



Government
Services

Local Government Reforms 2024 Consultation Paper

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Introduction and overview

Introduction

On 17 November 2023, the Victorian Government announced its intention to introduce legislative reforms in 2024 to support improved governance and integrity across the local government sector ahead of the 2024 council general elections.

This Consultation Paper provides an overview of the proposed reforms organised around three key reform areas:

- Reforms to strengthen council leadership, capability and councillor conduct.
- Reforms to improve early intervention and effective dispute resolution.
- Reforms to strengthen oversight mechanisms.

Background

Victorian councils have been through a significant period of reform with the development and enactment of the *Local Government Act 2020* (LG Act).

The Local Government Inspectorate's (LGI) 2023 report ['Checking compliance: A review of council policies'](#) found that councils had a very high rate of compliance with adopting the new and updated policies required under the Act. To build on this progress, ongoing sector engagement is needed to embed the new principles-based Act and support continuous improvement.

Continuous improvement includes addressing the findings of integrity body reports and other government initiatives which have provided consistent evidence in highlighting governance issues across the sector.

Since the start of the current council term in October 2020, the Minister for Local Government (Minister) has appointed Municipal Monitors to nine councils to monitor their governance processes and practices. In October 2022 a Commission of Inquiry into Moira Shire council was appointed by the Minister resulting in the dismissal of the Moira Shire council in 2023. And in December 2023, Strathbogie Shire Council was suspended.

Additionally, the Independent Broad-based Anti-Corruption Commission (IBAC), the LGI and other government initiatives such as the Local Government Culture Project have highlighted areas for improvement in relation to council governance.

These interventions and reports highlight some of the underlying governance and integrity challenges faced by the sector. It also emphasises the opportunities for supporting council leadership, capability and conduct. They have also provided a strong body of evidence to suggest that if left unaddressed, these issues can undermine public trust in the sector, hinder effective decision-making, and impede the delivery of essential services to local communities.

Key reports and recommendations that have informed the reforms

[Independent Broad-based Anti-Corruption Commission, Operation Sandon Special Report 2023](#)

[Local Government Culture Project Insights Report 2022](#)

[Local Government Inspectorate, Checking compliance: a review of council policies 2023](#)

[Local Government Inspectorate, Personal interests returns: Encouraging disclosure and increasing transparency 2021](#)

[Local Government Inspectorate, Social media fuels rise in complaints during 2020 council elections 2021](#)

[Commission of Inquiry into Moira Shire Council Report 2023](#)

[Municipal Monitor Reports \(Various\)](#)

Consultation

This consultation is for the local government sector to provide comment and feedback on the proposed reforms, specifically:

1. Whether the individual proposed reforms are supported or not supported; and
2. Any operational matters that should be taken into consideration in finalising the reforms, including to ensure that the proposed legislative changes can be implemented effectively by councils.

Local Government Victoria (LGV) invites feedback and comments from councils and peak bodies on the proposed reforms by **29 February 2024**.

To facilitate this, the Municipal Association of Victoria (MAV), the Victorian Local Governance Association (VLGA) and the Local Government Professionals Inc (LGPro) will actively seek feedback and comments and submit this to LGV by the closing date.

The peak bodies will coordinate feedback from Mayors and elected representatives, CEOs, and council staff. Noting the tight timeframes, the peak bodies will determine the most appropriate engagement strategies.

Individual, sensitive, and confidential submissions can be sent directly to LGV via email at lgv@ecodev.vic.gov.au.

Enclosed with this Consultation Paper is a **Feedback Form** to assist the peak bodies with this process (Attached).

Please note that all reforms in this paper are proposals only and may be subject to change.

Scope

LGV is inviting comments in relation to the proposed legislative reforms outlined in this Consultation Paper.

Following this initial invitation to provide feedback, LGV will undertake a separate consultation process with the local government sector to inform the development of regulations that will give effect to reforms outlined in this Consultation Paper. LGV will release details on this consultation process to the sector, including how the sector can participate, in due course.

Part 1: Reforms to strengthen council leadership, capability and councillor conduct

Overview

These reforms recognise the need to enhance the capability and leadership of elected representatives. This will be achieved through ongoing mandated training programs and professional development for mayors and councillors that will build upon the existing induction training requirements for councillors.

These reforms also seek to support improved councillor conduct by introducing a mandatory uniform councillor code of conduct. A uniform councillor code of conduct will ensure consistent standards of behaviour at all Victorian councils and promote early and effective intervention.

1. Mandatory ongoing training for councillors and mayors

Background

The 2022 Local Government Culture Project (the Project) was designed to understand the factors influencing culture and conduct within local government and to identify opportunities and initiatives to improve culture and conduct.

Following a public engagement process, the Project produced an Insights Report, reflecting the feedback received from the sector and other key stakeholders. The report identifies key issues that influence council culture and councillor conduct.

One of the key issues identified is that candidate training, councillor induction training and ongoing training help in understanding councillor and mayoral roles and responsibilities. They can also assist in clarifying how the local government sector operates.

Strengthening councillor capability in relation to governance, leadership, and integrity via mandatory training is also reflected in IBAC's Operation Sandon Special Report (Recommendation 18, 20 and 28).

The LG Act mandates local government candidate training to educate and prepare candidates for the strategic focus of the councillor role. This helps to minimise unrealistic expectations and confusion regarding the responsibilities of councillors. Once elected, the councillor induction training is mandatory and must be completed by all councillors within the first six months of taking the oath or affirmation of office. This training is also critical for newly elected councillors to receive the necessary guidance on the importance of building effective relationships and leadership capabilities.

Any additional or ongoing training throughout the course of the council term, and its frequency, is currently at the discretion of the council.

Proposal

To establish and enhance councillors' understanding of their role and their leadership capabilities, they may be required to complete regular (annual) training throughout their term. Councillors are required to perform their role and make decisions as soon as they take office. As such, six months is too long without them having undertaken this training. Councillors will instead be required to complete induction training within three months of commencing their role.

Mandatory training for mayors, deputy mayors and acting mayors may also be introduced for the first month of their term. The training will focus on developing effective leadership skills, understanding their roles and responsibilities, meeting procedures, and ways to manage conflicts that address root causes and prevent escalation. If an acting mayor is appointed for a period of less than one month, they must complete the training within that period of appointment.

The provisions providing for mandatory training for councillors and mayors will largely be modelled on the existing councillor induction training provisions in the LG Act and relevant regulations. To ensure compliance with these new training requirements, a councillor's allowance will be withheld until they have completed the training requirements.

The scope and delivery of the new mandatory training will be prescribed in Regulations. LGV will consult with the local government sector in their development.

2. Enable model Councillor Code of Conduct and other governance matters to be prescribed in regulations

Background

The purpose of the current council Councillor Code of Conduct includes prescribed standards of conduct expected to be observed by councillors while performing their duties and functions as councillors. The standards include the prohibition of discrimination, harassment (such as sexual harassment) and vilification.

Councils may, however, include any other matters in their Code of Conduct which the council considers appropriate. This has enabled councils to supplement the standards of conduct with other matters councillors have agreed in principle to abide by in performing their role. These matters vary significantly across councils and include such things as shared values and commitments, dispute resolution procedures and social media policies.

In the development of the proposed reforms, LGV considered community expectations that acceptable conduct should be standardised and not differ across municipalities. LGV noted that there is little value in councils including other matters in their Codes to supplement the standards of conduct. This is because these are

not enforceable in the same way that the standards of conduct are under the councillor conduct framework.

Proposal

Regulations may be made to prescribe a uniform mandatory Model Councillor Code of Conduct (Model Code) to replace existing Codes that would apply to all councils.

The Model Code will include the existing standards of conduct expected to be observed by councillors. It may also include matters necessary to ensure consistent standards of behaviour, including promoting early and effective intervention.

Councils will no longer be able to include any other matters in the Model Code which the council considers appropriate, to ensure their uniformity across councils.

A council would no longer be formally required to adopt the Model Code, as it will automatically apply to councils as prescribed. However, councils should be required to publish a copy of the Model Code on their website.

To allow councils some flexibility regarding policy implementation for matters not covered in the Model Code, councils could adopt policies regarding matters prescribed in regulations, separately from the proposed Model Code. In the same way that certain council policies are currently enforced through the standards of conduct¹ compliance with these prescribed policies may be enforced through the standards of conduct, where appropriate. These matters will be consulted on in the development of the regulations.

Regulations that will implement a Model Code will align with the recommendations in IBAC's Operation Sandon Special Report (Recommendation 17, 21 and 31). These regulations will be designed in consultation with the local government sector.

¹ See Clause 3 of the standards of conduct 'Compliance with good governance measures'.

Part 2: Early intervention and dispute resolution

Overview

These reforms are proposed to strengthen and clarify the operation of the councillor conduct framework and assist in effective dispute resolution.

1. Limit the Victorian Civil and Administrative Tribunal's (VCAT) jurisdiction with respect to councillor conduct panel decisions

Background

The councillor conduct framework under the LG Act is intended to ensure that councillor conduct issues are dealt with quickly, properly, fairly and with little formality.

Currently, a person who is affected by a councillor conduct panel (CCP) decision may apply to VCAT for a 'merits' review of that decision. This involves VCAT 'standing in the shoes' of the CCP and hearing the application afresh to determine the correct and preferable decision. In practice, this enables parties affected by a decision of a CCP to challenge the decision of a CC through a new hearing. These challenges can prolong the proceedings and delay a resolution to the matter.

Proposal

Parties affected by a decision of a CCP hearing will be able to seek a review of a decision to the Victorian Supreme Court. This can only occur on the grounds the decision is not legal, reasonable or fair i.e., judicial review, rather than on the merits of the decision to VCAT.

This is consistent with the process that applies to an internal arbitration process (IAP) under the LG Act, where VCAT review of a decision of an arbiter is not available.

2. Councils must not indemnify councillors in relation to the internal arbitration process and the councillor conduct panel process

Background

Using their insurance policies, councils often indemnify councillors for legal or other costs. This includes costs incurred with being a party to a proceeding for an IAP or

CCP process under the LG Act, and any associated review to VCAT or the Victorian Supreme Court.

LGV has noted the concerns that councillor conduct processes are being unduly delayed and complicated because of councillors' reliance on their councils to indemnify them for legal costs associated with these proceedings.

Proposal

A council must not indemnify a councillor or councillors against legal costs incurred in initiating or defending or otherwise being a party to a proceeding in relation to:

- an application for an IAP made, or
- an application for a CCP process, or
- an application to the Victorian Supreme Court for judicial review of a decision of an arbiter or a decision of a CCP.

A council will not be prohibited from indemnifying a councillor or councillors against legal costs in relation to an IAP or CCP hearing. This only applies when an arbiter or CCP has granted a party leave to have legal representation on the basis that legal representation is necessary to ensure that the process is conducted fairly. This proposal is not intended to restrict a council from obtaining legal advice in relation to those proceedings it initiates, by council resolution.

3. Broaden the scope of sanctions that may be imposed by an arbiter

Background

The LG Act sets out the sanctions an arbiter may take if the arbiter has made a finding of misconduct against a councillor.

The LG Act requires an arbiter to provide a written copy of the arbiter's decision and statement of reasons to the council, the applicant or applicants, the respondent and the Principal Councillor Conduct Registrar. A copy of the arbiter's decision and statement of reasons must be tabled at the next council meeting after the council received the copy of the arbiter's decision and statement of reasons.

However, the next meeting of the council can sometimes be an impromptu council meeting called at late notice to consider an urgent matter with little public notice and attendance at the meeting. This results in limited public transparency of the arbiter's decision.

A Municipal Monitor appointed to a Council in 2022 made several recommendations in their final report on ways to improve the sanctions that may be imposed by an arbiter and the transparency of the arbiter's decision. These included ensuring that a copy of an arbiter's decision and statement of reasons be tabled at the next

regular council meeting. Any apology a councillor is directed to make by an arbiter would also be made at the next regular council meeting that the councillor attends.

IBAC's Operation Sandon Special Report also made recommendations consistent with increasing the severity of sanctions available for misconduct (Recommendation 30).

Proposal

The sanctions that may be imposed by an arbiter on a finding of misconduct will be expanded to include:

- Directing that a councillor is prevented from attending and participating at the council's next council meeting or at a council meeting specified by the arbiter following the tabling of the arbiter's decision and statement of reasons;
- Suspending the councillor from the office of councillor for a period specified by the arbiter not exceeding three months (instead of one month); and
- Directing that a councillor be ineligible to hold the office of Mayor or Deputy Mayor for a period of up to 12 months.

A copy of an arbiter's decision and statement of reasons must be tabled at the next council meeting, or at a council meeting specified by the arbiter after the council received the copy of the arbiter's decision and statement of reasons.

To increase transparency and public trust, an arbiter will be given power to specify a council meeting which a councillor is prevented from attending and participating in. The arbiter will also be able to specify a council meeting at which the tabling of the arbiter's decision and statement of reasons must occur. The council meeting the arbiter specifies would occur reasonably soon after the arbiter's decision.

Part 3: Oversight Mechanisms

Overview

These reforms will strengthen direct accountability mechanisms and promote early and effective intervention at a council to prevent and address governance failures and councillor conduct.

1. Suspending or disqualifying individual councillors

Background

The Minister has the power to appoint a Municipal Monitor or Commission of Inquiry to a council under the LG Act where indications of a council's governance failures have been brought to the Minister's attention.

Municipal Monitors and Commissions of Inquiry have previously identified behaviours of individual councillors that create serious risks to the health and safety of staff at a council, or significantly impact a council's ability to perform its functions. However, neither a Municipal Monitor nor a Commission has an explicit function or power to recommend the suspension or dismissal of a councillor where it may be warranted.

Proposal

The Minister will be provided the power to suspend an individual councillor for up to 12 months if the Minister is satisfied on the advice of a Municipal Monitor or Commission appointed to the council. The advice would demonstrate that the councillor is creating a serious risk to the health and safety at the council or is preventing the council from performing its functions.

The suspended councillor will also be ineligible to hold the office of mayor or deputy mayor, or to chair a delegated committee of the council, for the remainder of the term. These sanctions are consistent with current sanctions following a finding of serious misconduct made by a CCP under the LG Act.

Councils and the Chief Municipal Inspector (CMI) will be expected to utilise existing pathways under the councillor conduct framework to address councillor conduct issues. Limiting this power of suspension by the Minister will provide a high bar to the exercise of this power. Additionally, before providing a report to the Minister, a Municipal Monitor or Commission will be required to confirm that a CCP is not already considering an allegation of serious misconduct against the councillor. This will avoid the councillor having separate adverse findings made against them in relation to the same behaviour.

Further, the Governor in Council will be provided with the power to disqualify a person from standing at future council elections. This would be on the recommendation of the Minister if satisfied on the advice of a Municipal Monitor or Commission. The advice must provide that the person was a councillor during the term immediately preceding the council's dismissal, and that the person was found to have created a serious risk to health and safety at the council or prevented the council from performing its functions. The period of disqualification would be for up to eight years following the dismissal of the council.

This power of disqualification of a councillor will ensure individual councillors found to have contributed to the council's governance failures are sanctioned appropriately and won't cause further issues at the council following the period of administration.

Prior to a Municipal Monitor or Commission submitting a report to the Minister recommending the suspension or disqualification of a councillor, they must first provide procedural fairness to the councillor to ensure they're provided an opportunity to respond to the adverse claims.

2. Clarify the application of privileges and statutory secrecy to Municipal Monitors and Commissions of Inquiry

Background

To fulfill their respective roles in monitoring or inquiring into the affairs of a council, Municipal Monitor or Commission of Inquiry often need to access legally privileged information, or other information prohibited from release under another enactment.

However, Municipal Monitors don't have explicit powers to request this information, and councils have previously been dissuaded from providing documents due to legal privilege or other statutory requirements prohibiting release of information.

Similarly, a Commission of Inquiry currently has the power to request a person to appear before it or give evidence or produce any document, which the person must comply with unless they provide a 'reasonable excuse'. Given the term 'reasonable excuse' is not defined, there is a risk that a person (or a council) refuses to provide evidence or information to a Commission. This may occur on the basis that the evidence or information is legally privileged information or is prohibited from release under another enactment.

Proposal

To encourage councils to provide information to assist a Municipal Monitor, the reforms will add:

- The provision of information by a council to a Municipal Monitor that is legally privileged does not cease to be the subject of legal professional privilege only because it is given or produced to a Municipal Monitor under the LG Act.
- When information that is prohibited from release under another enactment, is provided to a Municipal Monitor, a person is not subject to any criminal, civil, administrative or disciplinary proceedings or actions only because the person has complied with the request.
- Councils must provide reasonable assistance to a Municipal Monitor.

The reforms will clarify the meaning of 'reasonable excuse' for the purpose of complying with a request of a Commission, making it consistent with the definition of 'reasonable excuse' in the *Inquiries Act 2014*. The reforms will make it clear that it is not a reasonable excuse for a person to refuse or fail to comply with a request of a Commission to give information or produce a document on the basis that:

- The information, document, or other thing is the subject of legal professional privilege;
- The information, document or other thing might tend to incriminate the person or make the person liable to a penalty; and
- Another enactment prohibits the person from giving the information or producing the document or other thing or imposes a duty of confidentiality on the person in relation to the information, document or other thing.

3. Give the Chief Municipal Inspector the power to issue infringements for certain offences

Background

In the LGI's report [Social media fuels rise in complaints during 2020 council elections](#), it noted the limited avenues available to ensure compliance with offences relating to the conduct of council elections. The LGI recommended in its report that the LG Act be amended to give the CMI specific powers to issue infringement notices with respect to electoral related offences.

Further, in the LGI's report titled [Personal interests returns: Encouraging disclosure and increasing transparency](#), the LGI recommended that the CMI be given powers to issue infringement notices regarding personal interests returns related offences.

In these reports, the LGI noted that the cost and delay in conducting prosecutions in the court system in relation to these offences is disproportionate to the nature and seriousness of the offences. The LGI further observed that given the significant cost and time needed to bring these matters to court, historically only the most serious examples of noncompliance have been prosecuted by the LGI.

Proposal

The CMI will be given power to serve infringement notices for specified electoral and personal interests related offences under the LG Act. These offences, and their respective penalty amount, will be prescribed in regulations.

A general infringement provision will be introduced to enable offences in the LG Act to be prescribed to be infringement offences. This ensures that any further offences identified in the future as being appropriate to be made infringement offences, and their respective penalty amount, can be prescribed in regulations.

The proposed infringement regulations will be developed in accordance with the Attorney-General's Guidelines to the *Infringements Act 2006*.

Part 4: Other Miscellaneous Amendments

Overview

Note there are further proposed reforms to improve the operation of provisions relating to councillor conduct, early intervention, dispute resolution and oversight, as well as other miscellaneous amendments.

As noted above, these reforms will provide for administrative efficiencies and clarity and ensure the LG Act operates as intended. LGV is not seeking feedback and comments from the local government sector on these reforms.