial plan will not be in place until 6 months after an incoming council’s fist budget. This provides a disconnect between the financial plan and the budget in a similar way to the council plan and budget. This proposal is further complicated in that in the past councils have been able to factor projected rates increases into these plans with some certainty. The current rates capping regime which puts increases at the discretion of the minister introduces further uncertainty into these financial plans.

Proposed direction 87 removes the requirement for a council to prepare a strategic resource plan. This direction is supported given that other proposals will render this requirement obsolete.

Proposed direction 88 requires the financial plan to guide financial planning and provide certain prescribed information. These are reasonable and should be supported. It also requires the financial plan to be informed by the deliberative community engagement process. Again, it is considered that this should be a matter for the council to decide in the development of its community engagement policy and should not be subject to prescription. The proposed directions provide for deliberative community engagement processes to be undertaken for the:

* council plan
* community plan
* financial management plan
* asset management plan

The requirements for deliberative community engagement plans for each of these plans are onerous in terms of resources, time and cost. As mentioned earlier they are also at odds with the notions of council autonomy and less prescription and should be opposed.

Proposed directions 89 and 90 describe what an asset plan should contain and provide for a deliberative community engagement process.

Proposed direction 91 sets out requirements for Regulations and guidelines for these plans. Proposed direction 91 should be opposed on the grounds that it is in conflict with the stated intent to support council autonomy and remove detailed prescriptive processes in favour of principles-based provisions.

MAV position:

That:

* while a 10 year financial plan proposed direction 86 is supported in principle the proposal to adopt it by 31 December means that it will be out of phase with the budget cycle and is not supported
* the value of the 10 year financial plan will be compromised by the uncertainty introduced by the rate capping regime currently in place
* proposed direction 87 involving removal of the requirement for a strategic resource plan is supported
* proposed direction 88 (first two dot points) in relation guiding financial planning and providing prescribed information is supported in principle
* the requirement for the financial plan to be informed by the deliberative community engagement process is opposed. The deliberative community engagement process should be a matter left in the hands of the council and not subject to prescription
* the requirement for a council to conduct deliberative community engagement processes on:
  + the council plan
  + the community plan
  + the financial plan
  + the asset plan

be strongly opposed because they are onerous, resource intensive, time consuming and costly and in conflict with the stated intention to support council autonomy and less prescription

* proposed directions 89 and 90 relating to the asset plan are supported in principle subject to removal of the requirement for a deliberative community engagement process
* Proposed direction 91 is opposed on the grounds that it is in conflict with the stated intent to support council autonomy and remove detailed prescriptive processes in favour of principles-based provisions.

## Proposed Directions 92 to 94 – Improved budget guidance

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

Commentary:

Proposed direction 92 requires a council to review its budget mid-cycle at 31 December each year. This is a process undertaken by most if not all councils. It is a sound financial and governance process and is supported.

Proposed direction 93 is designed to address the uncertainty around the current provisions for a revised budget in the Act. This is supported in the interests of clarity.

Proposed direction 94 removes an obsolete administrative procedure.

MAV position:

That proposed directions 92, 93 and 94 be supported.

## Proposed Directions 95 to 97 – Strengthened role for audit and risk committees

1. *Require all councils to establish an audit and risk committee with an expanded oversight of:*
   * *The integrated strategic planning and reporting framework and all associated documents*
   * *Financial management and sustainability*
   * *Financial and performance reporting*
   * *Risk management and fraud prevention*
   * *Internal and external audit*
   * *Compliance with council policies and legislation*
   * *Service reviews and continuous improvement*
   * *Collaborative arrangements*
   * *The internal control environment*
2. *Require the audit and risk committee to include a majority of independent members and include councillors, but not council staff.*
3. *Require the audit and risk committee to report to the council biannually and require each council to table the biannual audit and risk committee report at a council meeting.*

Commentary:

Councils are currently required to have an audit committee, which is an advisory committee to council. The role of the audit committee is not specified. Proposed direction 95 (and elsewhere in the directions paper) provides for an expanded role for the audit and risk committee. Some rural councils struggle to attract independent members with the range of skills and expertise necessary to properly and effectively discharge the roles expected of audit committee members. This is a concern in the context of an expanded role for audit committees. The current time involvement for members of the audit committee will need to be increased to deal with the expanded range of matters. This will have resource implications for audit committees (number of meetings and members’ fees).

The requirement for a majority of the audit committee members to be independent is supported. The requirement for regular reporting from the audit and risk committee to council is a sound governance practice and is supported.

MAV position:

That:

* The expanded role for audit and risk advisory committees under proposed direction 95 be supported in principle subject to further consultation with the sector in relation to the workability and resource implications for rural councils (refer also to proposed direction 14)
* Proposed directions 96 and 97 be supported.

## Proposed Directions 98 to 100 – Improved accountability to the community

1. *Continue to require a council to include information in its annual report of operations about achievements against its council plan, community plan, financial plan, asset plan and budget.*
2. *Remove the requirement for a council to submit a copy of its annual report to the minister.*
3. *Require a council to present its annual report at an annual general meeting at which the mayor must report progress on implementing the council plan.*

Commentary:

Despite the current requirements of the Act and Regulations in relation to what must be included in the annual report, the directions paper maintains that the contents of the annual report are not well aligned with the strategic planning document making it difficult for the community to assess the council’s performance. Proposed direction 98 continues to require a council to include information in its annual report on achievements against its council plan, community plan, financial plan, asset plan and budget. As mentioned earlier, the proposed direction to delay the development of the council plan will effectively leave a council without a council plan for a 6 month period. The reporting requirements in the annual report are supported in principle subject to resolution of these issues.

Removal of the requirement to submit a copy of the annual report to the minister addresses an obsolete administrative requirement.

Proposed direction 100 requires a council to present its annual report at an annual general meeting at which the mayor must report progress on implementing the council plan. It is not clear what this means and how it would work. The closest thing that a council has to an AGM is when it elects the mayor around November. This may be a new mayor and would not be relevant to the past council plan under the former mayor. Traditionally, an AGM would have a report on the organisation’s finances. The financial report would not be available until August/September. The council must have its annual report completed by the end of September, including its financial report. As mentioned earlier in this submission, the council plan is the product of the council not just the mayor. The purpose, value and timing of this proposed direction needs further clarification.

MAV position:

That:

* Proposed direction 98 is in line with community expectations of what would be contained in an annual report and is supported
* The removal of the obsolete requirement to submit a copy of the annual report to the minister is supported
* Further clarification of the purpose, value and timing of proposed direction 100 is required for the sector to form a view on this matter.

## Proposed Direction 101 – Regional-level planning and integration with state government policy and planning

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

Commentary:

This proposed direction would bring Victoria into line with some other Australian states. It would seem reasonable for a council plan to take account of relevant aspects of regional and state plans that affect the municipality, notwithstanding that councils may want to advocate for changes to these plans.

MAV position:

That proposed direction 101 is supported.

# Chapter 8: Sustainable Finances for Innovative and Collaborative Councils

## Proposed Directions 102 & 103 – New financial sustainability principles

1. *Require a council to embed the principles of sound financial management in its council plan, community plan, financial plan and asset plan.*
2. *Include in the Act the following principles of sound financial management:*
   * *Manage financial risks prudently, having regard to economic circumstances*
   * *Align income and expenditure policies with strategic planning documents*
   * *Undertake responsible spending and investment for the benefit of the community to achieve financial, social and environmental sustainability over the long term*
   * *Provide value-for-money services and infrastructure which are accessible and responsive to the community’s needs*
   * *Ensure that decisions are made and actions are taken having regard to their financial effects on future generations*
   * *Ensure full, accurate and timely disclosure of financial information about the council*
   * *Undertake regular stress testing and evaluation of financial risk management.*

Commentary:

The discussion paper contends that the Act does not currently provide an adequate degree of clarity or demand sufficient transparency about how sound financial management principles must apply to strategic planning and decision-making and do not make reference to financial sustainability.

Proposed direction 102 requires the principles of sound financial management to be embedded in a council’s key strategic documents. This is sound governance and financial practice and is supported.

It is proposed to support proposed direction 103 (the principles of sound financial management) subject to further detailed consideration of the detail by the sector.

MAV position:

That proposed direction 102 is supported and proposed direction 103 supported in principle subject to further consultation with the sector on the detailed wording of the principles of sound financial management.

## Proposed Direction 104 – Removal of best value principles

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

Commentary:

The directions paper states that the best value provisions aim to promote benchmarking and ensure services meet minimum standards. However, councils apply the principles in a wide range of ways and there have been few service level reviews published that define the actual cost and quality of a service by comparing similar groups of councils. This is in part due to the different levels and priorities afforded similar services across different councils – no one size fits all. Some trial projects supported by LGV a number of years ago identified the difficulties and significant costs involved in complying with the legislative intent. It is proposed that the best value principle be embedded in the principles of sound financial management. This approach is supported.

MAV position:

That proposed direction 104 to remove the current best value provisions is supported.

## Proposed Directions 104 to 110 – Streamlined procurement practices

1. *Require a council at the start of the council term to develop and adopt a procurement policy that is consistent with the principles of sound financial management and require that all council procurement practices and contracts comply with this policy.*
2. *Specify in Regulations what must be included in a procurement policy, including when council will go to tender for the provision of goods and services (including thresholds), the process for going to tender and what collaborative arrangements have been explored to deliver value for money for the council.*
3. *Require the audit and risk committee to review compliance with the procurement policy and require a council to report in its annual report any non-compliance with its procurement policy.*
4. *Require a council to make its procurement policy available on its website.*
5. *Remove the requirement for an annual review of the procurement policy and the requirement to obtain ministerial exemptions for failure to go to tender in certain circumstances.*
6. *Provide councils with automatic access to state purchase contracts, whole-of-Victorian-Government contracts and the Construction Suppliers Register to save time, strengthen standards and improve efficiency*

Commentary:

Proposed direction 105 provides councils with the ability to develop a procurement policy that is consistent with the principles of sound financial management. This enables the policy to reflect the size and financial profile of the council. This direction is supported.

In the interests of consistency it is not considered unreasonable to specify in Regulations what must be included in the procurement policy (proposed direction 106). This direction is supported.

Proposed direction 107 provides for a monitoring role by the audit committee and reporting of any non-compliances in the annual report. This is considered to be a reasonable approach subject to earlier concerns expressed about the ability of rural councils to establish audit and risk committees with the capacity to undertake the expanded role as well as the additional resource implications.

Proposed direction 108 is a simple administrative and transparency requirement to publish the policy on the website. It is supported.

Proposed direction 109 removes the requirement for an annual review of the policy. This is supported as councils should review their policies at intervals as and when they see fit. Ministerial exemptions will no longer be relevant.

Proposed direction 110 will provide councils with automatic access to state contracts. This is long overdue and is supported subject to the State providing probity certification on the state contract process.

MAV position:

That:

* Providing councils with greater autonomy in the development of their procurement arrangements is consistent with providing more autonomy to councils and is supported.
* Proposed direction 106 to specify in Regulations what must be included in a procurement policy is supported in the interests of consistency across the sector, subject to a full cost-benefit analysis
* The monitoring role of the audit committee is supported in principle subject to further consideration of its implications for councils, particularly rural councils (cost and capacity)
* Proposed direction 108 requiring publication of the procurement policy on a council’s website is supported
* Proposed direction 109 vests responsibility for policy review in the council and makes ministerial exemptions no longer relevant and is supported
* Proposed direction 110 which provides councils with automatic access to state contracts is supported subject to probity certification

## Proposed Directions 111 & 112 – Improved investment practices

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

Commentary:

The directions paper notes that the range of council investment vehicles allowed in Victoria is much narrower than in other states and may result in lower returns for Victorian councils. Proposed directions 111 and 112 treat councils as a mature and responsible level of government. They are supported subject to the concerns expressed earlier in relation to the expanded role and capabilities of audit and risk committees. The revised scope, role and costs for the audit and risk committee should be subject to a cost-benefit analysis.

MAV position:

That proposed directions 111 and 112 are supported subject to issues with the expanded role and capacity of an audit committee being subject to a cost-benefit analysis.

**Proposed Directions 113 to 115 – Improved debt practices**

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

Commentary:

The directions paper notes that the range of borrowings could be expanded, which would strengthen the existing power to borrow and the ways borrowings can be applied. As with improved investment practices, these directions treat councils as a mature and responsible level of government. The expanded role of the audit and risk committee is noted.

Removal of the overdraft provisions and the role for the minister in relation to repayment of overdrafts is supported.

MAV position:

That the proposed directions 113, 114 and 115 are supported subject to issues with the expanded role and capacity of the audit committee being subject to a cost-benefit analysis.

## Proposed directions 116 & 117 – Streamlined sale and exchange of land provisions

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

Commentary:

It is not clear what information would be required to be included in the budget in relation to the proposed sale, exchange or lease of land. The council would then need to consider any submissions on these proposals and, presumably, decide whether to proceed or abandon the proposals and give reason for their decision. It would seem that the process that would need to be followed as part of the budget process would need to be the same as that to be applied where a proposal to sell, exchange or lease land is done outside of the budget process. While the proposed direction provides an additional option for a council, there seems to be limited value in the proposal. There is also a concern that these ‘transparency’ proposals would be buried in the budget document and would not achieve the desired outcome. On balance, it is considered that the transparency of council decisions to sell, exchange or lease land should prevail over administrative efficacy and thus the current provisions should be retained.

MAV position:

That the proposed directions be opposed because the current provisions provide for appropriate levels of community consultation and transparency for the sale, lease and exchange of community assets. The inclusion of details in the budget would be both cumbersome and would not provide increased transparency for the community.

## Proposed Direction 118 – Streamlined insurance requirements

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

Commentary:

The directions paper argues that a council should assume responsibility for this in accordance with their adherence to sound financial management principles. This is considered reasonable and is supported. Although the discussion paper does not mention section 76 relating to indemnifying councillors, members of council committees and council staff while performing their roles and acting in good faith, this provision needs to be retained. In the absence of insurance or inadequate insurance, this provision provides a protection for these people.

MAV position:

That proposed direction 118 to vest responsibility for taking out appropriate insurances in a council is supported, subject to section 76 which provides indemnities for councillors, committee members and staff being included in the new Act.

## Proposed Direction 119 – Entrepreneurial powers integrated into new collaborative arrangements

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

Commentary:

The directions paper contends that the current provisions in relation to forming library corporations and other collaborative arrangements are cumbersome and severely restrict other collaborative arrangements for the delivery of other council services. The proposed direction seeks to encourage these arrangements in the new Act. The intent to encourage and streamline these types of arrangements is supported. The current provisions in the Act also cover speculative and commercial entrepreneurial activities and seek to provide a process for these activities to be subject to ministerial approval based on the level of financial risk involved. These provisions are designed to have a process in place to protect the community’s financial interests from ill-considered and risky ventures. It is considered that the current entrepreneurial powers should be amended to:

* Encourage and facilitate collaborative arrangements between councils and service providers to deliver economies of scale, improved council services and increased value for money while making these arrangements less cumbersome for the delivery of council functions and services
* Preserve processes to ensure that an entrepreneurial activity that involves significant council investment in a commercial or speculative activity is subject to a risk assessment and approval process by the relevant minister(s) to protect and safeguard the council’s financial assets in the best interests of the local community and the council’s ongoing financial sustainability where the financial risk exceeds a trigger point (e.g. a set % of a council’s revenue budget)

MAV position:

That:

* The proposed direction 119 be supported in principle in relation to encouraging and facilitating collaborative arrangements between councils and service providers to deliver more efficient services with less cumbersome structural arrangements
* Appropriate processes should continue to be specified in the Act to ensure a rigorous assessment process for commercial and speculative activity that involves significant financial risk is undertaken, including a ministerial approval process (above a specified trigger point based on set % of a council’s budget), to protect and safeguard a council’s and community’s financial assets

# Chapter 9: Fair Rates and Sustainable and Efficient Councils

## Proposed Directions 120 & 121 – Improved transparency of revenue and rating systems

1. *Require a council to prepare a revenue and rating strategy that:*
   * *Is for at least 4 years*
   * *Outlines its pricing policy for services*
   * *Outlines the amount it will raise through rates and charges*
   * *Outlines the rating structure it will use to allocate the rate burden to properties*
2. *Require a council to align the strategy to its financial plan and to review and adopt it after each general revaluation of properties.*

Commentary:

A revenue and rating strategy is integral to the development of a council’s financial plan. Accordingly, a council will need to consider its fees and charges policy, the amount it needs to raise from rates, its rating structure, differential rates and municipal charge in the development of its revenue and rating strategy and in the development of its financial plan. As mentioned in relation to the 10 year financial plan, the development of a revenue and rating strategy is difficult and compromised in the current Fair Go Rates System environment. The fine grain of a revenue and rating strategy is not possible when the amount of the rate increase is unknown.

MAV position:

That the requirement to prepare a revenue and rating strategy is supported in principle because it is a critical component in the development of a financial plan. It must be emphasised, however, that the integrity and value of a revenue and rating strategy is compromised in a Fair Go Rates System environment in the absence of forward rate cap projections.

## Proposed Directions 122 & 123 – Clearer exemptions for rateable land

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

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

*Make land rateable that is:*

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

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

Commentary:

The directions paper maintains that the current exemptions are unclear and as a result can be applied inconsistently. It notes that all other jurisdictions rate mining operations recognising the impacts of mining on local government infrastructure, services and the environment. As part of the review of the Act, a paper has been commissioned on rating. While it is considered that the current rating provisions warrant a comprehensive review, it is considered premature to provide comment on these proposed directions in advance of the rating paper being produced. Notwithstanding this, the MAV has a policy position that premises operating electronic gaming machines should be rated. It is also considered reasonable to propose that as a policy position, rate exempt land that is used for commercial use should become rateable.

MAV position:

That:

* while a comprehensive and detailed review of the current rating provisions is supported, it is considered premature to comment on proposed directions 122 and 123 pending the preparation and release of the rating paper. Further consultation needs to take place with the sector informed by the rating paper
* as a matter of policy it is considered that rate exempt land used for commercial purposes should be rateable and that Councils should be provided a specific power to rate any premises operating electronic gaming machines

## Proposed direction 124 – A consistent method of valuing land for the purpose of raising general rates

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

Commentary:

The directions paper mentions that 73 councils use Capital Improved Value (CIV) and the remaining 6 councils use Net Annual Value (NAV). It argues that there is a strong case to adopt CIV as a uniform system for valuing land as almost all Victorian councils use it and, as it includes all improvements in the valuation, it reflects more closely the capacity-to-pay principle. As well as improving consistency, it is also more transparent given that the public find the concept of a market value of a property much easier to understand than NAV or site value. It is considered that these arguments do not outweigh the need for councils to be able to use a valuation model that best suits local circumstance. It is considered that the current provisions provide councils with this flexibility. It is also considered that there is no sound reason why councils using the net annual value system should not be able to apply differential rates.

MAV position:

That:

* proposed direction 124 is opposed because there are no compelling reasons for dispensing with the current provisions which provide the flexibility for councils to use the valuation system which best suits their local circumstance
* councils that choose to use the NAV system of rating should have the capacity to levy differential rates

## Proposed Direction 125 – Municipal charge to be fixed at a maximum of 10%

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

Commentary:

Currently the municipal charge cannot exceed 20% of the total revenue from municipal charges and general rates in the financial year. The directions paper states that the average proportion of revenue derived from municipal charges for all councils for the 2015-16 municipal year was 9.1%.

There are no compelling arguments advanced in the directions paper for reducing the maximum municipal charge to 10%. As the average charge is 9.1%, it is likely that a number of councils have seen fit to levy a charge in excess of 10%. It is considered that the proposal not be supported in preference to retaining the existing provisions.

MAV position:

That proposed direction 125 not be supported in the absence of compelling reasons to reduce the maximum charge from 20% to 10% of total revenue and that the charge be retained at 20%.

## Proposed Directions 126 to 128 – Increased transparency in the levying of differential rates

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

Commentary:

A council can apply a differential rate if it uses CIV for valuing land. The directions paper notes that a council must consider any relevant ministerial guidelines before declaring a differential rate. The paper does not support mandating differential rates for farm land and retirement villages and recognises that the types and characteristics of land are different within each municipality. It concludes that differential rating is best determined by councils to reflect local circumstances.

MAV position:

That the retention of differential rates be supported in their current form subject to further consultation with the sector on the ministerial guidelines (refer to MAV position on proposed direction 124).

## Proposed Directions 129 & 130 – Streamlined service charges

1. *Retain service rates and charges, renamed “service charges” but remove their application to the provision of water supply and sewage charges.*
2. *As part of these changes, provide the minister with the power to prescribe the setting of other service charges in Regulations.*

Commentary:

The current Act allows a council to declare a service rate or service charge for a specific purpose (such as providing a water supply, collecting refuse and providing sewage services). Water supply and sewage services are now redundant in relation to local government. The directions paper identifies that councils may want to levy other service rates and charges (for example an environmental charge to fund green power for public lighting or an infrastructure charge to fund asset renewal). The potential expansion of the application of these charges is supported. Council support is related to those services and functions performed by councils. It is not supportive in relation to enabling the State Government to levy taxation through council rates notices. The Victorian Government has ample powers to levy taxation through the State Revenue Office and should not be collecting taxes and service charges through council rates notices.

MAV position:

That the proposed directions 129 and 130 be supported subject to:

* further consultation with the sector on the specific purposes to which service charges may be applied
* Service charges being limited to functions and services performed by local government

## Proposed Direction 131 – More transparent special charges

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

Commentary:

Currently, if a council proposes to levy a special rate or charge to recover more than two-thirds of the total cost of a scheme, it must allow affected ratepayers to object and may not proceed if a majority of affected ratepayers object. Special charge schemes can be costly for councils and can be difficult to implement. They should be retained in the Act. Clearer guidance for these schemes is supported.

MAV position:

That proposed direction 131 be supported in principle subject to further consultation with the sector on the detail.

## Proposed Direction 132 – More flexible rate payment methods

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

Commentary:

This proposed direction provides for more flexibility for the council to determine the lump sum date, more flexibility for ratepayers of more frequent instalments subject to the continuing option to pay by 4 quarterly instalments. This proposal is supported.

MAV position:

That proposed direction 132 be supported.

## Proposed Direction 133 – Greater autonomy in applying rebates and concessions

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

Commentary:

The directions paper contends that the current provisions in relation to applying rebates and concessions are very restrictive and may prevent a council from incentivising activities that are beneficial to the broader community or supporting some groups in the community on equity grounds. Greater autonomy for councils is supported.

MAV position:

That proposed direction 133 is supported.

## Proposed Direction 134 – Clearer guidance on land ceasing to be rateable

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

Commentary:

The directions paper asserts that where a person successfully appeals a decision of council about their rates and charges, there is ambiguity in the current provisions as to the timeframe to which the appeal decision applies. This proposal seeks to clarify the situation of retrospectivity and is supported.

MAV position:

That proposed direction 134 is supported.

## Proposed Direction 135 – Uniform process for reviewing and appealing rates and charges

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

Commentary:

The directions paper argues that the inconsistency for reviews and appeals can confuse people and may result in people not effectively using the review or appeal processes to exercise their rights. This recommendation is supported in principle subject to further detail on the processes and timelines.

MAV position:

That proposed direction 135 is supported in principle subject to further detail on the process and timelines.

## Proposed Direction 136 – Inclusion of *Cultural and Recreational Lands Act* 1963 rating provisions

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

Commentary:

The directions paper contends that there appears to be no good reason to isolate rating provisions for recreational lands in another Act and that incorporating these provisions in the Act would ensure greater consistency in the setting of rates and charges on recreational lands. As these provisions only relate to a council function, it seems reasonable to consolidate them in the Local Government Act.

MAV position:

That this proposed direction be supported.

## Proposed Direction 137 – Inclusion of *Electricity Industry Act 2000* rating provisions

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

Commentary:

The Electricity Industry Act 2000 allows a generation company that is liable to pay rates under the Act to elect to pay amounts agreed between the generation company and the council. In a similar vein to the Cultural and Recreational Lands Act, the directions paper argues that there appears to be no good reason to isolate rating provisions for the electricity industry in another Act. Where these provisions relate to a function that is only exercised by a council, it seems reasonable to embed them in the Local Government Act. In this way the provisions are consolidated and serve to provide a coherent whole for locating relevant provisions.

MAV position:

That this proposed direction be supported.

# Chapter 10: A Rational Legislative Hierarchy

## Proposed Directions 138 to 144 – Legislative hierarchy

### Hierarchy

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

### Principle-based act

1. *Include an overarching statement of the Act’s objectives, intended outcomes and a plan of the remaining provisions in the Act.*
2. *Include high-level statements to frame the structure, language and content of the remainder of the Act, including new sections setting out the roles and functions and powers of councils.*

### Subordinate legislation

1. *Include a general power for the minister to make Regulations setting out the requirements councils must meet when exercising their powers or discharging their responsibilities under the Act (for example, requirements about the conduct of elections and mandated obligations under the councillor code of conduct framework). Include in this power capacity for other relevant subordinate legislation (such as legislative instruments like ministerial orders and governor-in-council orders) with the subordinate legislation only relating to matters permitted by the Act.*
2. *Empower the minister to release a council from the processes set out in Regulations if the council can show it is successfully discharging its obligations under the Act using different processes.*

### Non-legislative guidance

1. *Include a general power for the minister to make guidelines to supplement Regulations on any issue related to the Act (such as best-practice versions of documents councils must adopt like councillor codes of conduct, budget documents, meeting procedures and councillor briefing processes). The presumption would be that, by adopting these best-practice documents, a council would comply with the Act and Regulations.*
2. *Empower the minister through the ministerial directions power to require a council to adopt these best-practice policies and procedures where there have been governance failures.*

Commentary:

Proposed direction 138 is to create a legislative hierarchy comprising new principle-based provisions in the Act and new Regulations setting out processes. The intent should be for clear and unambiguous provisions in the Act and Regulations. The Act and Regulations should seek to minimise the compliance and prescription placed on councils. Notwithstanding this, there will be situations where principles should be underpinned with clear prescription to ensure that councils and the community are clear on the legislative intent and outcomes. There are many instances where prescription has served the sector well. This also provides the sector with a level of protection for autonomous localised decision-making unaffected by the political agendas of the person occupying the position of Minister for Local Government. The Minister should only have the power to make Regulations or issue binding guidelines in areas specifically provided for in the Act, which should reflect the provisions in the current Act. Non-statutory sector guidance should not seek to direct councils in areas that should more properly be included in the Act and Regulations and subject to parliamentary scrutiny.

Proposed directions 139 and 140, being an overarching statement of the Act’s objectives etc., including high-level statements to frame the Act and to set out the roles and functions and powers of councils and are supported in principle. The sector will need to be consulted on the detail.

In relation to proposed direction 141, the inclusion of a general power for the minister to make Regulations is supported. Proposed direction 142 seeks to empower the minister to release a council from the processes set out in Regulations if the council can show it is successfully discharging its obligations under the Act using different processes. It is not clear how this would work in practice. A council may need to seek a release before it does not comply with the Regulations. It may be in breach of the Regulations if the minister does not release the council where the minister is not satisfied that that it has discharged its obligations under the Act using different processes. It is proposed to support this direction in principle subject to clarification of how the process would operate.

A general power for the minister to make guidelines is supported in principle. There would be a number of circumstances in which guidelines would prove helpful. Guidelines should not be used to extend the reach of the Act or Regulations.

Proposed direction 144 to empower the minister to require a council to adopt best-practice policies and procedures where there have been governance failures seems reasonable and is supported.

MAV position:

That:

* Proposed direction 138 be supported on the proviso that principles be underpinned, where appropriate, with clear prescription to ensure that councils and the community are clear on the legislative intent and outcomes
* The minister should only have the power to make Regulations or issue binding guidelines in areas specifically provided for in the Act, which should reflect the provisions in the current Act
* The capacity for the minister of the day to have unfettered power to direct the sector without the imprimatur of parliament is strongly opposed
* Non-statutory sector guidance should not seek to extend the reach of the Act and Regulations for matters that should more properly be included in the Act and Regulations having undergone parliamentary scrutiny
* The notion that the minister of the day have largely unfettered power to do anything that he or she likes in the sector is opposed, as this usurps the function of parliament
* Proposed directions 139 and 140 being an overarching statement of the Act’s objectives, high-level statements to frame the Act and the roles, functions and powers of councils are supported in principle subject to further consultation with the sector on the detail.
* Proposed direction 141 providing the minister with a general power for the minister to make regulations is supported
* Proposed direction 142 to empower the minister to release a council from the processes set out in Regulations is supported in principle subject to clarification as to how this would work in practice
* Proposed direction 143 for a general power for the minister to make guidelines is supported in principle subject to guidelines being used sparingly and not in a way to extend the reach of the Act or Regulations.
* Proposed direction 144 to empower the minister to require a council to adopt best-practice policies and procedures where there have been governance failures is supported.

## Proposed Direction 145 – Principle-based obligations in the Act

1. *Require councils to take the following principles into account when performing their functions and exercising their powers:*
   * *The need for transparency and accountability*
   * *The need for deliberative community engagement*
   * *The principles of sound financial management*
   * *The economic, social and environmental sustainability of the municipality*
   * *The potential for cooperation with other councils, tiers of government or other organisations*
   * *Plans and policies in relation to the municipality, region, state and nation*
   * *The need for innovation and continuous improvement*

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

Commentary:

The directions paper maintains that there is a disconnect between the preamble and charter in the current Act and the rest of the Act. The principles are intended to be underpinned by more specific requirements in the Act. In the case of deliberative community engagement it is considered that this should not be prescribed elsewhere in the Act but left to the discretion of councils. In relation to the fourth dot point, it is considered that the inclusion of cultural sustainability should be included. This would bring it into line with the City of Melbourne Act.

MAV position:

That proposed direction 145 is supported subject to:

* The inclusion of deliberative community engagement not being underpinned by specific prescription
* The inclusion of cultural sustainability in the fourth dot point

## Proposed Directions 146 to 148 – Prescriptive requirements in regulations

1. *Retain the current power of the minister to intervene where a council does not comply with the obligations set out in the Act or regulations by imposing a municipal monitor or by issuing a ministerial governance direction.*
2. *Include a general power for the minister to make Regulations setting out the detailed requirements of councils when exercising their powers or discharging their responsibilities under the Act (such as requirements about the conduct of elections and mandated obligations under the councillor code of conduct framework). Include in this power other relevant subordinate legislation.*
3. *Empower the minister to release a council from the processes set out in Regulations if the council can show it is successfully discharging its obligations under the Act using different processes.*

Commentary:

It is considered reasonable for the minister to have intervention powers where a council does not comply with its obligations. Proposed directions 147 and 148 have essentially been addressed above.

MAV position:

That proposed direction 146 relating to ministerial intervention is supported and that proposed directions 147 and 148 be referred to the position for proposed directions 138 to 144 above.

## Proposed Directions 149 to 151 – Best-practice guidelines

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

Commentary:

Proposed direction 149 provides for sector guidance in the form of guidelines and formal and informal advice. This is generally supported however; clarification is required on informal advice. The creation of best-practice versions of essential documents would be helpful to councils and is supported. Empowering the minister to intervene where governance issues have been identified is reasonable and is supported provided that “governance failures” have been identified by a municipal monitor or the CMI.

MAV position:

That proposed directions 149, 150 and 151 are supported subject:

* to further clarification of “informal advice”
* Proposed direction 151 being conditional on “governance failures” having been identified by a municipal monitor or the CMI

## Proposed Direction 152 – Harmonisation of legislation – Roads traffic and transport legislation

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

Commentary:

The directions paper asserts that having the same areas addressed in different pieces of legislation creates unnecessary complexity and increases the risk of inconsistency. This review provides an opportunity to reduce, where possible, the administrative burden on councils and increase clarity for the community by removing redundant legislation, schedules and provisions and harmonising the different legislative provisions that apply to councils. A council’s road management responsibilities existed before the Road Management Act 2004. The Roads Management Act and the LGA have similar provisions. It is argued that including all councils’ road functions in the Road Management Act would place portfolio responsibility for all road matters under the one Act and one minister. This also extends to a council’s powers over traffic management and parking. It is considered that those provisions that are the responsibility of a council and another authority should be consolidated in the Road Management Act. Those provisions that are the sole responsibility of a council should be retained in the Local Government Act.

MAV position:

That as a matter of principle those provisions that are the sole responsibility of councils should be retained in the Local Government Act.

## Proposed Direction 153 – Harmonisation of legislation – Water Act 1989

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

Commentary:

There are two policy changes being suggested in the directions paper with regard to councils’ drainage functions (ss198 to 201). Firstly, that the role of councils in water and drainage responsibilities be clarified, and secondly, a question about whether or not the revised drainage provisions should be moved to the Water Act 1989. Both suggestions are more complex than they appear at face value, and require detailed examination and consultation with councils.

Greater legislative prescription of councils’ role in water and drainage responsibilities will represent a significant change from the current legislative framework which is largely enabling and broad in scope. This reflects the history of water management regulation when the Water Act 1989 came into effect, when councils were divested of their previous responsibilities for water and sewerage services. Broad provisions were required to be retained at that time, however, to deal with legacy assets which were not transferred to the new water authorities, and to maintain metropolitan councils’ role in managing drainage assets under continuation of the 60 hectare rule that had been established by the former Metropolitan Board of Works.

The scale of councils’ involvement in managing drains is large. As a result, even small changes in policy have potential to significantly impact councils’ resourcing of this function. For example, 2014 data collected by Melbourne Water shows that in just the greater-Melbourne catchment area alone, councils managed over one million drainage pipes covering 28,000 kilometres in length.

Where clarifying of roles leads to responsibilities being prescribed in legislation for all councils, careful consideration needs to be given to their impact on individual councils. While some councils may have the capacity to undertake particular activities, there will be a number of councils for which clarity will result in new imposts they will struggle to meet in a rate-capped environment.

In respect of whether ss198-201 should be moved to the Water Act 1989, the MAV is inclined to support their retention in the Local Government Act, noting that further work is required to consider the positive and negative impacts for councils in greater detail. Analysis is particularly required in respect of the legal and liability implications that could arise.

The Water Act contains considerable prescription of the roles, responsibilities and connections between the Minister for Water and the powers and constraints of the various water authorities. Its provisions are strikingly different to the broad enabling provisions created by the functions of councils in s3 and ss198-201 of the Local Government Act. References to councils in the Water Act are currently very limited.

The directions paper notes that there is potential to create increased connection between councils and water authorities if their responsibilities are included in the same Act. In fact, most of the activities which lead to issues arising between councils and water agencies relate to other Acts, such as the Environment Protection Act and the SEPP (Waters) Policy which set out council requirements for on-site domestic wastewater regulation and requirements for stormwater quality, the Victorian Planning Provisions and councils’ local planning policies.

There may be benefits in moving council drainage responsibilities to the Water Act, however, particularly if these lead to positive changes in the protection and supply of water for the economic, social and liveability needs future generations will require. For example, much greater collaboration between agencies will be required to manage increasing scarcity of water due to climate change at the same time there is a growing population. The MAV would like to see councils being given the ability to charge for any new water services they are asked to provide, and for consideration to be given to granting them ownership rights to stormwater as a tradeable commodity.

MAV position:

That as the implications of this proposed direction may be extensive, this is not supported at this time pending full and detailed consultation with the sector.

## Proposed Direction 154 – Requirements of other legislation

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

Commentary:

This would be a useful tool for practitioners to locate relevant provisions relating to council obligations and responsibilities.

MAV position:

That this proposed direction be supported.

## Proposed Direction 155 – City of Greater Geelong Act 1993

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

Commentary:

The City of Greater Geelong supported incorporating the City of Greater Geelong Act entirely into the Local Government Act as a distinct section. In the circumstances, this proposed direction is supported.

MAV position:

That proposed direction 155 is supported.

## Proposed Direction 156 – City of Melbourne Act 2001

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

Commentary:

The directions paper maintains that Melbourne has a series of unique characteristics that demand distinct legislative arrangements. The Local Government Act currently regulates all Victorian councils, with differing electoral and other provisions in specific Acts for Melbourne and Geelong. Arrangements that apply to all other councils under the LGA should also apply to Melbourne City Council unless extraordinary circumstances warrant otherwise.

MAV position:

That, with the exception of the electoral model, the Melbourne City Council should be subject to the same provisions of the Local Government Act applicable to all other Victorian councils unless extraordinary circumstances warrant otherwise.

## Proposed Direction 157 – Municipal Association Act 1907

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

Commentary:

It is proposed that the Municipal Association Act be considered independently of this directions paper in consultation with the MAV. It is considered that this is an appropriate way forward. While the MAV will ensure sector involvement in this review there should also be direct consultation with Victorian councils.

MAV position:

That proposed direction 157 be supported subject to consultation taking place with the entire sector and not just limited to the MAV.