



MUNICIPAL ASSOCIATION OF VICTORIA

MAV Rules Review 2021–22 Directions Paper

A future focused MAV———

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Foreword



From the MAV President

We are pleased to release this Directions Paper that signals the commencement of Phase 2 of the review of the MAV Rules, on behalf of the MAV Board.

The MAV Rules is an important legal document that defines how the organisation runs, governs and operates. The review and update of the Rules aims to ensure the MAV is fit-for-purpose and future-focused. As proposed in the initial Discussion Paper, the MAV's success will depend on demonstrating we are:

- A strong sector leader
- Modern and contemporary
- Credible
- Well governed.

We particularly wish to thank those who responded to the Discussion Paper, those who participated in the Phase 1 consultation forums, provided feedback and submissions. We acknowledge and have actively listened to the range of views.

The proposed reforms outlined in this Directions Paper have been informed by research, feedback and submissions received as part of Phase 1. Our conversations have confirmed many of the issues covered by the Rules dovetail, making them somewhat complex and interdependent.

Rules that relate to the President, the Board and State Council are key issues considered at length in this Directions Paper. These Rules are critical to the way we lead, manage our affairs and work in partnership with and for the sector. This Directions Paper seeks to provide some clarity on a way forward on these key issues and the required Rule changes under consideration.

We are committed to a comprehensive consultation and engagement process. As with Phase 1, consultation on this Directions Paper will include further opportunities for engagement through a second round of forums and calling for submissions. I encourage all those with an interest to have their say.

At the MAV State Council in June, the feedback from the Directions Paper and any further refinements to proposed Rule changes will be considered by MAV Representatives, who will provide further direction to the Board. Then the final phase, drafting of the Rules to be considered for adoption at a Special State Council meeting in September this year.

Again, thank you to all who have contributed to the review of the MAV Rules to date. We look forward to seeing you at the upcoming round table discussions and receiving written submissions in response to this Paper.

A handwritten signature in black ink that reads "David Clark". The signature is written in a cursive, slightly stylized font.

David Clark
MAV President

Background

The Municipal Association of Victoria (MAV) State Council on 21 May 2021 resolved to review the **MAV Rules**.

The MAV's current Rules were approved by an Order in Council dated 5 February 2013. This review will be the first comprehensive Rules review undertaken since 2006.

Rule changes have tended to be incremental. That has led to a set of Rules that no longer serves the MAV well.

What are the MAV Rules?

The MAV is established by the *Municipal Association Act 1907*. The MAV is not a Council and is governed by its own legislation. The MAV's operations are subject to normal review mechanisms of the State, like the Victorian Auditor General. Also, the MAV is subject to prudential regulation required by the *Federal Corporations Act 2001*. This is because of the MAV's insurance business. The MAV entity can be described as something between a corporation (in terms of its independence) and a statutory body (in terms of the accountability mechanisms applied to it).

It is the *Municipal Association Act 1907* which empowers the MAV to make Rules. The Act says:

"— It shall be competent for the Association with the approval of the Governor in Council to make rules (a) for the management of the association; (b) for the regulation of its proceedings; (c) for fixing the amount of the subscription to be paid annually to the Association by each municipality; (d) for the regulation and management of and for fixing the rate of contributions to the Municipal Officers Fidelity Guarantee Fund and terms and conditions upon which the benefit of such fund shall be available; and (e) generally for all matters whatsoever affecting the management of the Association not inconsistent with the laws of Victoria."

This power to make Rules is a broad one. Any change to the Rules requires a State Council resolution. The resolution must be carried in two ways by:

1. a majority of votes (noting the plural voting system); **and**
2. 60% of the representatives of participating member councils voting in favour.

Any changes to the Rules require the approval of the Governor in Council. That means securing positive support from the Department of Jobs, Precincts and Regions through to the Minister for Local Government

The MAV's current Rules are on the MAV website at mav.asn.au

What Has Happened So Far?

On 22 November 2021 the MAV released a Discussion Paper entitled "2021-22 Rules Review - A future focused MAV". The Discussion Paper outlined a range of possibilities for different MAV Rules. The Discussion Paper is on the MAV website at mav.asn.au

An extensive consultative process took place between November 2021 and February 2022. Working with the President, the Board and MAV Management Executive, the consulting team engaged with MAV representatives, Mayors, Councillors, CEOs, and governance officers. The purpose of the engagement was to generate conversations about possible Rule changes. Those conversations concentrated on seven key aspects of change:

- MAV Rules need to be modern, clear and more widely understood.
- MAV Rules need to address oversights and unintended consequences of the current Rules.
- MAV Rules need to better enable the MAV to fulfil its role and function.
- MAV Rules should respond to some principles or a framework that supports the MAV to do its job well. The Rules Review Discussion Paper described that framework as:
 1. A strong sector leader - highly influential, strongly supported by its participating Councils and respected across a wide constituency.
 2. Modern and contemporary - an adopter of best practice and nimble and agile in the way it responds and adjusts to change and opportunity.
 3. Credible - well informed, highly skilled and capable of arguing complex issues with rigour, persuasion and timely data.
 4. Well governed - seek high performance, be highly accountable to its members and set a shining example of ethical practice.

- MAV Rules must provide sound arrangements to elect and support the role of the MAV President.
- MAV Rules must provide sound arrangements to elect and support the role of the MAV Board.
- MAV Rules must enable the MAV State Council to be an effective forum for creating local government policy.

The consultative process included:

- 170 people representing 55 Councils taking part in online briefings and small round table conversations
- 5 council briefings attended by the consulting team.
- 34, or 43% of MAV's member Councils providing a submission.

What Have We Learnt?

Responses to the Discussion Paper have been reported in detail throughout this Directions Paper. Where possible, feedback has been synthesized, providing a justification for a Rule change option.

Through the consultative process we know there is strong, often unanimous support for new Rules that:

- Address the perceived weaknesses in the current Rules.
- Respond to the principles or framework put forward.
- Make important changes affecting the office of MAV President, the MAV Board and the State Council.

There is a real appetite in the local government sector for changes that will help the MAV be effective.



Glen Eira suggested another key principle was important. Council said:

"In particular – the themes of strong sector leader, modern and contemporary, credible and well governed – as outlined in the Discussion Paper are supported. The only addition we would suggest is incorporating an element of value – the MAV needs to deliver value to

the sector both financially and in the context of outcomes. In terms of outcome value, the advocacy, lobbying and representational role of the MAV must deliver tangible strategy, policy or funding shifts on the part of Government at both State and Federal levels."

What Happens Next?

This Directions Paper represents the **second phase of four key phases** in the Rules Review process. Those phases are:

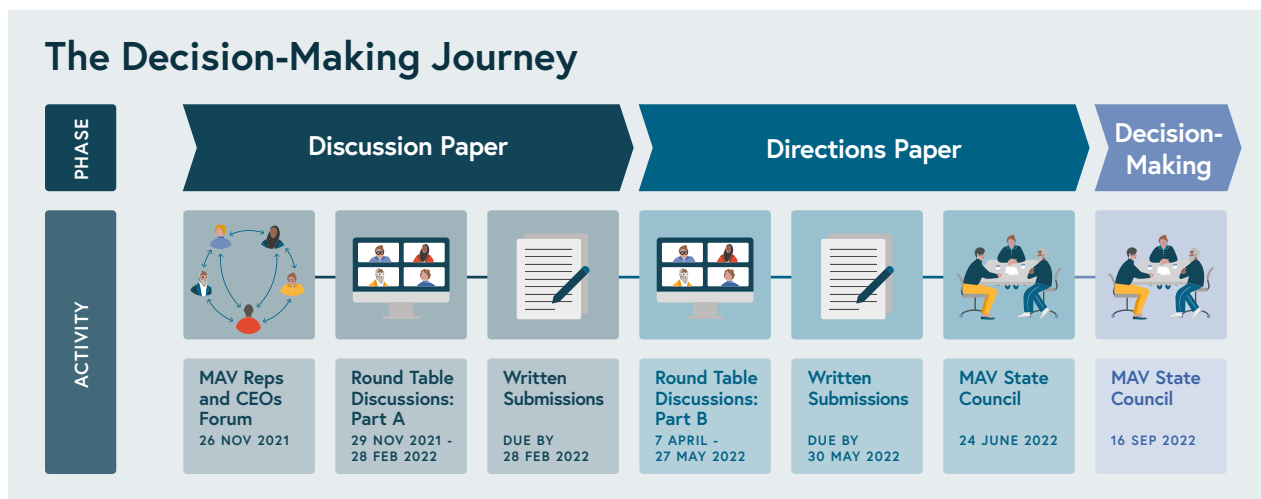
1. **A Discussion Paper** - canvassing possible Rule changes and seeking sector and stakeholder responses.
2. **A Directions Paper** – clarifying the kind of Rule changes contemplated.
3. **State Council deliberations** - deciding on the matters set out in the Directions Paper and providing clear advice to the MAV Board.
4. **Revised Rules and a Special State Council Meeting scheduled for September 2022** - voting on the new Rules.

The sector and stakeholders will be consulted in this Directions Paper in the same way as the earlier Discussion Paper. MAV representatives, Mayors, Councillors, CEOs and governance offices will be invited to take part in online round table discussions to consider this Directions Paper. These will occur during April and May 2022.

The MAV and its consulting team will also continue to consult with a range of other key stakeholders about this Directions Paper. These stakeholders include Local Government Victoria, the Department of Jobs, Precincts and Regions, the Victorian Electoral Commission and other relevant state agencies

The MAV representatives will participate in the June State Council. Sufficient time will be set aside for MAV representatives to provide clear direction on Rules change preferences to the Board.

The MAV is on schedule to complete this decision making journey.



Rules Affecting the Office of MAV President

The Discussion Paper raised several important issues in relation to the office of the MAV President. Those issues were all predicated on the belief that the MAV President's role is critical to MAV success. The role and function of the President is fundamental to the MAV achieving sector leadership, organisational credibility and good governance.

Respondents to the Discussion Paper acknowledged the importance of the role. Submissions supported the idea that new MAV Rules should set out the role and function of the MAV President. Rather than relying on a Board protocol for that task.

The Discussion Paper raised questions about aspects of the office of the MAV President relating to:

- Qualifications required to nominate for the office of MAV President;
- The length of a President's term in office;
- The tenure for a person holding the office of MAV President; and
- Qualifications necessary for a MAV President to stay in office and complete their term.

Nominating for President

Current MAV Rules require a councillor can only nominate for the office of MAV President if they are the current nominated MAV representative for their Council. 77% of respondents to the Discussion Paper supported that requirement. There were also submissions supporting very different arrangements.

Some argued any sitting Victorian councillor should be eligible to nominate for the office of MAV President. Two key reasons supported this view.

1. A 'good' MAV representative might not necessarily make a 'good' President. There are different skill sets involved.
2. The MAV President should be elected from a competitive and diverse candidate field.

Those supporting this approach also suggested the practicalities of such a change. For example, requiring nominations to only come from Councils and limiting each Council to one nomination. Another, requiring nominations to come from nominated Council representatives and requiring multiple representatives to support a nomination. Avoiding a "Melbourne Cup" field of candidates, especially when only seventy-nine votes would be cast, seems desirable.

Other submitters suggested that the Board might elect the President. This initiative aims to ensure high levels of trust and respect between the Board and President. Furthermore, a "Board elected" President would be more likely to produce a strong synergy between desirable leadership styles and the strategic intent of the organisation.

These models for electing a MAV President are worthy alternatives. However, the quality of the links between MAV representatives, the collective body of State Council and the MAV President are important. The current arrangement recognises the quality of those linkages. First, the MAV is a membership-based organisation. Drawing a President from the ranks of the MAV's nominated member representatives reaffirms the central importance of the membership. The representatives elect one of their own to lead the organisation. Second, to secure the support of their own Council as MAV representative is a reasonable preselection process. A process that probably enhances the credibility of the Presidential election.

The preferred option is to retain current arrangements and require councillors nominating for the office of MAV President to be the nominated MAV representative of their Council.

The President's Term in Office

Current MAV Rules provide for a two year Presidential term. Respondents to the Discussion Paper were almost equally divided over whether a two or four year term might be best.

On the one hand, some saw merit in a four year term, synchronised with Local Government General Elections. They observed that a longer term provides more time for building the relationships, networks, and trust. Important ingredients in influential intergovernmental relations.

On the other hand, many respondents saw merit in the two year term. They took several perspectives including:

- A four year term is a lot to ask from a sitting Councillor and, may create a disincentive for those willing to seek office.
- A four year term would be less than satisfactory in the event of electing a mediocre (or worse) President.
- There was no reason to suspect that a well performed President over a two year term would not be re-elected.
- Furthermore, the Presidential election process is not complicated or costly.

The Discussion Paper canvassed relatively recent events where the office of the President had been "weaponised" by the Council where the President was a sitting Councillor by withdrawing financial membership from the MAV. By withdrawing from financial membership such a Council hoped to force the President out of office. Whilst it would be open to make Rules that allowed such a President to continue in office until the end of their term, credibility issues arise in such circumstances where the MAV President sits at a Council which is no longer a participating MAV member. Throughout the consultation process it became clear to seek a solution which can provide security for the office of President **without** a loss of personal or organisation credibility.

The answer might lie in **matching** the length of the MAV Presidential term to the length of a Council's financial membership. This would negate tactical withdrawal of financial membership and be inconsequential to the MAV President's term in office. All Council members would be financial members for the entirety of the Presidential term. It would, of course, need member Councils to "sign up" for two or four-year terms of membership. Membership for

more than one year should be regarded a reasonable arrangement. The Discussion Paper made the very point that membership of an important peak body should not be a year by year consideration. Membership is a long-term commitment and a partnership.

This has been a very persuasive factor in reaching a preferred option in relation to the term in office for the MAV President. It provides a sensible solution to a problem that must be addressed. A two year membership commitment would need to be accompanied by a two year Presidential term in office. And, notwithstanding the sound arguments for a four-year presidential term, a four year term matched by four year membership commitment is a "bridge too far" for many member Councils.

The preferred option is to continue two year presidential terms in office but to change the MAV Rules to require member Councils to commit to two year memberships, payable in two annual instalments.

The President's Tenure

The Discussion Paper suggested a cap on a President serving consecutive terms in office is consistent with contemporary practice. It provides an opportunity for renewal and reinvigoration. A vast majority of respondents to the Discussion Paper agreed with that proposition. Choosing a suitable cap for tenure is somewhat arbitrary but eight years (four two year terms) seems about right.

The preferred option is to change MAV Rules to cap the tenure of a MAV President at four consecutive two year terms.

Rules Affecting the MAV Board

Electing a Board

The Discussion Paper pointed to the central nature of the MAV Board - it is a representative board. The Discussion Paper said:

*"...Current Board membership consists of 12 Councillors elected from small groupings of Councils. It is a highly **representative** Board. When electing Board members, the current Rules require the Board divide the State into 12 regional groupings. The strength of the current "regional groupings" Rule is it ensures a geographic distribution of Board members around Victoria. This geographic distribution enables the MAV Board to better understand what issues are important all over the State.*

*The weakness in this arrangement is it creates an obligation for Board members to **represent the interests of their region at the MAV**. And the practice of that representation has too little to do with conventional Board members' key responsibilities.*

*There are important differences between a **functional and representative** approach to board membership. A functional approach to board membership requires members to be selected (elected) for the skills they bring to the board to **address the strategic priorities of the organisation**. A representative approach sees board members elected to **represent the primary stakeholders of the organisation**."*

The Discussion Paper asked respondents to consider moving away from regional groupings. Instead electing Board members "at large" and equally from the rural and metropolitan areas. The proposal sought to create a board more concerned with the issues that conventional boards address.

There was only modest support for this proposal from respondents to the Discussion Paper. One third of respondents, mostly metropolitan councils favoured the idea. Many rural councils were not in favour of the proposal. Smaller rural councils highly value the idea that their opportunities and challenges can gain prominence through their regional Board member. They do not want to put that idea at risk.

Although this concept of "at large" elections was always developed to enable a more functional board, the consultation process revealed how "at large" elections might play out. Those MAV representatives seeking election to the Board would almost certainly canvass votes from Councils in their geographic region. That is exactly how candidates would initially seek support, thereby continuing to create something of an obligation and a responsibility to represent the regional interest.

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Verbatim comments from round table conversations about the Board:

"The current Board model allows for Board members to represent their own Regions and then also make decisions and contributions based on the whole sector."

"Skill based members are a good idea."

"Perhaps a gender quota should be considered by the Board."

"It is important that representative regions remain- it is the best way of filtering the information into the Board."

That likelihood suggests that "at large" elections may not diminish the representative nature of the MAV Board. The introduction of a proportional electoral model to go with "at large" elections would have assisted the process. It would probably create a different type of representation. But it is difficult to understand all of the nuances that might accompany such a change.

The current regional model can also be improved by readdressing the membership of each of the regional groupings, particularly in the rural areas. In addition, fewer regional groupings are likely to produce a Board that is less focussed on representation and more focussed on a functional approach.

Changing the Board is a significant matter. It should not be "let go" lightly. The responses to the Discussion Paper on this matter suggest that most rural Councils are strongly in favour of continuing with the current model. Responses from metropolitan Councils were more encouraging.

Accordingly, this is an important issue which deserves further consideration and consultation during the Directions Paper phase of the Rules Review and two options are put forward for comment.

Options to consider

Option 1: Maintain an equal number of regional groupings of rural and metropolitan Councils for the purpose of electing MAV representatives to the MAV Board.

Option 2: Maintain an equal number of Board members from rural and metropolitan members, and conduct "at large" elections, using a proportional representation electoral model in the metropolitan area and maintain regional groupings for regional and rural Victoria.



City of Melbourne Council offered a strong conceptual analysis of the current board arrangements. Council said:

"The Board in its current structure attempts to be both a representative body and a functional board governing the organisation.

- The State Council is a purely representative body and it is not necessary for the Board to also attempt to be a purely representative body.***
- Reinforcing the representational roles of the State Council, while removing the rigid representational roles of the Board, may improve the Board's functional responsibilities and its ability to maturely and collaboratively govern the organisation and provide leadership on matters important to the sector.***
- The Board's purely representational structure has necessarily required the creation of appointed skills-based subsidiary boards to manage the insurance and work care arms.***
- This structure facilitates a large number of paid Directors for one organisation, despite a relatively small number of staff and annual turnover.***
- The Board's single-member electorates do not naturally facilitate a diverse Board overall, in terms of politics, gender and other characteristics."***

Skill-Based Board Members

There was sound support for a proposal to appoint a small number of skill-based Board members. Three-quarters of respondents were supportive of the idea. Submissions referred to the proposal enhancing the Board's commercial capabilities. Some submissions noted the presence of some skill-based Board members would, of itself, help transition from a representative to a functional Board.

Some submitters suggested that any independent Board members should not be vested with voting rights. That point of view is understandable from the perspective that independent members would come to their Board role very differently to the elected Board members. Other respondents drew attention to the very significant skills retained by the MAV on the subsidiary Boards and Committees the MAV has established to oversee the insurance business and the audit and risk management functions. These independent appointed members of the MAV subsidiary Boards and Committees are very experienced and provide the MAV Board with high quality advice. Furthermore, the MAV Board is comprised only of Councillors who are normally very familiar with the importance of retaining expertise and seeking sound advice from experienced people to inform decisions.

A proposal which adds Board members to an already large Board needs to be carefully considered. It should be noted that there has been strong support from respondents to the Discussion Paper for a smaller Board! A smaller elected Board with two additional skill based appointed members would only result in a Board the same size as is currently the case.

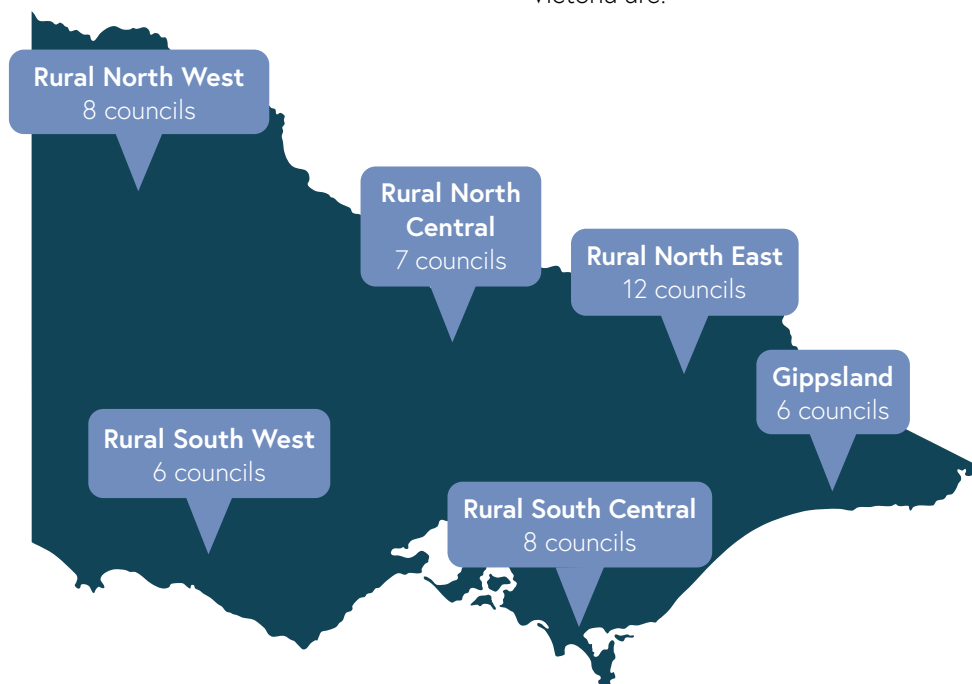
Whilst there is clearly potential for independent members to add value to Board deliberations it would seem desirable to retain the current arrangements for involving skill-based members on the MAV's subsidiary Boards and pursuing a smaller, elected MAV Board. A sort of "hybrid" Board, with both elected and appointed members might potentially create unnecessary confusion.

The preferred option is to retain current arrangements for all members of the MAV Board to be elected members.

The Size of the Board

The Discussion Paper drew attention to the current size of the MAV Board. A President and twelve Board members is a considerable number for an organisation with a maximum of seventy-nine members. Two-thirds of responders to the Discussion Paper favoured a smaller Board.

The regional groupings model attempts to create groupings of common interest and shared socio-economic links. However, it is not always possible to achieve that outcome. The regional groupings in the rural areas vary somewhat in the number of Councils they contain. The six regional groupings in rural Victoria are:



The results are imperfect but do strive to create regional groupings of **common interest**.

Some submitters suggested very different models. For example, the MAV groupings could follow Victorian Legislative Council regions. Victoria has eight Legislative Council regions (and elects five members from each Region). But, to ensure there is no voting "gerrymander" caused by the regional boundaries the State must include large parts of rural and metropolitan areas into one region. Nor do Legislative Council regional boundaries align well with municipal districts.

For the MAV to continue with regional groupings, particularly in rural Victoria, it should be understood that the main benefit of creating groupings to elect Board members is to enable Councils who share interests to have those interests represented at the Board table. Creating a regional grouping only for the purpose of creating an electorate for a Board member, without those shared interests, would be unhelpful.

Given the support for a smaller Board the current six regional groupings in both the metropolitan and rural areas should be reduced to five groupings to produce five Board members from both metropolitan and rural members. (Noting of course, that the metropolitan area might proceed on the basis of 'at large' elections and would be required to elect five Board members.)

Any smaller number than five elected Board members is very difficult to achieve under a regional groupings model if some level of shared common interests are to remain a feature of each grouping.

The preferred option is to reduce the number of elected Board members from twelve to ten (not including the President).

Term and Tenure of Board Members

The Discussion Paper suggested:

- A four year Board term might replace the current two year term to create stability and continuity. This might better enable Board members to make a stronger contribution to the governance of the MAV.
- In the interests of renewal and reinvigoration, a cap for consecutive Board terms might be established.

On the matter of the Board term, respondents to the Discussion Paper were almost equally divided in opinion over a two year or four year term. On the one hand, a four year Board term would enable Board members to bring a deeper understanding about the MAV's strategic imperatives to their role. It usually takes about six months to complete the induction and learning processes which equip Board members to make considered contributions to the governance of the MAV.

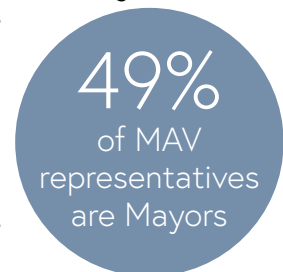
Many member Councils regard board membership as an "opportunity" for Councillors to broaden their experience and to make a contribution at a different level. These are two, somewhat competing notions. The notion of stability and continuity is to contribute to good governance at the MAV. The notion of an opportunity for Councillors is to make a contribution at a state level. Both notions have merit.

In considering the ideal Board term it is also important to understand the connection between the length of the Board term and the role played by Councillors who have been elected to the Board but who have been **replaced** as their Council's nominated Council representative. Under current Rules the Board member who is no longer their Council's nominated MAV representative can complete their term on the Board.

The Discussion Paper sought views from respondents about whether the "dis-endorsed" Board member should be able to complete their Board term or should a casual vacancy be declared. Sixty percent of respondents favoured the Board member completing their Board term, forty percent thought a casual vacancy should be declared and an election held for that Board position.

Once again, it would seem there are competing notions at work here. A Board member, who is no longer the Council's nominated MAV representative can currently complete the Board term. Thereby creating the stability and continuity that good governance often requires. Alternatively, MAV credibility might be severely tested if the MAV Board, operating on, say, a four year Board term, was eventually comprised of several, or worse, a majority of members who were no longer their Councils nominated MAV representative.

Member Councils could solve this "problem" by appointing MAV representatives for the whole of a Board term. That is a two year or perhaps four year nomination. Perhaps Councils would be unwilling to make four year representative appointments. It also should be noted that an increasing number of Councils are recognising the importance of the MAV and are appointing the elected Mayor of the day as their Council's nominated MAV representative. Currently, 49% of MAV representatives are Mayors.



Finally, on the matter of a cap limit on consecutive Board terms. Respondents to the Discussion Paper were almost unanimous in their support for such a cap. There was less agreement about how many terms should be capped. The ideal stay on a commercial board has often been the subject of analysis and reports. The Australian Institute of Company Directors says Board tenure limits of 9-12 years are common. It would be inappropriate to draw a direct parallel between the MAV Board and those operating in corporations across the country. In the corporate sector tenure on the Board is more often governed by individual and collective performance at the Board level. Arbitrary tenure limits are somewhat controversial for corporate Australia.

Board turnover, diversity and skills balance are increasingly important.

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Darebin City Council had a clear view about the need for an interim board. Council said:

"In the interests of stability and orderly transitions, board members (including President) who do not recontest the Council elections, or who are not re-elected should be able to see out their period on the Board. We note that once serving on the board, a director has a fiduciary duty to that board

and that this duty remains independently of their role as a councillor. This rule could only apply for the period between the declaration of Council election results and the election of a new MAV board."

For the MAV there is another issue which impacts the tenure of Board members. It is necessary for the MAV to develop Board members who have the talent, knowledge and experience to represent Victorian local government at the national level. Victorian advocacy through the Australian Local Government Association (ALGA) is important and requires skilled representation. ALGA is a forum where Victorian local government needs to be highly influential. It often takes time to build the experience at an MAV Board level necessary to be successful on a national stage. There is a sound argument to say that we should err on the conservative or generous side when applying a cap to Board service. And, as with the cap suggested for the office of MAV President, any change in MAV Rules applying a Presidential or a Board service cap would not be retrospective. The clock would only **begin** ticking on the proclamation of the new MAV Rule.

Finally, there is a strong case to align the Board term with the Presidential term. If the reasoning outlined in this Directions Paper for two year Presidential terms is sound, then much of the same logic can be extended to the Board term. A longer Board term (e.g. 4 years) could create a situation where a President seeking re-election would face an election and the Board members would not. Board members can, of course, stand for the office of President. Any inconsistency between the term for the President and the term for the Board has the potential to create an unhealthy political dynamic between the Board and the President.

The preferred option is

- **Two year Board terms, capped at four (4) consecutive terms.**
- **Board members who are no longer their Council's MAV representative may complete their term of office.**
- **Councils be encouraged to reappoint their MAV representative when that representative has been elected to the Board.**

Interim Board Arrangements

The Discussion Paper referred to current MAV Rules which establish an Interim Board (and Interim President) for the period between Council General Elections and the declaration of MAV President and Board elections in the following March. The Interim Board is constrained in its decision making. For example, a **unanimous** vote is required on "significant" decisions.

The MAV Rules define "significant" decisions relating to:

- A change in the policy position of the MAV;
- Entering into contracts with the value of \$200,00 or more;
- The expenditure of unbudgeted funds; or
- The employment or remuneration of the CEO.

80% of respondents to the Discussion Paper favoured simplified arrangements. Participants noted that the MAV continues to operate during the four months between Council and MAV elections. It needs to take a "business as usual" approach as far as is possible. Important decisions are made particularly in relation to the MAV's commercial activities like procurement and insurance services.



The key issue at stake during this period is whether sufficient members of the Board have been re-elected as Councillors. If a reasonable proportion of the Board have been re-elected it would seem that there is no need for unanimity on any Board decisions. For the purposes of this Directions Paper it is expected that the timetable for both Council General Elections and the MAV Presidential and Board elections will broadly continue around the current dates – Council elections in late October and MAV elections in early March immediately following. Some consideration was given to the possibility of shortening this "in-between period" but given regular issues associated with declaring elections in local government and the period taking in the Christmas and New Year break, it seems likely that this period of about four months will remain a necessary feature of arrangements.

It should also be noted that the current MAV Rules are silent on an unlikely but plausible scenario where a very small number, or indeed none, of the immediate past Board are re-elected as Councillors and are able to form the Board. It clearly raises questions about how the MAV would be governed in such circumstances. The new MAV Rules will include provisions to address this scenario.

It should further be noted that, in the event that the immediate Past President is no longer a Councillor, current Rules provide that the Interim Board **elect** one of their Board members to be the Interim President. It does seem more logical that, in such circumstances, the President, for the period only between the declaration of local government General Elections and the MAV Presidential election, should be the Immediate Past Deputy President from the same general grouping of the immediate Past President (Metropolitan or Rural) and if that immediate Past Deputy President was no longer a Councillor, the other Immediate Past Deputy President would be appointed as President. If both of the Immediate Past Deputy Presidents were no longer a Councillor, the Board would elect a President.

The preferred options are:

- 1. The concept of an Interim Board be abolished.**
- 2. The concept of a "significant decision", as defined in the current MAV Rules be abolished and such matters be resolved by a simple majority vote.**
- 3. In the event that the Immediate Past President is no longer a Councillor, the MAV President (for the period between local government General Elections being declared and the MAV Presidential elections) should be the Immediate Past Deputy President from the same general grouping of the Immediate Past President (Metropolitan or Rural). If that Immediate Past Deputy President was no longer a Councillor, the other Immediate Past**
- 4. MAV Rules be amended to make suitable provisions for securing a Board quorum in the event that fewer than a quorum of members of the Board, who were in office immediately prior to the Council General Elections, have been re-elected as Councillors or have not resigned their positions as MAV President or Board members.**

Board Performance and Accountability

The Discussion Paper referred to the desirability of the Board's current "Board Performance and Assessment Policy" being located in MAV Rules. There was unanimous agreement about this proposal from respondents. Several submissions also suggested, for accountability purposes, that the results of such performance assessments be reported annually.

The preferred option is MAV Rules be changed to require the Board to annually undertake a review of Board performance and to include the results of such reviews in the MAV's Annual Report.

Rules Affecting State Council

State Council Making Policy

The Discussion Paper argued that reforming the way State Council operates is overdue. For State Council to be an authentic and energising forum it will be necessary to make changes that can **elevate the impact of State Council**.

The Discussion Paper highlighted weaknesses in current arrangements, including:

- Member policy proposals that are parochial or peripheral.
- Member proposals that have little or no connection with the current MAV Strategy.
- Too many member proposals on matters that fall short of meeting the threshold of "State-wide significance to local government".
- Member proposals that dilute what MAV can achieve with a strategic approach and create an unsustainable burden on limited MAV resources.

The Discussion Paper also suggested a more **visionary** approach to the role and function of the State Council. It said:

"It would also seem there is an important role for State Council in the development and monitoring of the MAV's Four Year Strategy. For several years the arrangements made for State Council have had a wider scope than debating member propositions. In many ways the entire event has been a combination of policy forum, conference and a celebration. All of these ingredients are important enough."

*It could be argued, however, that State Council plays too small a role in effective stewardship around the MAV Strategy. Can the Strategy's implementation and continuing relevance be more regularly evaluated through expert information and analysis at State Council? Whilst members are regularly exposed to high quality guest speakers in the "conference" mode of State Council, this would entail a more targeted use of expert participants and stakeholders to inform and alert members to emerging trends impacting the MAV's strategic approach. This kind of format would encourage members to bring to the Board's attention what they see and hear from contemporary thinkers about the key issues being addressed through the MAV Strategy. **A more dynamic, less insular model is one that may improve policy and strategy development and elevate the impact of State Council.***

*State Council Meetings that could process quality information into opportunities for the Board to evaluate, and a Board that has a **stronger mandate** to develop policy, monitor and evaluate strategy implementation and provide accountable reporting to the State Council, seem to represent a **better balance or partnership** between the two MAV organs that could advance the interests of the MAV."*

“

Some verbatim comments from the round table conversations about reforming State Council.

"Clarify who the MAV represents - Councils or people? Need to figure out whether it is population or the number of member Councils that is the basis of equity."

"Improve the quality of motions."

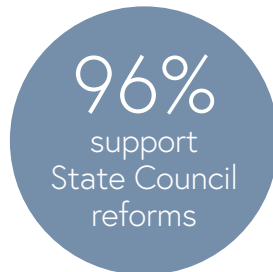
"We shouldn't be voting on so many things."

"Can we limit the number of motions so only the important issues come up?"

"Pleased there is an appetite to improve standards to include better screening and a framework."

"One Council, one vote."

96% of respondents to the Discussion Paper supported State Council reforms. There is a strong appetite to keep that which is stimulating and strategic about State Council but at the same time address the weaknesses most members are recognising. Many suggestions were made about how, exactly, the impact of State Council can be elevated and how the State Council processes of creating MAV policy might be improved, including:



- Limiting the number of motions any one Council can submit.
- Providing the MAV Board with stronger powers to set aside proposed motions not of sufficient relevance to the MAV Strategy and provide other pathways for such proposals away from the State Council process.
- Establishing an interactive, informative and less insular process as a part of State Council proceedings to enable State Council to evaluate the implementation and continuing relevance of MAV Strategy.
- Deliberating on Board proposed motions – the MAV Board has a highly informed view of issues needing consideration and resolution by the membership and might adopt the practice of bringing Board proposals to State Council.
- Enabling Councils to submit proposed motions at any time during the year but requiring a significantly longer period of time (currently 28 days) for the MAV to review and determine the suitability of proposed motions.
- Providing Councils with significantly more time (currently 14 days) to consider State Council agendas and provide their nominated MAV representative with appropriate advice and instruction.

Many sensible suggestions. It is highly unlikely that there is one simple solution. It is more likely that a multi-faceted set of changes can shift the State Council processes into a more contemporary phase. State Council's policy formation role has changed little over decades. It is something of an institution. But a more focussed strategic approach which recognises an ever changing intergovernmental landscape and context is clearly required. The tradition of member inspired policy through robust debate must continue. Grassroots participation in policy formation is just as important as ensuring the MAV is discussing the right things at the right time.

Of the specific reforms identified by respondents, the least attractive may be the idea of limiting the number of proposals any one council can submit. That seems a very arbitrary approach. Reforms are more aimed at a change in the **quality** of proposals which, in turn, might have an impact on the quantity of proposals received. It will be important, when implementing State Council reforms, members give the MAV Board and the MAV CEO strong support to take the necessary decisions which will elevate the impact of State Council.

It would seem there are three critically important aspects of State Council which require some attention at State Council. Firstly, State Council's primary function is to enable members to create the policy framework for the Association. That policy framework underpins a significant proportion of the Association's advocacy program, especially in the intergovernmental space. It is of utmost importance. If the impact of State Council is to be elevated, it will be important to ensure that the policy formation function exhibits some fundamental characteristics. These would include policy formation that:

- Deals with matters of state-wide significance to local government;
- Responds to important emerging issues that demand the Association has clearly adopted positions; and
- Has a significant and clear connection with the adopted MAV Strategy.

Secondly, it will be inevitable that some member matters and proposals will not demonstrate the threshold characteristics set out above. It will be important for such matters to be appropriately considered by the MAV organisation and suitable pathways found for them. These alternative pathways should encourage member Councils to refer matters to the MAV at any time of the year, not only immediately prior to State Council meetings.

Thirdly, some of the reforms around State Council, already in evidence, do not require MAV Rule changes. State Council meetings are already a major event in the local government calendar and the significance of the event should grow. The MAV should continue the process of creating State Council as an engaging and influential forum across all of its formats. Developing a stronger link between State Council's deliberations on member proposals and members providing evaluation and direction on the continuing relevance of the MAV Strategy is probably one of those formats.

The preferred option is to make changes to MAV Rules which:

- 1. Empower the MAV Board to ensure that member proposals for State Council:**
 - **Are of state-wide significance to local government.**
 - **Respond to important emerging issues which require the MAV to have clearly adopted positions.**
 - **Have a significant and clear connection with the adopted MAV Strategy.**
 - **Are reviewed by the MAV Board and consolidated, amended or modified when broadly dealing with similar subject matter to other member proposals.**
 - **Require member Councils to provide notice of member proposals not less than sixty days before the meeting.**
 - **Require the MAV to provide member Councils with the agenda for State Council meetings not less than thirty days before the meeting.**
- 2. Empower the MAV Board to place Board motions on the agenda of State Council meetings.**

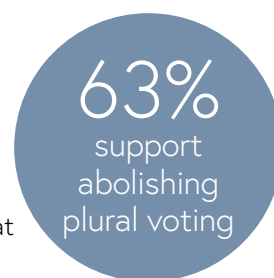
Plural or Weighted Voting

The Discussion Paper asked whether plural voting was in the long term best interests of the MAV. Plural voting is provided for in the current MAV Rules. Under plural voting "larger" Councils receive two votes on matters before State Council whereas "smaller" Councils receive one vote on such matters. The relevant Rule says:

At any meeting of State Council, voting entitlements on any motion or amendment will be:

- *15.1.1. the representative of each participating member council paying an annual subscription to the Association which exceeds the mid-point between the lowest and highest subscriptions will have two (2) votes; and*
- *15.1.2. the representative of each participating member council paying an annual subscription to the Association which does not exceed that mid-point will have one (1) vote.*

Respondents to the Discussion Paper were somewhat divided in their views about plural voting. It should be noted, with only two exceptions, the divide was entirely predictable. That is, those Councils receiving two votes supported the retention of plural voting and those Councils receiving one vote argued for the abolition of plural voting. However, 63% of respondents who offered a view about plural voting favoured its abolition.



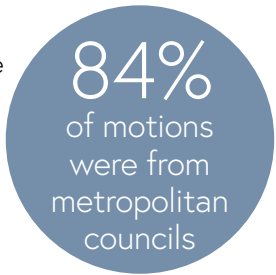
Submissions made varying references to the concept of fairness. Larger Councils saw fairness in plural voting because it addressed the huge variations in Council populations across Victoria. The constituencies of larger Councils are many, many times greater than those of many smaller Councils. Smaller Councils saw fairness differently. They pointed to the MAV as a membership organisation comprising seventy-nine Councils all equal before the law. All responding to the same legislation and not suffering any discrimination on the basis of "size" on any significant matter.

Some of the discussion at round table consultations connected the membership fees paid by 'larger' Councils with an 'entitlement' to plural voting. Some submissions thought a more graduated form of plural voting might be fairer. They suggested a graduated arrangement of perhaps four quartiles of council membership (largest to smallest) going from 4 votes to 1.

Can the MAV members find an answer here? There is no practical revised formula that will suffice. This matter must be resolved on principle. The issue raised about membership fees is surely a furphy. Membership fees are calculated by a simple "shandy" formula which involves a council's population and budget. It is purely aimed at the principle of relative affordability. The membership fees are proportional to the size and scale of each council. The idea of paying higher fees for a greater "say" seems a very unlikely argument to make.

While a graduated system might be preferable to the "middle of the membership", it would grate against those who fervently believe in one vote per member.

The real genesis of plural voting simply lies in the structure of Victorian local government. There are more small councils than larger ones. Or, put another way, rural councils outnumber metropolitan councils quite comfortably. Without plural voting the voting strength would very much be with smaller rural councils. The larger and mostly metropolitan councils may feel that plural voting is necessary to ensure that MAV policy is more than a local government policy framework for rural Victoria. That notion, however, is somewhat contradicted by compelling evidence from the 2021 State Council. Of the 102 motions submitted by member councils for consideration at State Council, 84% of those motions were from metropolitan councils.



Plural voting has not always been a feature of the MAV Rules. For many years normal voting prevailed. In recent times, under plural voting, most member councils on both sides of the ledger have, to some extent, "learned to live" with plural voting. But there is no denying that it remains a thorn in the side of smaller rural councils. It is regarded as an extension of a metropolitan centric world so often the bane of rural life.

To return to the earlier theme – if this matter is to once again be tested by the members then it should be tested as a matter of principle. And, it would seem the dominant principle here is that the MAV is a membership based organisation with seventy nine equal members.

The preferred option is to abolish plural voting.

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Corangamite Shire Council offered a succinct but reasoned response to Plural Voting. Council said:

"The Corangamite Shire does not support the current rules that dictate that larger councils receive two votes on matters before the State Council whereas smaller councils only receive one vote. As previously mentioned, Corangamite is concerned with equity between larger metro councils and smaller rural councils and seek that the rules of the MAV ensure that metro councils cannot ignore the concerns of regional areas through having greater power at State Council. It is also

important to note that the MAV does not represent people or the Victorian electorate at large, it represents the membership of the MAV, which is individual Councils. Any given member of the organisation should not be discriminated against because of the size of its constituency."

Who May Submit Matters for Consideration at State Council?

The Discussion Paper noted the current MAV Rules require a Council's nominated MAV representative to submit matters for consideration at meetings of State Council. That has not been the custom and practice at the MAV.

80% of respondents supported the proposal to require **member Councils (and not Councils nominated MAV representative)** to submit matters for consideration at meetings of State Council. Respondents also favoured the requirement that Councils must actually **resolve** to submit a matter for consideration.

Some may see such changes as pedantic or bureaucratic. However, both requirements for a Council to submit such matters and to do so by a Council resolution should contribute to improving the quality of proposals. It might also be noted that earlier in this Directions Paper, in the section dealing with "State Council making policy", it has been proposed to significantly extend both the timelines associated with Councils lodging such proposals with the MAV and for the MAV to provide Councils with longer notice of matters included on the State Council Meeting agenda. These changes should also contribute to better proposals and more thorough examination of proposals by Councils.

The preferred option is to require member Councils to submit matters for consideration at meetings of State Council and to do so by Council resolution.

High Standards of Ethical Behaviour

The Discussion Paper pointed out that current MAV Rules are silent about members of State Council declaring and managing their conflicts of interest. Such arrangements are prescribed in the current MAV Rules for Board members at Board meetings.

Respondents to the Discussion Paper unanimously supported a MAV Rule change to require members of State Council to declare and manage conflicts of interest. The current MAV Rules are also silent about the establishment and operation of a MAV Audit and Risk Committee. While the MAV **does** currently operate an Audit and Risk Committee it is a significant matter that should be required in MAV Rules.

The preferred option is for MAV Rules changes to prescribe how members of State Council will declare and manage conflicts of interest and to require the establishment and operation of a MAV Audit and Risk Committee.

Councils Discontinuing Their MAV Financial Membership

The Discussion Paper canvassed the difficulties experienced by the MAV when a member Council discontinues financial membership of the organisation with little or no notice. The MAV is not a large organisation and the loss of membership fees has a material impact on its operation.

92% of respondents to the Discussion Paper agreed that reasonable notice of a Council withdrawing financial membership should be required. Respondents also made a variety of suggestions about what might constitute "reasonable notice" ranging from three months to two years. The notice period needs to be long enough to ensure the issue or problem leading a Council to withdraw from financial membership isn't whimsical. It also needs to allow sufficient time to discuss remedies or solutions other than non-participation. Enough time must also be allowed for a member Council in that position to fully understand the ramifications of non-participation.

92%

agreed that reasonable notice of a Council withdrawing financial membership should be required

Having regard to all of these matters it would seem that a longer, not a shorter period of notice to withdraw financial membership should be required.

Current Rules also provide that a non-participating member Council is "not entitled to avail itself of the privileges and benefits of any of the functions or services provided by the MAV". Respondents to the Discussion Paper unanimously support the continuation of that Rule.

Several respondents suggested that special, fee-for-service arrangements might be made available to a non-participating member Council. There seems to be merit in that suggestion. There are several MAV services (insurances, procurement and perhaps training) where there are few or no alternative providers. Now, in itself that should serve as a significant **disincentive** to Councils considering non-participation. Never-the-less, continuing to make some services available to a non-participating Council, albeit through an appropriate fee-for-service arrangement, might provide fertile ground for maintaining a relationship that could result in the reversal of a decision to withdraw.

The preferred option in relation to Councils who wish to discontinue their financial membership of the MAV is:

- To require six (6) months' notice of that decision to be provided, and
- To retain MAV Rules that exclude a non-participating Council member from the services or functions of the MAV except where the MAV CEO has agreed to provide selected services under special fee-for-service arrangements.

Other MAV Rules Changes

There will be a myriad of less noticeable Rules changes. In fact, if the MAV is to achieve the goals of Rules that are clearer and more easily understood, and Rules that have been modernised, then the new MAV Rules will probably be unrecognisable from the old Rules.

Rules changes other than those specifically canvassed in this Directions Paper are highly unlikely to be contentious or contested by member Councils. They will simply be the product of well drafted, modern rules fit for the 21st Century.

Responding to this Directions Paper

Persons and organisations intending to make a response to the Directions Paper should do so by close of business on Monday 30 May 2022. Responses will be posted on the MAV's website after the close of the submission period unless submitters indicate otherwise. To assist in receiving your response, please complete the electronic survey form which is available via the MAV website at mav.asn.au. Alternatively, we would encourage more comprehensive submissions with expanded commentary about the ideas in the Directions Paper. These submissions can be emailed to rules@mav.asn.au.

The MAV would encourage participating member Councils to provide a response by adopting a preferred position to the matters raised in the Directions Paper by Council resolution, if possible.

Councils and other stakeholders wanting to ask questions about the content of the Directions Paper, the processes to be followed to arrive at new Rules or avenues available to make a response to the Directions Paper can contact Ms. Celia Robinson, MAV Manager Governance at (03) 9667 5535 or crobinson@mav.asn.au. The lead consultant, Mr. Phil Shanahan, will also be available to assist those with enquiries and can be contacted through Celia. The MAV wants widespread responses to this Directions Paper.

Summary of Directions

Area of Rules

Options & Directions

<p>Nominating for President</p>	<p>The preferred option is to retain current arrangements and require councillors nominating for the office of MAV President to be the nominated MAV representative of their Council.</p>
<p>President's term in office</p>	<p>The preferred option is to continue two year presidential terms in office but to change the MAV Rules to require member Councils to commit to two (2) year memberships payable in two annual instalments.</p>
<p>President's tenure</p>	<p>The preferred option is to change MAV Rules and to cap the tenure of a MAV President at four (4) consecutive two (2) year terms.</p>
<p>Electing a Board</p>	<p>Option 1. Is to maintain an equal number of regional groupings of rural and metropolitan Councils for the purpose of electing MAV representatives to the MAV Board.</p> <p>Option 2. Is to maintain an equal number of Board members from rural and metropolitan members, but to conduct "at large" elections, using a proportional representation electoral model in the metropolitan area whilst maintaining regional groupings amongst regional and rural Councils.</p>
<p>Skills-based Board members</p>	<p>The preferred option is to maintain current arrangements whereby members of the MAV Board are all elected members.</p>
<p>Size of Board</p>	<p>The preferred option is to reduce the number of elected Board members from twelve to ten (not including the President).</p>
<p>Term and tenure of Board Members</p>	<p>The preferred option is:</p> <ul style="list-style-type: none"> • Two (2) year Board terms, capped at four (4) consecutive terms. • Board members who are no longer their Council's MAV Representative may complete their term of office. • Councils be encouraged to reappoint their MAV representative when that representative has been elected to the Board.
<p>Interim Board arrangements</p>	<p>The preferred options are:</p> <ul style="list-style-type: none"> • To abolish the concept of an Interim Board, • To abolish the notion of significant decisions and allow the Board to make all decisions on a simple majority vote, and • To provide new Rules for that period after the local government General Elections and before the MAV elections for President and Board which will clarify who would be the President during this period and what would occur in the event that a Board quorum didn't result from the council elections process.

Area of Rules

Options & Directions

Board performance and accountability

The preferred option is that MAV Rules be changed to require the Board to annually undertake a review of Board performance and to include the results of such reviews in the MAV's Annual Report.

State Council making Policy

The preferred option is to make changes to MAV Rules which:

1. Empower the MAV Board to ensure that member proposals for State Council:

- Are of state-wide significance to local government.
- Respond to important emerging issues which require the MAV to have clearly adopted positions.
- Have a significant and clear connection with the adopted MAV Strategy.
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- Require the MAV to provide member Councils with the agenda for State Council meetings not less than thirty days before the meeting.

2. Empower the MAV Board to place Board motions on the agenda of State Council meetings.

Plural or weighted voting

The preferred option is to abolish plural voting.

Matters for consideration at State Council

The preferred option is to require member Councils to submit matters for consideration at meetings of State Council and to do so by Council resolution.

High standards of ethical behaviour

The preferred option is for MAV Rules changes to prescribe how members of State Council will declare and manage conflicts of interest and to require the establishment and operation of a MAV Audit and Risk Committee.

Discontinuing MAV financial membership

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- To require six months' notice of that decision to be provided, and
- To retain MAV Rules that exclude a non-participating Council member from the services or functions of the MAV except where the MAV CEO has agreed to provide selected services under special fee-for-service arrangements.