

A Proud Community  
Growing Together



DRAFT

Act for the future - Directions for a new Local  
Government Act  
Melton City Council Response

Melton City Council  
September 2016

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## 1. INTRODUCTION

Melton City Council welcomes the opportunity to comment on the directions paper, *Act for the future – Directions for a new Local Government Act* (the Directions Paper). Council commends the Government both on its process to date and on the production of a constructive Directions Paper.

The City of Melton is one of Victoria's designated growth area Councils. Between 2005 and 2015 our population doubled. Our current population is 136,587 (30 March 2016) and this is expected to increase to 316,000 by 2036 with an eventual population of well over 400,000 when we reach our ultimate build out state.

The City of Melton currently has 7 Councillors. This number will increase to 9 in the coming elections. The Council has a strong female representation (5 of the 7 Councillors) and a diverse and multicultural population.

Perhaps distinct from some other Councils, the City of Melton contracts out a number of its core services, including but not limited to road maintenance, park maintenance, waste management, tree removal and the operations of kindergartens and swimming pools.

Council also has entrepreneurial ventures, including the Lend Lease Joint Venture Land Development Project of approximately 4,200 house lots over the next 20 years.

## 2. OVERARCHING COMMENTS

### Deliberative Democracy

A 'deliberative community engagement process' is set out as one of the major reform directions, aimed at 'revitalising local democracy'.

Council notes here that the current system of representative democracy is itself a form of deliberative democracy in its purest form. Councillors, being representatives of the community, come together to debate an issue and vote on a resolution.

The term, 'deliberative community engagement' or 'deliberative democracy' is not defined in the Directions Paper. For the purpose of this Response, Council defines the term as, a process which involves the *unelected* citizens coming together to debate or deliberate an issue and its proposed solution. To put it another way, the direct involvement of the citizen, rather than his or her elected representative (noting however that at times, not every citizen will be able to participate and thus those involved will therefore be representative, albeit not formally elected).

We note that a deliberative community engagement may take many forms including, but not limited to, citizens juries (such as will be used to decide the future governance design of the City of Greater Geelong), public 'town hall' style debates and simple online voting. The basic aim of such processes is to engage a broader cross section of the community and therefore arrive at a better solution that is embraced by more people.

Whilst Council certainly supports these aims and the notion of community engagement generally, a process that it already undertakes in many areas, it does hold some concerns in

relation to any requirement for deliberative democracy. Council's main concerns are listed below:

1. The ability to be truly representational and if not, then the risk that it delivers no better an outcome than the status quo or indeed risks a worse outcome, driven by 'the angry few' who did turn out.
  - a. Councils may struggle to attract deliberative engagement of a sufficient number or of a sufficient and true cross section of the community.
  - b. If the deliberative process is driven mainly by those with immovable contempt for local government or of the issue at hand, this risks the result that decisions are less representative, less informed and less effective.
2. The need to ensure that the engagement is both appropriate and supported by infrastructure.
  - a. Be it citizens juries, town hall style meetings or online voting, the engagement needs to be carefully considered. For complex matters and 'wicked problems', online voting may create more problems than it does solve and for simple and/or operational matters, long debates may be needless and unproductive.
  - b. The need for (and cost of rectification) appropriate infrastructure to conduct these processes properly and safely should not be overlooked.
3. The limitations potentially imposed by the reality that Councils devolve a number of their services to contractors via commercial contracts.
  - a. Any requirement for Councils to engage in deliberative democracy must take into account the fact that Councils, including the City of Melton, provide many services and operations via contractors and therefore commercial contracts. Practically, this potentially limits the scope for community involvement. It may limit both the content and the timing. Insofar as the timing, the only 'window' for material change to the specification of the contract is in the tender phase, when the contract is 'open'.
4. Whilst deliberative community engagement appears to be the "flavour of the month" at present, trends and methodologies around community engagement evolve and change over time, and to prescribe in legislation is merely repeating the errors of the past, that this review seeks to eliminate.

Council does not say that there is no place for a deliberative community engagement process, indeed it currently undertakes significant community consultation as part of its annual community engagement program that directly advises Council planning, strategic planning and operational planning processes. Council has an adopted Community Engagement Policy which ensures that representative engagement with identified cohorts and geographically significant communities occurs when implementing the annual program.

#### **A principles Based Act with detail in regulations and the use of Guidelines**

Council acknowledges that a principles based Act with the detail in regulations would, amongst other things, allow for changes to be made more easily as regulations can be amended more easily. However, Council notes the obvious disadvantage of law made at regulation level, that is, the absence of the scrutiny of the Parliament including, importantly, debate on the bill. On the one hand the Directions Paper espouses deliberative community



engagement process and on the other it purports to make and allow change without the scrutiny of the Parliament but instead at 'the stroke of the Minister's pen'.

Council is also concerned at the proposed use of guidelines, again with no scrutiny of the Parliament and effectively at the Government's whim. If Guidelines are to be used those guidelines, which are non-binding, must be open not to be not followed. In other words, those Councils who decide not to adhere to the Guidelines must not be subject to criticisms or censure by the Minister and should not be subject to criticisms from other bodies such as the Ombudsman (noting however that the Minister would have no control over other bodies).

**3. SPECIFIC COMMENTS**

In the comments below Melton City Council (MCC) has concentrated on matters that it strongly supports, or has concerns with. Some directions have therefore not been commented upon.

No	Direction	Support Yes/No	Comment
	<b>Chapter 2: Contemporary councils capable of meeting future challenges</b>		
1.	Require councils to take the following principles into account when performing their functions and exercising their powers: <ul style="list-style-type: none"> <li>• the need for transparency and accountability</li> <li>• the need for deliberative community engagement processes</li> <li>• the principles of sound financial management</li> <li>• the economic, social and environmental sustainability of the municipality</li> <li>• the potential to cooperate with other councils, tiers of government and organisations</li> <li>• plans and policies about the municipality, region, state and nation</li> <li>• the need for innovation and continuous improvement</li> </ul>	No, see comments.	Broadly MCC supports this direction however insofar as Councils will be 'required' to undertake deliberative community engagement processes, MCC refers to the Overarching Comments above.

No	Direction	Support Yes/No	Comment
2.	<ul style="list-style-type: none"> <li>any other requirements under the Act or other state or federal legislation.</li> </ul> <p>Provide that the role of a council is to:</p> <ul style="list-style-type: none"> <li>plan for and ensure the delivery of services, infrastructure and amenity for its municipality, <del>informed-by-deliberative community engagement</del></li> <li>collaborate with other councils, tiers of government and organisations</li> <li>act as an advocate for its local community</li> <li>perform functions required under the Act and any other legislation.</li> <li>Develop a vision and strategic direction for the future of the Council</li> </ul>	No, see amendments shown in redline opposite and also see comments.	<p>MCC recommends the amendments shown, that is, the deletion of the words, 'informed by deliberative community engagement' and the addition of a new bullet point, 'develop a vision and strategic direction for the future of the Council.'</p> <p>MCC does not say that there is no place for a deliberative community engagement process however we do not believe it is Council's role to ensure that the delivery of those matters mentioned is informed by it (other than to the extent that it already is by reason of the democratic process). Also see MCC's Overarching Comments above.</p>
3.	Provide that councils have the powers described in the Act and in other legislation.	No, see comments.	<p>This is arguably too proscriptive (and at the same time could be viewed as vague).</p> <p>There is a general principle at law that a citizen can do whatever it likes provided there is no legislation prohibiting it whereas Government can only do those things that legislation permits. If that be so, then there must be 'catch all type provisions' such as currently exists at s3F of the Act, "a Council has the power to do all things necessary or convenient to be done in connection with the achievement of its objectives and the performance of its functions."</p>
4.	Make the following reforms to the election of mayors:	No.	



No	Direction	Support Yes/No	Comment
	<ul style="list-style-type: none"> <li>• to require the CEO to report to the council about the implementation of council decisions</li> <li>• to appoint chairs of council committees and appoint councillors to external committees that seek council representation</li> <li>• to support councillors—and promote their good behaviour—to understand the separation of responsibilities between the elected and administrative arms of the council</li> <li>• to remove a councillor from a meeting if the councillor disrupts the meeting</li> <li>• to mutually set council meeting agendas with the CEO</li> <li>• to be informed by the CEO before the CEO undertakes any significant organisational restructuring that affects the council plan</li> <li>• to lead and report to council on oversight of the CEO's performance</li> <li>• to be a spokesperson for the council and represent it in conduct of public civic duties.</li> </ul>	<p>Yes.</p> <p>No.</p> <p>Yes.</p> <p>Yes, see comments. No, see comments.</p> <p>Yes.</p> <p>Yes.</p> <p>Yes.</p>	<p>This is potentially a huge task and potentially divisive.</p> <p>Also the ability to remove members of the public who disrupt a meeting.</p> <p>The CEO should set the agenda – requirement to consult only. Needs to be a single point of responsibility.</p>
6.	Review the formula for setting mayoral allowances in light of the proposed expanded role of mayors.	Yes, see comments.	Indeed MCC's view is that this raises the question of whether the Mayor should be a full time role.
7.	Formalise the status of the Local Government Mayoral Advisory Panel (LGMAP) by making it a statutory advisory board to the minister under the	Yes.	



No	Direction	Support Yes/No	Comment
	Local Government Act.		
8.	<p>Require all councils to appoint a deputy mayor elected in a manner consistent with the mayor. That is:</p> <ul style="list-style-type: none"> <li>where councillors elect their mayor, councillors elect the deputy mayor for the same two-year period</li> <li>where the mayor is directly elected, a deputy mayor is jointly elected with the mayor on the same ticket.</li> </ul>	Yes.	
9.	Consider deputy mayoral allowances in light of the expanded role of deputy mayors.	Yes.	
10.	Require councillors to actively participate in engagement processes mandated by the Act.	No.	This requires significant clarification. MCC refers to the Overarching Comments above.
11.	Require councillors to recognise and support the role of the mayor specified in the Act.	Yes.	
12.	Provide that councillors are entitled to all relevant entitlements consistent with other significant public offices (such as for disability support, maternity leave and childcare).	Yes.	
13.	<p>Require the CEO to provide support to the mayor by:</p> <ul style="list-style-type: none"> <li>consulting the mayor when setting council</li> </ul>	Yes.	

No	Direction	Support Yes/No	Comment
	<p>agendas</p> <ul style="list-style-type: none"> <li>• keeping the mayor informed about progress implementing significant council decisions, including reporting on implementation when asked to do so</li> <li>• providing information the mayor requires to meet the responsibilities of the role</li> <li>• informing the mayor before making significant organisation changes that affect the council plan</li> <li>• 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).</li> </ul>		
14.	<p>Require all councils to have a CEO remuneration policy that broadly aligns with the Remuneration Principles of the Victorian Public Sector Commission's <i>Policy on Executive Remuneration for Public Entities in the Broader Public Sector</i>.</p>	Yes.	
15.	<p>Require the audit and risk committee to monitor and report on a council's performance against the remuneration policy.</p>	Yes.	<p>Noting this is not looking at the CEO's performance but rather just the Council's performance.</p>
16.	<p>Require the mayor to get independent advice in overseeing CEO recruitment, contractual arrangements and performance monitoring.</p>	Yes.	

No	Direction	Support Yes/No	Comment
17.	Remove detailed prescription about council decision-making processes from the Act.	Yes.	
18.	Include high-level principles about council decision-making processes: namely, that they be open and accountable.	Yes.	
19.	Require councils to adopt rules about internal council processes that are consistent with the high-level principles in the Act.	Yes.	
20.	<p>Include in the new Act that a council may determine that information is confidential if:</p> <ul style="list-style-type: none"> <li>it affects the security of the council, councillors or council staff</li> <li>it would prejudice enforcement of the law</li> <li>it would be privileged from production in legal proceedings or would prejudice a Council's legal position.</li> <li>it would involve unreasonable disclosure of a person's personal affairs</li> <li>it relates to trade secrets or would disadvantage a commercial undertaking.</li> </ul>	No, see amendments to direction and comment.	<p>There needs to be very clear guidance here in relation to interpretation. Anecdotal evidence would suggest that sometimes matters are determined in camera in order to err on the side of caution because there is lack of clarity in relation to the interpretation of the current Act and lack of clarity in relation to how the <i>Local Government Act 1989</i> fits with other legislation such as the <i>Privacy and Data Protection Act 2014</i>. Examples include:</p> <ul style="list-style-type: none"> <li>contractual matters that might disadvantage a commercial undertaking and/or be a breach of confidentiality;</li> <li>a list of donations and grants which would contain individual names (for which there is currently only a requirement to have available for public inspection rather than available on the website)</li> </ul>
21.	Require a committee to which a council may delegate any of its powers to be known as a special committee	Yes.	

No	Direction	Support Yes/No	Comment
	and require it to include at least two members who are councillors.		
22.	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.	No, see comments.	Approval of committee rules need not be annually. Rules should be established upon formation and reviewed perhaps every 5-10 years.
23.	Apply legislative provisions exclusively to special committees that have delegated council powers and to administrative committees (as described in the proposed direction above).	No, see comments.	As per 22 above.
24.	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.	Yes.	
25.	Remove matters about employing council staff from the Act.	Yes.	
26.	Require the CEO to establish a workforce plan that describes the council's staffing structure including future needs; <del>that the plan include a requirement that it can only be changed in consultation with staff; and</del>	No, see amendments and comments.	MCC agrees with the existence of a plan but does not agree with the balance of the direction which does not allow the required flexibility.

No	Direction	Support Yes/No	Comment
	that the plan be available to the mayor and to staff.		
27.	Require a council CEO to consult the staff if there is a major organisational restructure.	No.	This should be dealt with in an Enterprise Bargaining Agreement (EBA) and not in the legislation.
28.	Require a community consultation process before making or varying a local law.	Yes.	
29.	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.	No.	Model local laws should be developed which would not only assist Councils in the drafting process but would also make this unnecessary.  All that this would serve to do would be to keep law firms in demand unnecessarily and at high costs to Councils. Partner charge out rates at mid-tier firms range from \$500-\$700 per hour.
30.	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.	Yes.	
31.	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.	Yes.	
32.	Consult to determine the appropriate value of a penalty unit for local laws and whether the value	No, see comments.	This requires further clarification. It is unclear who the consultation is with in relation to this.



No	Direction	Support Yes/No	Comment
	should be indexed annually.		
33.	Remove the requirement to submit local laws to the minister.	Yes.	
	Chapter 3: Democratic and representative councils		
34.	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.	Yes.	
35.	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.	Yes.	Regulations to document current practise would be less arbitrary.
36.	Allow for one of two representative structures—unsubdivided or entirely uniform multi-member wards—to be applied in each municipality. (Option 1) or Allow for one of three representative structures—unsubdivided, entirely uniform multi-member wards or entirely single-member wards—to be applied in each	No.  No.	Retention of the current structure allows flexibility. MCC does not support single wards.

No	Direction	Support Yes/No	Comment
	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.		
37.	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: <ul style="list-style-type: none"> <li>• evidence of a marked increase in population in a municipality</li> <li>• a request to the minister from a council or members of the community supported by evidence of the need for a review</li> <li>• in response to a recommendation from the VEC to the Minister</li> <li>• on any grounds determined by the minister published in the government gazette.</li> </ul>	Yes, as amended.	MCC suggest a maximum of 7 years but also be exception, as per its amended direction.
38.	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.	Yes.	We note that a person would still be able to mark the entire ballot.
39.	Implement a countback method to fill casual	Yes.	

No	Direction	Support Yes/No	Comment
	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).		
40.	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.	Yes.	
41.	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. <b>(Option 1)</b> or 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. <b>(Option 2)</b>	No.	
		Yes.	Option 2, however the VEC must make property owners sufficiently aware and it must be sufficiently easy for these to enrol.
42.	Require the VEC to revise the candidate's nomination form to require candidates to explicitly state that no disqualification conditions apply to them.	Yes.	

No	Direction	Support Yes/No	Comment
43.	Require a council CEO to complete a police check and a check of the Australian Securities & Investments Commission (ASIC) register of persons disqualified under the <i>Corporations Act 2001</i> for elected candidates within three months after the general election. <b>(Option 1)</b> or Require each candidate to submit a completed ASIC and police check when nominating. <b>(Option 2)</b>	No.	VEC to inform and assist candidates.
44.	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.	No.	Councils should retain flexibility and discretion.
<b>Chapter 4: Councils, communities and participatory democracy</b>			
45.	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.	No, see amendments and comments.	MCC would be interested to see the wording of any requirement. Otherwise, MCC refers to the Overarching Comments above.
46.	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.	Yes.	

No	Direction	Support Yes/No	Comment
47.	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.	No, see comments.	MCC broadly agrees but also refers to the Overarching Comments above.
48.	Include in regulations that an engagement strategy must ensure: <ul style="list-style-type: none"> <li>the community informs the engagement process</li> <li>the community is given adequate information to participate</li> <li>the scope/remit of the consultation and areas subject to influence are clear</li> <li>those engaged are representative of the council's demographic profile.</li> </ul>	Requires clarification.	Is the first bullet point implying a consultation in relation to the consultation? If so, MCC believes this goes too far. There should not be a requirement to consult in relation to the consultation.
49.	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.	No.	Retain the current provisions, noting also MCC's Overarching Comments.
50.	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.	Yes.	
51.	Require a council to publish on its website all documents and registers currently required to be kept	Yes.	



No	Direction	Support Yes/No	Comment
	on council premises and ensure this information is accessible to the public.		
52.	Require a council to publish its CEO remuneration policy on its website.	Yes.	
53.	Regulate for minimum standards and include in guidelines best-practice processes for ensuring transparency and accountability in council operations and administration, <del>based on the guidelines on current Melbourne City Council practices.</del>	No, see amendments.	
54.	Include in the Act a definition of a customer complaint consistent with the Ombudsman's recommendation of it as 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.	Yes, see comments.	Also include a definition of vexatious complainant, and the ability for Council to appropriately deal with same.
55.	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.	Yes.	

No	Direction	Support Yes/No	Comment
	<b>Chapter 5: Strong probity in council performance</b>		
56.	Incorporate the current councillor conduct framework largely unamended in the Act, including: <ul style="list-style-type: none"> <li>the definitions</li> <li>the principal requirements imposed on councils and councillors, relevant statutory officers, principal councillor conduct registrars</li> <li>the role and powers of the minister and ministerial monitors and the Chief Municipal Inspector (CMI).</li> </ul>	Yes.	
57.	Include in Regulations all the processes specified in the current councillor conduct framework.	Yes.	
58.	Extend the offence of release of confidential information to council staff who unlawfully disclose confidential information.	No.	But if so, only in relation to Senior Officers.
59.	This will make councillors and council staff liable to criminal prosecution for more 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.	Noted.	As per 58 above.
60.	Provide that a conflict of interest exists where: <ul style="list-style-type: none"> <li>the councillor or a person with whom they are</li> </ul>	No.	Overall we support a very prescriptive approach to this very difficult area. Whilst the current provisions could be improved, too vague an approach risks people erring too heavily on the

No	Direction	Support Yes/No	Comment
	<p>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.</p>		<p>side of caution, or risks people being brought to account for marginal matters when significant penalties apply.</p>
61.	<p>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.</p>	Yes.	
62.	<p>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 eight years.</p>	Yes.	
63.	<p>Retain the current legislative provision on misuse of position.</p>	Yes.	
64.	<p>Retain the current legislative provisions on improper direction, noting they will be supported by the further legislative measures to clarify the roles and</p>	Yes.	

No	Direction	Support Yes/No	Comment
	responsibilities of councillors, mayors and CEOs set out in Chapter 2 of this paper.		
65.	Retain the current enforcement role, functions and powers of the CMI and the inspectorate.	No, see comments.	All powers must be subject to and/or contain legal professional privilege exemption/provisions.
	<b>Chapter 6: Ministerial oversight of councils</b>		
66.	Include in the Act principles to apply to a proposal to create a new municipality, that: <ul style="list-style-type: none"> <li>• each new municipality shall be viable and sustainable in its own right</li> <li>• the allocation of revenues and expenditures between municipalities being separated shall be equitable for the residents of each municipality</li> <li>• the views of the communities affected by the restructuring shall be taken into consideration</li> <li>• 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.</li> </ul>	Yes.	
67.	Other than the proposed direction above, retain the current provisions (in Part 10A) about altering external municipal boundaries.	Yes.	

No	Direction	Support Yes/No	Comment
68.	Retain the power of the minister to: <ul style="list-style-type: none"> <li>• appoint a municipal monitor in a manner and with the role and powers as currently set out in the Act</li> <li>• 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</li> <li>• stand down a councillor as currently set out in the Act.</li> </ul>	Yes.	
69.	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: <ul style="list-style-type: none"> <li>• 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</li> <li>• 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</li> <li>• 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</li> </ul>	Yes.	



No	Direction	Support Yes/No	Comment
	<p>been provided with detailed reasons for the recommendation and was given an opportunity to respond to their recommendation and</p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>		
70.	<p>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.</p>	Yes.	
71.	<p>Streamline the minister's power to conduct inquiries into councils into a single power to appoint commissioners 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:</p> <ul style="list-style-type: none"> <li>• governance issues</li> <li>• financial probity issues</li> <li>• disputes between councils and between councils and other parties.</li> </ul>	Yes.	
72.	<p>Retain the existing power to forbid a council from</p>	Yes.	

No	Direction	Support Yes/No	Comment
	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.		
73.	Remove the power relating to senior officers from the new Act as all staff employment matters should be dealt with by relevant employment laws.	No, see comments at 78.	
74.	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.	No.	
75.	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.	Yes, with reservation.	As a general rule all regulations should apply equally however some limited circumstances might lend to relief but these circumstances must be predetermined.
76.	Empower the minister to issue non-regulatory guidelines on any matter under the Act.	Yes, with reservations and noting comments.	MCC has set out its concerns with the use of regulations and guidelines in the Overarching Comments.
77.	Remove the requirement to request ministerial exemption from public tenders, as explained in Chapter 8.	Yes.	
78.	Remove the power requiring a contract for a senior officer: all employment matters for council staff will	No.	Retain the maximum 5 year contracts.

No	Direction	Support Yes/No	Comment
	now be subject to employment law.		
79.	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.	Yes.	We support the exploration and look forward to further directions.
	<b>Chapter 7: Integrated planning</b>		
80.	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).	Yes.	
81.	Include in Regulations and guidelines details about the information a council will include in each plan.	Yes.	MCC notes the use of the word 'will' here. Any regulations need to be clear on what <i>must</i> be included and what <i>may</i> be included, rather than references to 'will'.
82.	Require: <ul style="list-style-type: none"> <li>• a council to prepare and adopt a four-year council plan by 31 December of the second year after a general election</li> <li>• preparation of the council plan to be informed by the deliberative community engagement process described in Chapter 4</li> <li>• the council plan to include information about</li> </ul>	No, see comments.	MCC advocates to maintain the current requirements and timelines in relation to the Council Plan.

No	Direction	Support Yes/No	Comment
	services, infrastructure and amenity priorities for the council term.		
83.	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.	No, see comments.	The plan should still be formally submitted to the Minister but it should also be available on a Council's website.
84.	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.	No, see comments.	MCC notes here that it cannot be accountable for the actions of external stakeholders (such as businesses, individuals and NGOs) because it has no legal authority over them.  Any regulations need to be clear on what <i>must</i> be included and what <i>may</i> be included and provide clear definitions were appropriate.
85.	Set out in Regulations and guidelines what is to be included in the community plan, including a community vision statement.	No, see comments.	MCC notes here that it cannot be accountable for the actions of external stakeholders (such as businesses, individuals and NGOs) because it has no legal authority over them.  Any regulations need to be clear on what <i>must</i> be included and what <i>may</i> be included and provide clear definitions were appropriate.
86.	Require all councils to prepare and adopt a rolling financial plan of at least ten years by 31 December of the second year after a general election, in accordance with the principles of sound financial	No.	MCC advocates for 30 June as the deadline and refers also to its comments in relation to the Council Plan and maintaining the current provisions and timelines (see for example 82 above).

No	Direction	Support Yes/No	Comment
	management, and for council to review and approve this plan annually.		
87.	Remove the requirement for a council to prepare a strategic resource plan.	Yes.	
88.	Require the financial plan to: <ul style="list-style-type: none"> <li>• guide financial planning and inform the council plan</li> <li>• provide the community with prescribed information about the human resource and capital works assumptions and decision-making underlying financial forecasts</li> <li>• be informed by the deliberative community engagement process.</li> </ul>	Yes.	
89.	Require all councils to prepare and adopt a rolling asset plan of at least ten 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.	No.	MCC advocates for 30 June as the deadline and refers also to its comments in relation to the Council Plan and maintaining the current provisions and timelines (see for example 82 above. Also see 86 above).
90.	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	Yes.	

No	Direction	Support Yes/No	Comment
	community engagement process.		
91.	Set out requirements for what is to be included in the financial and asset plans in Regulations and guidelines.	Yes.	
92.	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.	Yes.	
93.	Include in the Act a clearer definition of material variation in order to clarify when a revised council budget must be struck.	Yes.	
94.	Remove the requirement to submit a copy of the adopted budget to the minister.	No.	The adopted budget should still be sent to the Minister but there should also be a requirement for a Council to have this information on its website.
95.	Require all councils to establish an audit and risk committee with an expanded oversight of: <ul style="list-style-type: none"> <li>• the integrated strategic planning and reporting framework and all associated documents</li> <li>• financial management and sustainability</li> <li>• financial and performance reporting</li> <li>• risk management and fraud prevention</li> <li>• internal and external audit</li> <li>• compliance with council policies and</li> </ul>	No, as amended and taking into account comments.	<p>MCC broadly supports the expanded view of the audit and risk committee however makes the following points:</p> <ul style="list-style-type: none"> <li>- Members must be suitably qualified. MCC suggest the requirement of members from certain categories (legal, accounting) and ideally a male/female ratio</li> <li>- The committee must clearly be an advisory/oversight committee to the Council and operate as such – otherwise, there is a risk the CEO is effectively 'serving two masters'.</li> <li>- The committee must be looking at the existence of</li> </ul>



No	Direction	Support Yes/No	Comment
	legislation <ul style="list-style-type: none"> <li>• service reviews and continuous improvement</li> <li>• collaborative arrangements</li> <li>• the internal control environment.</li> </ul>		framework/process and its effectiveness but not looking at the operational level.
96.	Require the audit and risk committee to include a majority of independent members and include councillors, but not council staff.	Yes.	Members must be suitably qualified and ideally be a sufficient male/female ratio. MCC would suggest the requirement for a mix of legal, accounting and risk management expertise lawyer, an accountant, a previous manager of local government with 10+ years experience.
97.	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.	No.	MCC believes that this should be annual rather than biannual.
98.	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.	Yes.	
99.	Remove the requirement for a council to submit a copy of its annual report to the minister.	No.	The annual report should still be formally sent to the Minister however the current and immediate past annual report should be required to be on each Council's website.
100.	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.	No, see comments.	MCC believes that a special meeting is not necessary. It must be done at a public meeting, that is, a public part of an ordinary meeting.

No	Direction	Support Yes/No	Comment
101.	Require that in developing its council plan, a council take account of relevant aspects of regional and state plans that affect the municipality.	No, see comments.	MCC seeks clarification in relation to what 'take account of' means. MCC would advocate for a 'desktop review' only.
	Chapter 8: Sustainable finances for innovative and collaborative councils		
102.	Require a council to embed the principles of sound financial management in its council plan, community plan, financial plan and asset plan.	Yes.	
103.	Include in the Act the following principles of sound financial management: <ul style="list-style-type: none"> <li>• manage financial risks prudently, having regard to economic circumstances</li> <li>• align income and expenditure policies with strategic planning documents</li> <li>• undertake responsible spending and investment for the benefit of the community</li> <li>• provide value-for-money services and infrastructure which are accessible and responsive to the community's needs</li> <li>• ensure that decisions are made and actions are taken having regard to their financial effects on future generations</li> <li>• ensure full, accurate and timely disclosure of financial information about the council.</li> </ul>	No, see amendment and comments.	Terms in this section need to be clearly defined including 'strategic planning documents' and 'value-for-money' and 'stress testing'.

No	Direction	Support Yes/No	Comment
104.	Remove the current best value provisions, as value for money is included in the new principles of sound financial management.	Yes.	
105.	Require a council at the start of the council term to develop <b>review</b> 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.	Yes, with amendment.	
106.	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.	Yes.	
107.	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.	No.	If the committee is involved with this level of operational review it diminishes the role and it is at odds with the committee being an independent oversight by experts. The proposed direction is the function of internal audit process.
108.	Require a council to make its procurement policy available on its website.	Yes.	
109.	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.	Yes.	

No	Direction	Support Yes/No	Comment
110.	Provide councils with automatic access to state purchase contracts, whole-of-Victorian-Government contracts and the <i>Construction Suppliers Register</i> to save time, strengthen standards and improve efficiency.	Yes.	
111.	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.	Yes.	
112.	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.	No.	As per comments at 107.
113.	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.	Yes.	
114.	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.	No.	As per comments at 107.
115.	Remove the overdraft provisions and remove the	Yes.	

No	Direction	Support Yes/No	Comment
	requirement for the minister to approve the repayment of an overdraft from its borrowings.		
116.	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.	No.	MCC believes this is completely unworkable. It is impossible to know (with any accuracy) 12-24 months out what property may be sold, leased or exchanged. The proposed direction is too restrictive and inflexible.
117.	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.	No, see amendments and comments.	See comments at 116.
118.	Remove from the Act the requirement for councils to have public liability and professional liability 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.	Yes.	
119.	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	Yes.	MCC agrees with the removal however believes that like the procurement policy requirements, Councils should develop their own policy which would likely include some form of independent oversight or advice.

No	Direction	Support Yes/No	Comment
	consistent with the revised role of a council under the Act.		
	Chapter 9: Fair rates and sustainable and efficient councils		
120.	Require a council to prepare a revenue and rating strategy that: <ul style="list-style-type: none"> <li>• is for at least four years</li> <li>• outlines its pricing policy for services</li> <li>• outlines the amount it will raise through rates and charges</li> <li>• outlines the rating structure it will use to allocate the rate burden to properties.</li> </ul>	Yes.	
121.	Require a council to align the strategy to its financial plan and to review and adopt it after each general revaluation of properties.	Yes.	
122.	Define all land as rateable except for the following four categories of land that would be exempt: <ul style="list-style-type: none"> <li>• 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)</li> <li>• land vested or held in trust for any charitable not-for-profit organisation and used</li> </ul>	No.  Yes.	MCC submits that not all crown land or public bodies should be exempt. For example, MCC does not believe Water authorities, cemeteries and VicRoads should be exempt.



No	Direction	Support Yes/No	Comment
	<p>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)</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• land held in trust and used exclusively as a not-for-profit club for persons who performed service duties under the <i>Veterans Act 2005</i>. <b>(Option 1)</b> or</li> </ul> <p>Include land subject to a lease, sublease, licence or sublicense that is used for the purposes in Option 1, provided the lease, sublease, licence or sublicense 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:</p> <ul style="list-style-type: none"> <li>• owned by a for-profit organisation but leased to a charitable organisation</li> <li>• used exclusively for mining purposes. <b>(Option 2)</b></li> </ul>	<p>Yes.</p> <p>No.</p> <p>Yes.</p>	
123.	Retain the capacity for councils to grant rebates and concessions and apportion rates based on separate	Yes.	

No	Direction	Support Yes/No	Comment
	occupancies or activities.		
124.	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.	Yes, in relation to CIV as single uniform system.  No re exemption, see comments.	MCC does not understand the City of Melbourne exemption.
125.	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.	No, see comments.	The current maximum provides discretion. The explanation will be in the rating strategy.
126.	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.	No, see comments.	MCC submits that Council's rating strategy should address this, not Ministerial Guidelines.
127.	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).	Yes, noting comments.	This should be in the rating strategy.

No	Direction	Support Yes/No	Comment
128.	Retain the requirement that the highest differential rate must be no more than four times the lowest differential rate.	No, see comments.	There should be no restriction.
129.	Retain service rates and charges, renamed 'service charges' but remove their application to the provision of water supply and sewage services.	Yes.	
130.	As part of these changes, provide the minister with the power to prescribe the setting of other service charges in Regulations.	No.	
131.	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.	No, see comments.	MCC submits that the current provisions are unworkable however it believes that the real problem is in fact the 90% requirement.
132.	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.	Yes.	
133.	Allow a council to use rebates and concessions to support the achievement of their council plan's strategic objectives, provided that the purpose is	Yes.	

No	Direction	Support Yes/No	Comment
	consistent with their role		
134.	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.	Yes.	
135.	Establish a uniform process and timeline for people wanting a review or to appeal a rates or charges decision.	Yes.	
136.	Incorporate the municipal council rating provisions in the <i>Cultural and Recreational Lands Act 1963</i> in the Local Government Act. Require in the Act that councils disclose the rates that are struck for cultural and recreational lands.	Yes, see comments.	MCC submits that all laws relating to rates and charges should be contained in the <i>Local Government Act</i> .
137.	Incorporate the municipal council rating provisions in the <i>Electricity Industry Act 2000</i> in the Act.	Yes, see comments.	See 136 above.
	<b>Chapter 10: A rational legislative hierarchy</b>		
138.	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.	Yes, with reservations set out in comments.	MCC notes its Overarching Comments in relation to regulations generally.  Further MCC submits that in relation to non binding Guidelines, that Councils should be free to exercise discretion without criticism. To put it another way, those that do not 'comply' with the non-binding guidelines must be free to do so.

No	Direction	Support Yes/No	Comment
139.	Include an overarching statement of the Act's objectives, intended outcomes and a plan of the remaining provisions in the Act.	Yes.	
140.	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.	Yes, with reservations set out in comments.	MCC agrees with this but notes that language will be extremely important here.
141.	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.	Yes, with reservations set out in comments.	MCC agrees generally but refers to its Overarching Comments.
142.	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.	Yes.	
143.	Include a general power for the minister to make guidelines to supplement Regulations on any issue	Yes, with reservations set	MCC agrees repeats its comments at 138.

No	Direction	Support Yes/No	Comment
	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.	out in comments.	
144.	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.	Yes, with reservations set out in comments.	MCC agrees, provided such 'failure' is a finding and is in relation to legally binding provisions and not discretionary guidelines. MCC refers to and repeats its comments at 138.
145.	Require councils to take the following principles into account when performing their functions and exercising their powers: <ul style="list-style-type: none"> <li>• the need for transparency and accountability</li> <li>• the need for deliberative community engagement</li> <li>• the principles of sound financial management</li> <li>• the economic, social and environmental sustainability of the municipality</li> <li>• the potential for cooperation with other councils, tiers of government or other organisations</li> <li>• plans and policies in relation to the municipality, region, state and nation</li> </ul>	Yes.	
146.	Retain the current power of the minister to intervene	Yes.	



No	Direction	Support Yes/No	Comment
	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.		
147.	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.	Yes, with reservations set out in comments.	MCC refers to its Overarching Comments above regarding regulations.
148.	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.	Yes	
149.	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.	Yes, with reservations set out in comments.	MCC refers to 138 above.
150.	Create best-practice versions of essential documents that councils are required to adopt. Adoption of these best-practice documents will constitute compliance.	Yes, with reservations set out in comments.	MCC refers to 138 above.
151.	The minister will have a power under the new Act to require the council to adopt best-practice policies and	No, see comments.	MCC requires more information about this direction and what amounts to 'governance issues' 'identified'.

No	Direction	Support Yes/No	Comment
	procedures as part of a governance order where governance issues have been identified.		
152.	Incorporate relevant portions of Part 9, Division 2 and schedules 10 and 11 of the current Act into the <i>Road Management Act 2004</i> (or other relevant legislation), to better consolidate the legislation dealing with road management.	Yes.	
153.	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 <i>Water Act 1989</i> .	Yes.	
154.	List all Acts including the relevant sections that impose obligations on councils in a schedule in the new Act, to be updated as new legislation is enacted.	Yes, with amendment and noting comments.	MCC believes that sections must also be listed, otherwise this is of little utility.
155.	Repeal the <i>City of Greater Geelong Act 1993</i> and include relevant provisions in the new Act.		MCC has no opinion in relation to this.
156.	Retain the <i>City of Melbourne Act 1993</i> 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.		MCC has no opinion in relation to this.
157.	Consider matters relating to the <i>Municipal Associations Act 1907</i> independently of this directions paper in consultation with the Municipal Association	Yes	

No	Direction	Support Yes/No	Comment
	of Victoria.		

