

A Proud Community  
Growing Together



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

Melton City Council

September 2016 Updated with Analysis January 2018

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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.

As set out above, in its submission Melton supported the broad aims of deliberative democracy but listed a number of concerns, including, but not limited to, its being truly representational, its being achievable in terms of infrastructure and resources and its potential effect on the commercial realities of modern-day Council operations.

The Draft Bill, taking a 'principles based' approach, puts 'community engagement' at the centre of the legislation, together with 4 other Supporting Principles and effectively binds it together with the Overarching Governance Principles.

The proposed Draft requires the use of community engagement in only a few circumstances (drafting and amending a local law, community plan and budget following election, revised budget, application for a higher rates cap) and otherwise, leaves it to Council to comply with its own community engagement policy (including process) which the Draft Bill requires it have.

Subject to its Policy complying with the requirements of the Draft Bill, Council's individual policy approach would be in its own discretion. It may demand a high level of community engagement in some circumstances and little, or even no, community engagement in other circumstances.

Nowhere in the Draft Bill does the word 'deliberative' appear, nor are there any *strict* rules around community engagement however it should be noted that there is a clause allowing for regulations to be prescribed.

Clause 54 of the Draft Bill provides that Council must adopt and maintain a community engagement policy capable of being applied in relation to its strategic planning and policy development, with mechanisms for informing the community of the outcomes and with different processes for community engagement depending on the significance and complexity of the matter.

Pursuant to clause 55 of the Draft Bill the community engagement principles (a) to (e) must inform the policy. The Community engagement principles require:

- (a) a community engagement process with a defined scope;
- (b) participants must have access to objective, relevant and timely information to inform participation;
- (c) participants must be representative of those affected by the subject of the community engagement;
- (d) participants are entitled to 'support' (not defined) to enable meaningful and informed engagement;
- (e) participants are informed of the ways in which the process will influence Council decision making.

As mentioned in its submission, Melton already has a Community Engagement Policy. The Draft Bill contains a requirement that community engagement occur in relation to a number of matters, including but not limited to, the introduction and amendment of a local law (70), the development of the Council Plan and the first budget following election (c54(3)) and in relation to strategic planning and policy development generally (c54(2)(b)) but, other than as set out above, it is essentially not proscriptive as to *how* the community engagement is to occur.

#### **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 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).

The Draft Bill proposes a largely 'principles based' approach but with some sensible reversions to a traditional 'rules based' approach if specified outcomes/performance are not achieved.

The principles are set out by way of:

- **Overarching Governance Principles** (c8(2)) (a) to (i) relating to
  - o decision making in accordance with law;
  - o priority to achievement of best outcomes for the municipality including future generations;
  - o economic, social and environmental sustainability of the municipality including climate change;
  - o engagement of the community in strategic decision making and planning;
  - o innovation and continuous improvement;
  - o collaboration with other Councils, Governments and Statutory bodies;
  - o ensuring the ongoing financial viability of the Council;
  - o taking into account regional, state and national plans in strategic decision making and planning;
  - o recognising public accountability and ensuring transparency.
  
- **Supporting Principles** (c8(3)) – five in total:
  - o community engagement principles;
  - o public transparency principles;
  - o strategic planning principles;
  - o financial management principles;
  - o service performance principles.

The Draft Bill retains the wide enabling feature of providing Councils with the power to do '*all things necessary or convenient to be done in connection with the performance of its role*' (LGDB c9 LGA s3F).

In addition to the principles listed, there is a focus, both legislatively and practically, on outcomes rather than method or proscription.

It remains to be seen how much guidance or what might be called 'quasi-proscription' will be given by way of information sheets, guidance notes and/or regulations, but in the absence of those, the principles based approach does leave significant room for Councils to achieve the desired outcomes by whatever means they see fit based on the principles espoused.

The term 'quasi-proscription' is used because the Draft Bill contains provisions which mean that the non-compliance with any Ministerial Guidelines which are allowed by the Draft Bill (c82) would not be advised.

Guidelines by their nature are not binding however clause 82(3) states that compliance by a Council with the relevant guideline can be used as evidence of compliance with the corresponding requirements under the Act/regulation.

This is not the same as stating that non-compliance with the relevant guideline can be used

as evidence of breach or non-compliance with the relevant guideline however it is certainly one very persuasive way to have the guidelines adhered to without making being technically proscriptive.

**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.

The comments in blue text below are by way of analysis of the Draft Bill as against Council's submission.

The 'traffic light' colours in the 5<sup>th</sup> column indicate whether not the Draft Bill accords with MCC's submission in relation to the Direction proposed (Yes = Red, Partially = Orange, No = red). Accordingly, it also takes in circumstances where the Draft Bill proposes a new Direction and whether or not that direction was in fact part of Council's submission.

References in the analysis commentary to clause is to the Bill and references to sections are to the existing Act. Reference to LGDB is to the Local Government Draft Bill and reference to LGA is to the existing Local Government Act 1989.

Those marked with ★ are area which it is anticipated that a further submission could be made.

No	Direction	Support Yes/No	Comment	Yes Partially No
	<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> </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.  As set out above, in its submission MCC supported the broad aims of deliberative democracy but listed a number of concerns, including, but not limited to, its being	



No	Direction	Support Yes/No	Comment	<table border="1"> <tr> <td style="background-color: #90EE90;">Yes</td> <td style="background-color: #FFD700;">Partially</td> <td style="background-color: #FF0000;">No</td> </tr> </table>	Yes	Partially	No
Yes	Partially	No					
	<ul style="list-style-type: none"> <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> <li>any other requirements under the Act or other state or federal legislation.</li> </ul>		<p>truly representational, its being achievable in terms of infrastructure and resources and its potential effect on the commercial realities of modern-day Council operations.</p> <p>The Draft Bill, taking a 'principles based' approach, puts 'community engagement' at the centre of the legislation, together with 4 other Supporting Principles and effectively binds it together with the Overarching Governance Principles.</p> <p>The proposed Draft requires the use of community engagement in only a few circumstances (drafting and amending a local law, community plan and budget following election, revised budget, application for a higher rates cap) and otherwise, leaves it to Council to comply with its own community engagement policy (including process) which the Draft Bill requires it have.</p> <p>Subject to its Policy complying with the requirements of the Draft Bill, Council's individual policy approach would be in its own discretion. It may demand a high level of community engagement in some circumstances and little, or even no, community engagement in other circumstances.</p> <p><b>The rating given is orange to indicate that community engagement is required in only few circumstances and is otherwise left to Council's discretion. Save for that, the rating would have been green</b> because Council otherwise supported the principles listed in the Direction, which are included in the Draft Bill by way of inclusion in either the Overarching Governance Principles or 5 Supporting Principles.</p>				
2.	<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,</li> </ul>	No, see amendments shown in	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.'	9			

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
	<p>infrastructure and amenity for its municipality, <del>informed by deliberative community engagement</del></p> <ul style="list-style-type: none"> <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>• <b>Develop a vision and strategic direction for the future of the Council</b></li> </ul>	<p>redline opposite and also see comments.</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> <p>Again, MCC's concerns with this Direction were around the requirement of deliberative community engagement, but it otherwise, MCC supported the proposed elements of the Role of Council</p> <p>The Draft Bill sets out the Role of a Council in provisions which include, either directly or indirectly, all of the elements mentioned in the Direction</p> <p>Community engagement is an element of the Role, but in a much more nuanced way than proposed.</p> <p>The provision refers to compliance with the Governances Principles which themselves contain a requirement that 'the municipal community is to be engaged in strategic planning and strategic decision making'. Though the difference might be thought to be merely semantics, there is a significant difference between a role which states that the planning for services and infrastructure be <i>informed</i> by deliberative community engagement and a role which refers to principles which <i>include</i> a requirement for the community to be <i>engaged</i> in decision making.</p> <p>Accordingly, <b>an orange rating has been given in relation to the community engagement requirement</b> (albeit not as prescriptive as that set out in the Direction). <b>Otherwise, the rating would have been green</b>, because Council broadly supported the balance of the direction.</p>	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%;"> <span>Yes</span> <span>Partially</span> <span>No</span> </div>
			<p>The role of a Council is proposed in the Draft Bill as follows:</p> <p><b>7 Role of a Council</b></p> <p>(1) <i>The role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community.</i></p> <p>(2) <i>A Council provides good governance if it complies with section 8.</i></p> <p>(3) <i>In performing its role, a Council may—</i></p> <p style="padding-left: 20px;">(a) <i>perform any duties or functions or exercise any powers conferred on a Council by or under this Act or any other Act;</i></p> <p style="padding-left: 20px;">and</p> <p style="padding-left: 20px;">(b) <i>perform any other functions that the Council determines are necessary to enable the Council to perform its role.</i></p> <p>(4) <i>If it is necessary to do so for the purpose of performing its role, a Council may perform a function outside its municipal district.</i></p> <p>The proposed definition is an improvement on the current Act in that it defines 'good governance' (by reference to the overarching governance principles). It is a less proscriptive definition of the role and refers back to the wide enabling 'general power' set out at clause 9.</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</p>	

No	Direction	Support Yes/No	Comment	<div style="background-color: #92d050; padding: 2px;">Yes</div> <div style="background-color: #ffcc00; padding: 2px;">Partially</div> <div style="background-color: #ff0000; padding: 2px;">No</div>
			<p>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> <p>The Draft Bill retains the wide enabling feature of providing Councils with the power to do 'all things necessary or convenient to be done in connection with the performance of its role' (LGDB c9 LGA s3F).</p> <p>As the Draft Bill accords with MCC's submission, a rating of green has been given.</p>	
4.	<p>Make the following reforms to the election of mayors:</p> <ul style="list-style-type: none"> <li>• Elect all mayors for two-year terms</li> <li>• Retain election of the mayor by their fellow councillors for most councils</li> <li>• Provide the minister with power to approve the direct election of mayors for councils where:                             <ul style="list-style-type: none"> <li>○ the size of the council is sufficient to support the additional costs of direct election</li> <li>○ the significance of the council in its own terms</li> </ul> </li> </ul>	<p>No.</p> <p>Yes.</p> <p>No.</p>	<p>In accordance with MCC's submission, the Draft Bill retains the 1 or 2 year term – with slightly more emphasis on the option by making it an <i>imperative</i> for Council to resolve which length of term the Mayor will be elected for rather than providing an <i>option</i> to resolve the length be 2 years.</p> <p>The proposed clause 26(3) 'Before the election of the Mayor ... the .. Council, must determine by resolution' as compared with the existing section 71(2), 'Before the Mayor is elected ... the Council may resolve'.</p> <p>Likewise, in accordance with MCC's submission, the Mayor is elected by the Councilors (DLGB c25(4) LGA s71(1)).</p> <p>Providing a little more specificity than the Act, the Draft Bill states that the Mayor must be elected by an absolute majority, which, for the purposes of this section means the number of Councilors greater than half the total number of Councilors at a Council (c25(7)). For Melton this would be 5 Councilors. Such a definition provides that the number of Councilors required remains the same, regardless of the number in attendance at the meeting. So, if only 7 Councilors were at the meeting, there would still need to be 5 votes in favour of the proposed Mayor for her/him to be elected.</p>	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%; font-size: 8px;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
	<p>or in terms of the region in which it is situated supports a directly elected mayor</p> <ul style="list-style-type: none"> <li>o community consultation provides evidence of strong support for a directly elected mayor, recognising the additional costs to the community.</li> <li>• Should the minister approve direct election of a mayor for a municipality, the City of Melbourne model will apply. This is that the mayor and deputy mayor are jointly elected by voters and councillors are elected at large to represent the entire municipality.</li> </ul>		<p>In accordance with MCC's submission there is no power for the Minister to approve the direct election of the Mayor (such as at the City of Melbourne).</p> <p>The Draft Bill contains similar provision for the election of the Deputy Mayor (though there would appear to be some drafting errors in relation to the Deputy provisions – see 8 below). This is to be compared with the current Act which contains no reference to Deputy notwithstanding the position is common to most, if not all, Councils in Victoria.</p> <p>As the Draft Bill provisions accord with MCC's submission, a rating of green has been given.</p> <p>This allows for inconsistency and creates confusion. If so, it should be upon application to the Minister only.</p>	
5.	<p>Expand the role of the mayor to include the following powers and responsibilities:</p> <ul style="list-style-type: none"> <li>• to lead engagement with the community on the development, and the reporting to the community at least annually about the</li> </ul>	Yes.	<p>In line with MCC's submission:</p> <ul style="list-style-type: none"> <li>- The Draft Bill provides that the role of Mayor has been somewhat expanded to include responsibility for leading a community engagement process in relation to the Council Plan and the first budget following an election (c54(3)) and reporting annually onto the community on the implementation of the Plan (c17(c) and 95(2)).</li> </ul>	

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	<ul style="list-style-type: none"> <li>• implementation, of the council plan</li> <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> </ul>	<p>Yes.</p> <p>No.</p> <p>Yes.</p> <p>Yes, see comments.</p>	<p>Contrary to MCC's submission:</p> <ul style="list-style-type: none"> <li>- The Draft Bill does not require the CEO to report to the Council about the implementation of Council decisions <u>unless requested</u> by the Mayor (c45(2)(e)).</li> <li>- The Draft Bill provides that the Mayor also has 'specific powers' including the power to appoint a Councillor to be the Chair of a delegated committee (which is stated to be notwithstanding any appointment by Council) and to direct to the removal of a Councillor from a Council meeting (subject to the Council's own Governance Rules).</li> </ul> <p>In accordance with MCC's submission, the Role of the Mayor includes promotion of behaviour standards set out in the Councillor Code of Conduct and providing assistance to Councillors in understating their role (c17(e)&amp;(f)). 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>In accordance with Melton's submission the Draft Bill provides that the Mayor has the specific power, subject to the Council's own Governance Rules, to direct a Councillor to leave a Council meeting (the words here indicating that it only applies to meetings of the Council itself) (c18(1)(c)).</p> <p>In relation to the public, rather than a power to remove, there is a power to close to the meeting to the public for reasons of security or disorderly conduct (c63(2)(b) &amp;(c)) <u>provided that that meeting can be viewed by the public by the internet or other means</u>. This is a somewhat curious provision. Would it mean that a disorderly public gallery would remain in the chamber viewing the meeting that continues behind closed doors or a disorderly crowd is removed to the foyer to watch the meeting via live streaming? Either way, a disorderly crowd should</p>	

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	<ul style="list-style-type: none"> <li>to mutually set council meeting agendas with the CEO</li> </ul>	No, see comments.	<p>not be allowed to continue. Practicality would dictate that the meeting would simply just be adjourned (provision for which would be the Council's Governance Rules).</p> <p>The CEO should set the agenda – requirement to consult only. Needs to be a single point of responsibility. That the CEO is responsible for setting the agenda is now clearly defined. Whilst this has been the <i>practice</i> across the sector, the current Act is in fact silent on the matter. However there is also now proposed a requirement for the CEO consult with the Mayor before setting the agenda (c45(2)(d)). This is therefore partially in line with MCC's submission.</p>	
	<ul style="list-style-type: none"> <li>to be informed by the CEO before the CEO undertakes any significant organisational restructuring that affects the council plan</li> </ul>	Yes.	<p>The Draft Bill provides that the CEO must develop and maintain a workforce plan which, amongst other things, specifies the projected staffing requirements for a 4 year period and sets out measures to 'ensure' gender equity, diversity and inclusiveness (c45(4)). Further, the CEO will be required to 'inform' the Council before implementing an organisational restructure that <i>will</i> affect the capacity of the Council to <i>deliver the Council Plan</i>. This would appear to be a very high threshold but not out of step with Council's submission by which it agreed to inform the Council in relation to 'significant' restructuring affecting the Council Plan. What constitutes a restructure is not defined and in practical terms could be subject of some conjecture however because the emphasis is on the delivery of the Council Plan, a definition is perhaps not necessary.</p>	
	<ul style="list-style-type: none"> <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</li> </ul>	<p>Yes.</p> <p>Yes.</p>	<p>In accordance with MCC's submission, the Draft Bill provides that:</p> <ul style="list-style-type: none"> <li>the Mayor has a specified 'leadership role' in ensuring the regular performance review of the CEO (c17(g)); and</li> <li>The Mayor is the principal spokesperson for the Council (c17(b) and chair of Council meetings (c17(a)).</li> </ul>	

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Yes	Partially	No					
	conduct of public civic duties.		The overall rating of orange indicates that some parts of the Draft Bill accord with Council's submission whereas others do not. (DLGB c17 Role of the Mayor; LGA s73AA Functions of Mayor).				
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.  The Draft Bill provides a somewhat simplified process for the setting of allowances in that they are set by the Minister and do not appear to require a resolution of Council. Allowances will be set by the Minister for the Mayor, Deputy Mayor and Councillors (c37 & 38).  The Council will be required to have a policy for reimbursement of out-of-pocket expenses, not unlike the current s75B provisions (c40). A Council will also be required to make available resources to the Mayor and Councillors not unlike the current provisions (c41).  Like the current Act, the role of Councillor is not a 'paid role' such as that of an employee but rather a voluntary one, for which an allowance is paid.  The overall rating of green has been given because Council agreed with the Direction, notwithstanding it also noted support for a full time paid 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 Local Government Act.	Yes.	Clause 23 of the Draft Bill provides that the Minister may establish and maintain a Local Government Mayoral Advisory Panel comprising at least 5 Mayors and chaired by the Minister pursuant to terms determined by the Minister.				



No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%; font-size: 8px;"> <span>Yes</span> <span>Partially</span> <span>No</span> </div>
8.	Require all councils to appoint a deputy mayor elected in a manner consistent with the mayor. That is: <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.	<p>The Draft Bill sets out the role and powers of the Deputy Mayor at c21. Essentially, the Deputy is to perform the role and exercise any of the powers of the Mayor if the Mayor is unable to attend a Council meeting or part thereof or the Mayor is incapable of performing the duties of the office, or the office of Mayor is vacant.</p> <p>The Draft Bill provides that subsections (2) to (7) of clause 26 apply to the election of the Deputy as if those provisions substituted the word 'Mayor' for 'Deputy'.</p> <p>This means that the Council must decide on the term of the Deputy and, on the face of it allows for a situation where you might have a Mayor for a two year term serving along with 2 Deputy Mayors each serving a one year term (or vice versa).</p> <p>However, clause 22(a) seems to be at odds with this possibility in that it states that the office of Deputy Mayor becomes vacant at the time and on the day of the election of the Mayor. This should be clarified with LGV as it would appear to be a drafting error.</p> <p>Also see 4 above, the requirements in relation to absolute majority.</p>	
9.	Consider deputy mayoral allowances in light of the expanded role of deputy mayors.	Yes.	This has been provided for in the Draft Bill – see 6 above.	
10.	Require councillors to actively participate in engagement processes mandated by the Act.	No.	<p>This requires significant clarification. MCC refers to the Overarching Comments above.</p> <p>Council's submission was not in favour of this reform, specifically aimed at <i>Councillors</i> because it required significant clarification as to the level of type of 'active participation' and to the 'processes' involved. Broadly, Council had</p>	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%; font-size: 8px;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
			<p>concerns that the resultant provisions might be quite onerous and/or would be very specific such that they may be 'used as a sword' by some members of the community such as by 'unreasonable complainants' demanding to be heard by a Councillor on issues already exhaustively and thoroughly canvassed. In other words, residents demanding to be heard on multiple occasions on the same issue with the Councillor having no recourse to refuse on reasonable grounds that the person had already received a hearing on the matter.</p> <p>The Draft Bill does not include any specific processes in relation to community engagement in relation to Councillors (or the Council), either actively or otherwise. <b>For this reason a rating of green has been given.</b></p> <p>The Direction has probably been borne out in the Draft Bill by way of changes to the specified Role of Councillor (DLGB cl28 LGA s65).</p> <p>Much of the relevant section of the current Act (which is a relatively new section - 2015) has been retained.</p> <p>In subsection (1) the role of a Councillor is the same as the current Act.</p> <p>Subsection (2) sets out what <i>must</i> be done in performance of that role. Here there is no longer a reference to 'leadership' and there has been added a requirement to 'facilitate and participate in effective communication between Council and the municipal community' and also to 'acknowledge and support the role of Mayor (c28(d)&amp;(e)).</p> <p>These provisions are general and are not considered to be provisions that would be capable to being used by unreasonable complainants as a sword against a Councillor. The green rating also reflects this.</p>	
11.	Require councillors to recognise and support the role of the mayor specified	Yes.	This is included in the Draft Bill in the clause relating to the performance of the role of Councillor (c28(2)(e)).	

No	Direction	Support Yes/No	Comment	<table border="1"> <tr> <td style="background-color: #92d050;">Yes</td> <td style="background-color: #ffcc00;">Partially</td> <td style="background-color: #ff0000;">No</td> </tr> </table>	Yes	Partially	No
Yes	Partially	No					
	in the Act.						
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.	<p>This is provided for throughout the Draft Bill. See for example:</p> <ul style="list-style-type: none"> <li>- clause 33 where it is stated that a Councillor is not taken to be absent from a Council Meeting during the period 6 months after becoming a parent or spouse of a person becoming a parent.</li> <li>- Clause 40 in relation to reimbursement of expenses policy which states that it must provide for childcare and have particular regard to expenses incurred by a Councillor who is a carer within the meaning of section 4 of the relevant Act.</li> <li>- Clause 41 in relation to resources which must be provided having particular regard to those with a disability or other specials needs and a Councillor who is a carer within the meaning of section 4 of the relevant Act.</li> </ul>				
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 agendas</li> <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> </ul>	Yes.	<p>All of the matters listed in the Direction are included in the Draft Bill, thus a rating of green has been given.</p> <p>In the Draft Bill the functions of the CEO come under two heads:</p> <p>(a) supporting the Mayor &amp; Councillors in the performance of their roles; and                      (b) ensuring the effective and efficient management of the day to day operations of the Council (c45(1))</p> <p><i>[it should be noted here at reference to the Council Plan has been removed in the Draft Bill in relation to the CEO and the day-to-day operations, placing the emphasis in relation to the Council Plan squarely on the Mayor &amp; Councillors except to the extent that any organisational restructure would affect the Plan].</i></p>				

No	Direction	Support Yes/No	Comment	<div style="background-color: #90EE90; width: 10px; height: 10px; display: inline-block;"></div> Yes <div style="background-color: #FFD700; width: 10px; height: 10px; display: inline-block;"></div> Partially <div style="background-color: #FF0000; width: 10px; height: 10px; display: inline-block;"></div> No
	<ul style="list-style-type: none"> <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>		<p>Each of the two heads ('the support function' c 45(1)(a)) and the 'operational function' c45(1(b)) are then expanded upon by inclusive (as opposed to exhaustive) definitions, leaving scope for the CEO to interpret the two heads of power more widely.</p> <p>Insofar as the Support Function is concerned some of the responsibilities listed are the same as the current Act. These include the provision of advice to the Council on its obligations under the Act and supporting the Mayor in the performance of that role.</p> <p>There are two notable new inclusions. The first relates to the Council meeting agenda. That the CEO is responsible for setting the agenda is now clearly defined. Whilst this has been the practice across the sector, the current Act is in fact silent on the matter. However there is also now proposed a requirement for the CEO consult with the Mayor before setting the agenda (c45(2)(d)). Secondly, when requested by the Mayor, the CEO must report to the Council in relation to the implementation of a Council decision (c45(2)(e)).</p> <p>Separately, as mentioned in 5 above, there is a requirement upon the CEO to inform the Council (not specifically the Mayor) in relation to any organisational restructure the <i>will</i> affect the <i>Council's ability to deliver the Council Plan</i>.</p> <p>Insofar as resources for the Mayor, see 6 and 12 above. The requirement to provide resources and facilities has been amended in the Draft Bill to make specific reference to the position of Mayor.</p>	
14.	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</i>	Yes.	<p>As anticipated and supported by Melton, the Draft Bill provides that each Council must develop and maintain a CEO Employment and Remuneration Policy.</p> <p>The policy must provide for 'independent professional advice' in relation to the employment of the CEO including in relation to recruitment, contract conditions</p>	

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	<p><i>Remuneration for Public Entities in the Broader Public Sector.</i></p>		<p>and monitoring and review of performance. The policy must be in line with the remuneration principles contained in the Government of Victoria's Policy on Executive Remuneration in Public Entities (c.44).</p> <p>The 5 year limit on contract term remains (c43(2)) with an allowance for reappointment (c43(3)). Presumably there is no limit on the number of reappointments unless one is stated in the Council's own policy, which it would be at liberty to include.</p> <p>The public notice requirements have been removed (LGA s94(3) which currently also applies to reappointment). It would however be open to any Council to include public notice requirements in its own policy.</p> <p>The Draft Bill also provides that if the Minister is satisfied on reasonable grounds and on the recommendation of the Municipal Monitor/CMI/Commission of Enquiry, that the employment or re-employment of a CEO <i>could</i> result in a failure by the Council to provide 'good governance' (which is now defined) or the Council acting unlawfully, the Minister may give a written direction that the CEO not be employed/re-employed and any contract of employment be declared void (c209(4)&amp;(5)&amp;(6)).</p>	
15.	<p>Require the audit and risk committee to monitor and report on a council's performance against the remuneration policy.</p>	<p>Yes.</p>	<p>Noting this is not looking at the CEO's performance but rather just the Council's performance.</p> <p>There does not appear to be any reference in the Draft Bill to the Audit and Risk Committee specifically reporting against the remuneration policy (relating to the CEO). However, the CEO Remuneration Policy and Audit &amp; Risk Committee Charter could provide for this if the Council so determined. Accordingly, this is partially in line with Council's submission and thus an orange rating has been applied.</p>	
16.	<p>Require the mayor to get independent</p>	<p>Yes.</p>	<p>The independent advice is not specifically sought by or for the Mayor but rather</p>	

No	Direction	Support Yes/No	Comment	<div style="background-color: #92d050; padding: 2px;">Yes</div> <div style="background-color: #ffc000; padding: 2px;">Partially</div> <div style="background-color: #ff0000; padding: 2px;">No</div>
	<p>advice in overseeing CEO recruitment, contractual arrangements and performance monitoring.</p>		<p>there is a requirement for the Council to have a CEO Employment and Remuneration Policy. The policy must provide for 'independent professional advice' in relation to the employment of the CEO including in relation to recruitment, contract conditions and monitoring and review of performance (c44). See further at 14 above.</p> <p>The Role of the Mayor, set out in clause 17 of the Draft Bill does include taking a leadership role in ensuring the regular review of the performance of the CEO (c17(g)).</p> <p>The combination of these provisions means that the difference between the Draft Bill and the Direction is largely immaterial. Accordingly, a green rating has been applied.</p>	
17.	<p>Remove detailed prescription about council decision-making processes from the Act.</p>	Yes.	<p>The Draft Bill largely enables Councils to make their own rules about decision making processes (with some exceptions including around the election and ouster of the Mayor) and thus the rating here is green.</p> <p>Clause 58 of Draft Bill provides that a Council <i>must</i> develop, adopt and keep in force Governance Rules with respect to the following:</p> <ul style="list-style-type: none"> <li>(a) the conduct of meetings of the Council;</li> <li>(b) the conduct of meetings of delegated committees;</li> <li>(c) the conduct of joint meetings of Councils;</li> <li>(d) the form and availability of meeting records;</li> <li>(e) the election of the Mayor and the Deputy Mayor;</li> <li>(f) the disclosure of a conflict of interest by a member of Council staff when providing advice to the Council;</li> <li>(g) any other matters prescribed by the regulations (c58(1)).</li> </ul> <p>The Governance Rules <i>must</i> also provide for a Council to:</p>	

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			<p>(a) consider and make decisions on any matter being considered by the Council fairly and on the merits; and</p> <p>(b) institute decision making processes to ensure that any person whose rights will be directly affected by a decision of the Council is entitled to communicate their views and have their interests considered (c58(2)).</p> <p>A Council <i>must</i> comply with its Governance Rules (c58(3)).</p> <p>Subsection 2 of these provisions replaces the s223 provisions of the current Act and also partially codifies the common law. That said regard should always be had to the common law and any person who rights and reasonable expectations might be affected by a Council decision or potential decision.</p>	
18.	<p>Include high-level principles about council decision-making processes: namely, that they be open and accountable.</p>	Yes.	<p>Notions of openness (transparency) and accountability are contained variously in the current Act.</p> <p>These have been strengthened in the Draft Bill with reference in the Overarching Governance Principles (a) to (i) (see clause 8)</p> <p>In particular (i) reads:</p> <p>(i) <i>the public accountability of the Council must be recognised and the transparency of Council decisions, actions and information is to be ensured.</i></p> <p>Further, one of the 5 supporting principles is the 'public transparency principles'. Pursuant to this principle the Council must adopt and maintain a Public Transparency Policy</p>	
19.	<p>Require councils to adopt rules about internal council processes that are</p>	Yes.	<p>This direction, which was supported by MCC, is consistent with the Draft Bill.</p>	

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Yes	Partially	No					
	consistent with the high-level principles in the Act.		The high-level principles set out in the Draft Bill are the Overarching Governance Principles and the Supporting Principles (community engagement principles, public transparency principles, strategic planning principles, financial management principles and service performance principles). The Draft Bill provides for a policy to be adopted in respect of each.				
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> <p>Council did not support this Direction chiefly because it considered that the directions as put, did not provide sufficient specificity, in circumstances where the Ombudsman was at the same time as the Directions Paper was released, conducting an own motion investigation into Local Government's interpretation and reliance on the provisions in the current Act allowing Council's to close the meeting to the public (s89(2)) (Victorian Ombudsman, <i>Investigation into the Transparency of Local Government Decision Making</i> December 2016).</p> <p>The Ombudsman's result report was highly critical of Local Council's use of the provisions in particular the use of the general provision to close a meeting to avoid prejudice to the Council (Ombudsman's report pages 7-8 paragraphs 13-19). The words of this subsection in the current Act read, 'any other matter which the Council or special committee considers would prejudice the Council or any</p>				



No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%;"> <span>Yes</span> <span>Partially</span> <span>No</span> </div>
			<p><i>person</i> (s89(2)(h)).</p> <p>All five of the bullet points mentioned in the Direction are included in the definition of Confidential Information at c.3 and drafting in essentially the same terms as put in the Direction (largely based on the existing FOI Act provisions).</p> <p>The definition goes further and also includes information that would prejudice the Council's position in a commercial negotiation, planning information which if prematurely released would be likely to encourage land value speculation, internal resolution information, councillor conduct panel confidential information and any other information prescribed confidential by the regulations.</p> <p>What the definition does <u>not</u> include is the current 'catch all' provision that the Ombudsman was so critical of the use of. The removal of this provision increases the specificity of the provisions to a useful degree. <b>For this reason the allocation of orange has been given</b> in that the provisions of the Draft Bill go some way to increase specificity. Also given that the provisions will be new, the Ombudsman and others can be left in no doubt that the Government intended to allow Councils the ability to consider some matters behind closed doors.</p> <p>Guidance material on this definition would be useful and this could perhaps form the basis of any further submission.</p> <p>Related provisions worth noting are</p> <ul style="list-style-type: none"> <li>- specific requirements to present the quarterly budget report (c92) and the annual report (c95) at meetings open to the public; and</li> <li>- clause 65(d) which states that the proceedings of a Council or delegated committee will not be invalidated because of a failure to keep the meeting open to the public..</li> </ul>	
21.	Require a committee to which a council	Yes.	The Draft Bill proposes the same composition (2 Councillors) as anticipated by	

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	<p>may delegate any of its powers to be known as a special committee and require it to include at least two members who are councillors.</p>		<p>the Direction but it proposes that such committee be styled a 'delegated committee' rather than – and in replacement of - 'special committee'. <b>By reason of the change of proposed name, this Direction is considered to partially accord with MCC's submission and this a rating of orange has been applied.</b> Equally, the rating could have arguably been green as the change of name is arguably immaterial.</p> <p>Pursuant to clause 61 delegated committees are committees that Council may delegate some of its functions to (pursuant to the delegation power in clause 10).</p> <p>The power of delegation contained in clause 10 is, like the current Act, subject only to the listed items including, amongst other things, the power of delegation, power to elector the Mayor/Deputy, power to appoint members to a delegated Committee, power to adopt or amend a policy required by the Act and the power to adopt or amend the Governance Rules.</p> <p>Pursuant to clause 61 a delegated committee must include at least 2 Councillors and be chaired by a Councillor appointed by the Council or the Mayor (noting that the Mayor can override the decision of the Council – see c18).</p>	
22.	<p>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.</p>	<p>No, see comments.</p>	<p>Approval of committee rules need not be annually. Rules should be established upon formation and reviewed perhaps every 5-10 years.</p> <p>MCC disagreed with this submission only to the extent that it anticipated annual approval of rules which was perceived to be overly administratively burdensome. There is nothing in the Draft Bill about annual establishment of rules. Rather the Draft Bill largely leaves scope of these Committees to the CEO (which need not be exercised annually but rather at any time) with only some requirements specified. <b>For this reason a rating of green has been applied.</b></p> <p>These administrative committees, styled Community Asset Committees are completely separate and distinct from delegated committees. Community Asset</p>	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%; height: 15px;"> <span style="background-color: #90EE90; width: 33%;"></span> <span style="background-color: #FFD700; width: 33%;"></span> <span style="background-color: #FF0000; width: 33%;"></span> </div> Yes Partially No
			<p>Committees are for the purpose only of managing community assets (c62).</p> <p>Members of Community Asset Committees are delegated responsibility via a sub-delegation from the CEO, that is, via a delegation from the CEO (c46(1)(b)) having first been delegated the power from the Council.</p>	
23.	<p>Apply legislative provisions exclusively to special committees that have delegated council powers and to administrative committees (as described in the proposed direction above).</p>	<p>No, see comments.</p>	<p>As per 22 above.</p> <p>Council's reservations in relation to this direction were confined to the administrative burden of annual rules. This is dealt with in 22 above.</p>	
24.	<p>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.</p>	<p>Yes.</p>	<p>The Draft Bill makes no reference to assemblies of Councillors, nor advisory committees as per the Direction, which MCC supported.</p> <p>That is not to say that assemblies of Councillors should not continue to be minuted or recorded however this will be left to the discretion of each Council - the mechanism for which would be the Governance Rules.</p> <p>That said, the conflict of interest provisions apply (albeit to differing degrees) to all meetings – not just Council Meetings and meetings of delegated committees and to this end the Draft Bill may offer some level of minimum protection in the absence of adequate Governance Rules.</p>	
25.	<p>Remove matters about employing council staff from the Act.</p>	<p>Yes.</p>	<p>The Draft Bill retains some provisions relating to employment of staff and inserts some new provisions. For this reason the Draft Bill may be said to partially accord with Council's submission and has thus been allocated orange.</p> <p>Relevantly, the ultimate responsibility for all staffing matters continues to rest with</p>	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
			<p>the CEO (c45(3)(b)). That said, there remains a restriction on the CEO appointing any person who has previously been a Councillor of that Council within 2 years of that person ceasing to hold office (DLGB c47(3); LGA s102(1)).</p> <p>The most notable removal provided for by the Draft Bill is that of the requirement to publicly advertise in the newspaper all senior officer roles.</p> <p>The Draft Bill provides that Senior Officers are no longer defined by reference to wage and/or reporting line to the CEO but rather, 'a senior member' of Council staff who is authorised in writing by the CEO to witness statutory declarations.</p> <p>As mentioned above at 5 above, the CEO must develop and maintain a workforce plan which, amongst other things, specifies the projected staffing requirements for a 4 year period and sets out measures to 'ensure' gender equity, diversity and inclusiveness (c45(4)).</p> <p>See further at 5 above.</p>	
26.	<p>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 that the plan be available to the mayor and to staff.</del></p>	No, see amendments and comments.	<p>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.</p> <p>As mentioned in 5 above, the Draft Bill provides that CEO must develop and maintain a workforce plan which, amongst other things, specifies the projected staffing requirements for a 4 year period and sets out measures to 'ensure' gender equity, diversity and inclusiveness (c45(4)). In relation to gender equity the Draft Bill leaves open the possibility of regulations.</p> <p>The current Act contains a requirement to develop and implement an equal employment opportunity program however the requirement is almost 'hidden away' in the schedules (LGA Schedule 6).</p> <p>Further, the Draft Bill provides that the workforce plan is available to all staff and</p>	

No	Direction	Support Yes/No	Comment	<div style="background-color: #90EE90; padding: 2px;">Yes</div> <div style="background-color: #FFD700; padding: 2px;">Partially</div> <div style="background-color: #FF0000; padding: 2px;">No</div>
			<p>Councillors.</p> <p>In relation to a proposed organisational restructure the CEO must before implementing such restructure, consult with members of staff affected by the proposed restructure and <i>inform</i> the Council in relation any restructure that <i>will</i> affect the capacity of the Council to deliver the Council Plan. The latter would appear to be a reasonably high bar.</p> <p>MCC in its submission agreed with the introduction of a workforce plan but not the requirement to consult with the Council. To the extent that there is no requirement to consult but rather to inform, the Draft Bill accords with Council's submission.</p>	
27.	Require a council CEO to consult the staff if there is a major organisational restructure.	No.	<p>This should be dealt with in an Enterprise Bargaining Agreement (EBA) and not in the legislation.</p> <p>MCC did not support this direction. Whilst the Draft Bill refers to 'a proposed restructure' and 'staff affected' rather than reference to 'major', it is nevertheless a requirement to consult and therefore does not accord with Council's submission.</p> <p>In addition, the provisions require more clarity. For example, is the addition of a staff member to a team a restructure?</p>	
28.	Require a community consultation process before making or varying a local law.	Yes.	<p>The Draft Bill provides that a Council must make a local law in accordance with its community engagement policy (c70(2)). The community engagement policy is informed by the community engagement principle - one of the 5 supporting principles that, together with the Governance Principle, provide the main framework of the Draft Bill. The Draft Bill contains some proscription in relation to the Community Engagement Policy (c54(2)) however it is largely left to each Council to determine the form and level of community engagement for each situation, save that there <i>must</i> be community engagement in relation to the</p>	

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			<p>Council Plan (c54(3)).</p> <p>The Draft Bill requires that the proposed local law be available for inspection at Council's offices and on its website (c70(5))</p>	
29.	<p>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.</p>	No.	<p>Model local laws should be developed which would not only assist Councils in the drafting process but would also make this unnecessary.</p> <p>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.</p> <p>MCC did not support this Direction, stating that in its view this would give law firms a licence to charge higher rates for this exclusive task. Instead, Council advocated for model local laws, developed at a Department level, conferring on it the task of ensuring compliance with the relevant principles.</p> <p>The requirement to have advice and certification from a qualified Australian lawyer is contained in the Draft Bill however it allows for such advice/certification to be provided by an in-house lawyer provided that person has been admitted for at least 5 years and is not a Councillor of the Council.</p> <p>This will only limit costs for those Councils that have in house lawyers. Councils who do not have in house lawyers including rural councils are generally those that can ill afford exorbitant certification fees.</p> <p>There is nothing in the Draft Bill or accompanying material to suggest that there will be any formal or informal model local laws.</p> <p>Insofar as MCC currently has an in-house lawyer and thus the Draft Bill's allowance of an in house lawyer's certification is perhaps satisfactory, it does not</p>	

No	Direction	Support Yes/No	Comment	Yes Partially No
			provide adequately for those Councils – the majority of Victorian Councils - without in house lawyers.	
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.	The Draft Bill retains the power of the Governor in Council by an Order in Council on the recommendation of the Minister to revoke a local law in whole or in part (DLGB c80(1); LGA s123(1)).	
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.	There is nothing in the Draft Bill or accompanying material in relation to model local laws.	
32.	Consult to determine the appropriate value of a penalty unit for local laws and whether the value should be indexed annually.	No, see comments.	This requires further clarification. It is unclear who the consultation is with in relation to this.  MCC did not agree here because it was not clear that it was agreeing to. It remains unclear who this consultation was proposed to be with or was with.  Insofar as the proposed consultation related to sentencing it is noted that the material released in accompaniment to the Draft Bill states that the Sentencing Act will be amended to allow for indexation of penalties for breach of local law (see 'A New Local Government Act for Victoria' DELWP 2017 p.7).	
33.	Remove the requirement to submit local laws to the minister.	Yes.	The Draft Bill removes the requirement to submit local laws to the Minister.  The Draft Bill also maintains a requirement for the Council to have it available for	

No	Direction	Support Yes/No	Comment	Yes Partially No
			inspection at its offices and on its website.	
	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.	The Draft Bill retains the current band (5-12max) of number of Councillors rather than extending the band to 15max as envisaged in the Directions Paper with which MCC agreed (DLGBc12(1) LGA s12).	
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. In accordance with the Direction generally, the Draft Bill states that the number of Councillors will be determined by regulation. The formula remains to be seen. It is not clear when a review of Councillor numbers is envisaged to be undertaken and whether that would be before the next election.	
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	No.  No.	Retention of the current structure allows flexibility. MCC does not support single wards. MCC did not agree with either Direction. The Draft Bill provides for Option 2.	★



No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
	<p>structures—unsubdivided, entirely uniform multi-member wards or entirely single-member wards—to be applied in each municipality. (Option 2)</p> <p>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.</p>		<p>The Draft Bill provides for either un-subdivided Councils or Councils with equal representation in each ward including an allowance for single member wards. (c12(4)). Specifically, there are three options viz, unsubdivided, uniform multi member wards or single wards.</p> <p>Also see 35 above.</p>	
37.	<p>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:</p> <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>• <del>on any grounds determined by</del></li> </ul>	Yes, as amended.	<p>MCC suggest a maximum of 7 years but also be exception, as per its amended direction.</p> <p>MCC supported this Direction with some amendment. MCC supported the Minister being able to direct a review of electoral representation in the 3 specific circumstances listed in dot points 1-3 but not 'on any grounds determined by the minister..' per dot point 4.</p> <p>The Draft Bill refers to a recommendation from the VEC but is otherwise silent, leaving it essentially to the discretion of the Minister, based largely on population increase.</p> <p>To the extent that the Draft Bill provides a wide discretion to the Minister to commence a review, contrary to MCC's submission, an orange rating has been applied.</p> <p>Specifically, insofar as the electoral structure, the Draft Bill provides that the Governor in Council makes an Order in Council on the recommendation of the Minister. The Draft does not specify what circumstances may spark a review by the Minister but rather states the two matters that the Minister must be satisfied in</p>	

No	Direction	Support Yes/No	Comment	<div style="display: flex; flex-direction: column; align-items: center;"> <div style="width: 15px; height: 15px; background-color: #90EE90; margin-bottom: 2px;"></div> <div style="width: 15px; height: 15px; background-color: #FFD700; margin-bottom: 2px;"></div> <div style="width: 15px; height: 15px; background-color: #FF0000;"></div> </div> <div style="display: flex; flex-direction: column; align-items: center; margin-top: 2px;"> <div style="width: 100%; text-align: center; font-size: 8px;">Yes</div> <div style="width: 100%; text-align: center; font-size: 8px;">Partially</div> <div style="width: 100%; text-align: center; font-size: 8px;">No</div> </div>
	<p>the minister published in the government gazette.</p>		<p>relation to, before making the recommendation as follows:</p> <p>(a) each ward has approximately an equal number of voters per councillor; and                      (b) the number of voters per Councillor in a ward does not vary from the average number of voters per Councillor in any other ward by more than 10% (c14(2)(a)&amp;(b)).</p> <p>Insofar as the ward boundaries, if the Minister receives advice from the VEC as that one or more of the wards will vary from the average number of voters per Councillor in another ward by more than 10% by the time of the next general election, then the Minister may request the VEC to conduct a review of the boundaries and provide advice to the Minister (c16(2)).</p> <p>The Draft Bill provides that the Minister may establish an electoral representation advisory panel to advise the Minister in relation to the electoral structure of a Council (c15).</p> <p>Following this, the Governor in Council on the recommendation of the Minister may make various Orders in Council in relation to the electoral structure including but not limited to the following:</p> <p>(a) specify or alter the total number of Councillors to be elected for the Council;                      (b) specify that the municipal district of the Council is to be an un-subdivided municipal district;                      (c) specify that the municipal district of the Council is to be subdivided into a specified number of wards;                      (d) alter the number of wards into which the municipal district of the Council is subdivided;                      (e) specify or alter the number of Councillors to be elected for each ward of the municipal district of the Council;                      (f) alter the boundaries of wards of the municipal district of the Council by</p>	

No	Direction	Support Yes/No	Comment	Yes Partially No
			<p>adding or removing an area to, or from, an existing ward give a name to, or alter the name of, a ward of the municipal district of the Council.</p> <p>(g) (c.14)</p> <p>Before making such a recommendation the Minister <i>must</i> seek to ensure that each ward has approximately an equal number of voters per Councillor, and the number of voters per Councillor in a ward does not vary from the average number of voters per Councillor in any other ward by more than 10% (c14(2)(b)) which is not dissimilar to the current provision (s219D(c)).</p>	
38.	<p>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.</p>	Yes.	<p>We note that a person would still be able to mark the entire ballot.</p> <p>MCC supported this direction for partial preferential voting in line with the Victorian Legislative Council elections.</p> <p>The Draft Bill proposes no change where more than 2 Councillors are being elected (LGDB c289; LGA Sch3 11B 2) and thus a rating of red has been applied.</p>	
39.	<p>Implement a countback method to fill casual vacancies between general elections by which all valid votes cast at the general election would be counted, not just those of the vacating councillor (excluding the votes that made up the quotas of the continuing councillors).</p>	Yes.	<p>As per the direction, supported by MCC, the Draft Bill provides for a countback method to fill casual vacancies between general elections by which all valid votes cast at the general election would be counted, not just those of the vacating councillor. The election or exclusion of a previously elected candidate during the countback has effect only for the purpose of the continuation of the count. The countback stops as soon as a candidate who was not previously elected obtains a quota (c299(6)&amp;(7)).</p>	
40.	<p>Consolidate all electoral provisions in a schedule to the Act, arranged</p>	Yes.	<p>Despite this direction, which was supported by MCC, the electoral provisions have not been placed in a schedule however the electoral provisions have been</p>	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100px;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
	<p>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.</p>		<p>moved to the back and now form Part 9.</p>	
41.	<p>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</p> <p>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></p>	<p>No.</p> <p>Yes.</p>	<p>MCC did not support Option 1, nor has this been taken up in the Draft Bill.</p> <p>Option 2, however the VEC must make property owners sufficiently aware and it must be sufficiently easy for these to enrol.</p> <p>MCC supported Option 2, which anticipated the existing franchise except that the enrolment of property owners be by election rather than automatic.</p> <p>The Draft Bill proposes no change to the electoral franchise (residents, owner ratepayers, corporations including occupiers and owners) (c254) and in this way is a partial compliance with option 2 and thus a rating of orange has been applied.</p>	

No	Direction	Support Yes/No	Comment	<table border="1"> <tr> <td>Yes</td> <td>Partially</td> <td>No</td> </tr> </table>	Yes	Partially	No
Yes	Partially	No					
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.	There is nothing in the Draft Bill in this regard. This may be included in subsequent regulations.  As per the current Act, it remains an offence for a person to nominate when not qualified or entitled to become a Councillor (penalty 240 penalty units or imprisonment for 2 years) (DLGB c300; LGA s52).				
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.  Yes.	There is nothing in the Draft Bill in this regard. This may be included in subsequent regulations.  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.  Contrary to Council's submission, the Draft Bill provides that the Minister will determine the voting method upon advice from the VEC. The drafting of the clause would indicate that the decision will be applicable to all Councils in the general election (c276). This interpretation is consistent with the accompanying material from the Department.	★			
	<b>Chapter 4: Councils, communities and participatory democracy</b>						

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
45.	<p>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.</p>	<p>No, see amendments and comments.</p>	<p>MCC would be interested to see the wording of any requirement. Otherwise, MCC refers to the Overarching Comments above.</p> <p>See Overarching comments above.</p>	
46.	<p>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.</p>	<p>Yes.</p>	<p>See Overarching comments above.</p> <p>Clause 54 of the Draft Bill provides that Council must adopt and maintain a community engagement policy capable of being applied in relation to its strategic planning and policy development, with mechanisms for informing the community of the outcomes and with different processes for community engagement depending on the significance and complexity of the matter.</p>	
47.	<p>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.</p>	<p>No, see comments.</p>	<p>MCC broadly agrees but also refers to the Overarching Comments above.</p> <p>See 46 above.</p>	
48.	<p>Include in regulations that an engagement strategy must ensure:</p> <ul style="list-style-type: none"> <li>• the community informs the engagement process</li> <li>• the community is given</li> </ul>	<p>Requires clarification.</p>	<p>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.</p> <p>MCC neither supported nor opposed this direction but rather stated that it</p>	

No	Direction	Support Yes/No	Comment	
	<p>adequate information to participate</p> <ul style="list-style-type: none"> <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>		<p>required clarification.</p> <p>The Draft Bill does not contain detailed proscription as to the community engagement <i>policy</i> (rather than <i>strategy</i> as mentioned in the direction).</p> <p>The Draft Bill provides that the community engagement policy is underpinned by the community engagement principles (one of the 5 supporting principles) which are as follows:</p> <ul style="list-style-type: none"> <li>(a) a community engagement process with a defined scope;</li> <li>(b) participants must have access to objective, relevant and timely information to inform participation;</li> <li>(c) participants must be representative of those affected by the subject of the community engagement;</li> <li>(d) participants are entitled to 'support' (not defined) to enable meaningful and informed engagement;</li> <li>(e) participants are informed of the ways in which the process will influence Council decision making. (c55)</li> </ul> <p>The policy must:</p> <ul style="list-style-type: none"> <li>(a) give effect to the community engagement principles; and</li> <li>(b) be capable of being applied in relation to any of the Council's strategic planning or policy development; and</li> </ul>	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%; font-size: 8px;"> <span style="background-color: #92d050; padding: 2px;">Yes</span> <span style="background-color: #ffc000; padding: 2px;">Partially</span> <span style="background-color: #ff0000; padding: 2px;">No</span> </div>
			<p>(c) describe the type and form of community engagement proposed, having regard to the significance and complexity of the matter the subject of community engagement and the level of resourcing required; and</p> <p>(d) specify a process for informing the municipal community of the outcome of the community engagement; and</p> <p>(e) include any other matters prescribed by the regulations, give effect to the principles. (c54)</p>	
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.	<p>Retain the current provisions, noting also MCC's Overarching Comments.</p> <p>MCC did not support this direction, preferring the current provisions. The current provisions are 6 months after the general election or 30 June, whichever is the later (s125)</p> <p>The Draft Bill provides that the Council Plan must be prepared and adopted by Council by 30 June after a general election for a period of at least the next 4 financial years (c85).</p> <p>As the Draft Bill accords with the current provisions in all material aspects, a green rating has been applied.</p>	
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.	<p>The Draft Bill provides that the Mayor must report annually on the implementation of the Council Plan (c95)</p>	



No	Direction	Support Yes/No	Comment	<div style="background-color: #92d050; padding: 2px;">Yes</div> <div style="background-color: #ffcc00; padding: 2px;">Partially</div> <div style="background-color: #ff0000; padding: 2px;">No</div>
51.	Require a council to publish on its website all documents and registers currently required to be kept on council premises and ensure this information is accessible to the public.	Yes.	<p>MCC supported this Direction, which has been borne out in the Draft Bill via Public Transparency <i>Principles</i> underpin the required Public Transparency <i>Policy</i>.</p> <p>The Public Transparency Principles are as follows:</p> <ul style="list-style-type: none"> <li>(a) Council information must be publicly available unless—                             <ul style="list-style-type: none"> <li>(i) the information is confidential by virtue of this Act or any other Act; or</li> <li>(ii) public availability of the information would be contrary to the public interest;</li> </ul> </li> <li>(b) Council information must be understandable and accessible to members of the municipal community;</li> <li>(c) public awareness of the availability of Council information must be facilitated.</li> </ul> <p>For the purposes of the public transparency principles, information includes documents.</p> <p>The Public Transparency Policy must</p> <ul style="list-style-type: none"> <li>(a) give effect to the public transparency principles; and</li> <li>(b) describe the ways in which Council documents and information will be made available; and</li> <li>(c) specify which Council documents and information must be publicly</li> </ul>	

No	Direction	Support Yes/No	Comment	Yes Partially No
			available, including all policies, plans and reports required under this Act or any other Act.	
52.	Require a council to publish its CEO remuneration policy on its website.	Yes.	There is no specific requirement in the Draft Bill to publish the Chief Executive Officer Employment and Remuneration Policy on the Council internet site however it, like many other policies (in particular those required by the Act) these would likely be made public pursuant to Council's required Public Transparency Policy (underpinned by the Public Transparency Principles). See 51 above.	
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.	MCC agreed with this direction save that it did not agree that the any guidelines be based on Melbourne City Council practices.  As any Guidelines are yet to be drafted/released, it is not clear whether they will be based on a Melbourne City Council model.  The balance of the direction, with which Council agreed, would appear to have been complied with.  A principles based act/bill might be described as regulation for minimum standards.  The Draft Bill does that Ministerial 'good practice guidelines' may be issued (c82) relating to the Act or regulations. Such guidelines would be published on the Department's website. Compliance with the Guidelines will be good evidence of compliance with the Act.	
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,	Yes, see comments.	Also include a definition of vexatious complainant, and the ability for Council to appropriately deal with same.  The Draft Bill contains a fairly comprehensive definition of complaint including a definition of decision (being a decision that is not a policy decision nor a decision	

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	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.		subject to a statutory review) (c146(3))  There is no mention of vexatious complaints in the Draft Bill, as per MCC's submission, thus resulting in an orange rating, however the Council could include this matter in its complaints policy.	
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.	The Draft Bill contains a requirement for Councils to develop and maintain a complaints policy including a process for dealing with and reviewing the actions, decision or service in relation to which the complaint was made. (c146)  In terms of the review, the Draft Bill refers to independence from 'the person' who took the action, made the decision or provided the service - not independent from the Council.	
	<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</li> </ul>	Yes.	Despite the direction proposing the current Councillor conduct framework be included in the Draft bill 'largely unamended' there are some fairly significant changes which has resulted in the orange rating.  First, and most usefully, it contains a clause which sets out the purpose of the Councillor Code of Conduct. The purpose is stated as being two-fold viz, the setting the standards of behaviour and the agreement of an internal resolution process for complaints of a breach of the Code. Many a community member	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
	<p>officers, principal councillor conduct registrars</p> <ul style="list-style-type: none"> <li>the role and powers of the minister and ministerial monitors and the Chief Municipal Inspector (CMI).</li> </ul>		<p>mistakes this document as an avenue of complaint/redress against a Councillor when in fact it is an internal facing document only.</p> <p>Other notable changes include the removal of the requirement for the Code to be adopted at a special meeting called for the purpose only of adoption of the Code, the removal of a declaration to be made before the CEO and the requirement for the Code to be agreed to by a resolution requiring at least two thirds of the total number of Councillors voting in the affirmative (for Melton this would mean 6) (c180(2)).</p> <p>In keeping with the removal of the special meeting and declaration requirements, the Draft Bill provides that the Code may be amended at any time and states that the current code existing upon the election of the new Council will necessarily apply until a new Code is adopted (c180(1), 179(6)).</p> <p>Also removed is the specific requirement to have the Code on the Council's internet site. That said, a Council may decide that it should be available on its internet site pursuant to the Public Transparency Policy (and Public Transparency Principles – see 51 above).</p> <p>Insofar as the sanctions for contravention of the Code, in addition to their being moved so as to be placed more proximate to the general requirements of the Code, there has been removed the specification as to the maximum number of meetings or months that a Councillor be directed not to attend council meetings / position chairing committees. In the Draft Bill the reference is to 'the period determined by the Council' (DLGB c182(b)&amp;(c); LGA s81AB(b)&amp;(c)). This is not insignificant.</p> <p>Many of the other provisions in the Draft Bill are the same as the current Act including the requirement for the adoption within 4 months of a general election, requirement to include Councillor conduct principles.</p>	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
			<p>The accompanying material to the Draft Bill states that the form of oath that a Councillor takes at the commencement of her/his term will include a declaration to abide the Code in its current form and as amended from time to time (see 'A New Local Government Act for Victoria' DELWP 2017 p.11).</p> <p>Insofar as the functions and powers of the municipal monitor and CMI, both roles have been retained in the Draft Bill however, the role of the municipal monitor has been focussed or even arguably pared back to be a role limited to the provision of advice in relation to Governance but not investigations per se. That said, it remains incumbent on the municipal monitor to make a report to IBAC if there is evidence of corrupt conduct. (DLGB c213, 214 &amp; 215; LGA s223CA, 223CB &amp; 223CC).</p> <p>Practically this has also seen the removal of the municipal monitor's ability to require a person 'to appear before the municipal monitor for examination on oath and to answer questions'.</p> <p>A redefined comparison of the powers is at <b>Appendix 2</b>.</p>	
57.	Include in Regulations all the processes specified in the current councillor conduct framework.	Yes.	It is yet to be seen what will be in regulations in relation to Councillor Conduct framework.	
58.	Extend the offence of release of confidential information to council staff who unlawfully disclose confidential information.	No.	<p>But if so, only in relation to Senior Officers.</p> <p>MCC did not support this Direction which has nevertheless been taken, albeit with slight amendment in that the threshold is arguably higher for a prosecution. As the direction is against Council's submission it has been rated red.</p> <p>The Draft Bill does extend the offence to all staff. The language has been slightly changed from 'information that the person knows, or should reasonably know, is</p>	

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			<p>confidential' to 'intentionally or recklessly disclose information that the person knows, or should reasonably know, is confidential information'. This drafting change has the effect of making it clear that mens rea (the guilty mind) is an element of the offence rather than a strict or absolute liability offence.</p> <p>It is a rebuttable presumption at law that mens rea is an element of every criminal offence (see He Kaw The v R (1985) 157 CLR 523) however this drafting change puts the matter beyond any doubt. This is sensible given that it casts a wider net insofar as those it applies to.</p>	
59.	<p>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.</p>	Noted.	<p>As per 58 above.</p> <p>See 58 above. Is a 'less serious' breach one that does not contain the element of mens rea? Clarification is required here.</p>	
60.	<p>Provide that a conflict of interest exists where:</p> <ul style="list-style-type: none"> <li>• the councillor or a person with whom they are closely associated stands to gain a benefit or suffer a loss depending on the outcome of the decision (a 'material conflict of interest') the councillor has, or could reasonably be taken to have, a conflict between their</li> </ul>	No.	<p>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 side of caution, or risks people being brought to account for marginal matters when significant penalties apply.</p> <p>MCC did not support this direction, based on a material effect, because it was thought to be too vague. MCC also expressed concerns with people facing severe penalties in the face of vague provisions.</p> <p>Whilst the Draft Bill does indeed provide for two broad types of conflict of interest viz, material and general, rather than the very prescriptive current provisions, it</p>	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%; font-size: 8px;"> <span style="background-color: #92d050; padding: 2px;">Yes</span> <span style="background-color: #ffcc00; padding: 2px;">Partially</span> <span style="background-color: #ff0000; padding: 2px;">No</span> </div>
	<p>personal interests and the public interest that could result in a decision contrary to the public interest.</p>		<p>also essentially removes the penalty for the general conflict provisions. Accordingly, as it addresses some of Council's concerns, a rating of orange has been given.</p> <p>There remains a number of circumstances which will not be taken to be a conflict including, but not limited to, interests held in common with a 'substantial proportion of residents, ratepayers or electors of the municipal district and does not exceed the interest held by [them]' (current Act refers to 'generally held by' ... or 'held in common with a large class of persons' – s77A(5) and DLGB c168(b)).</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.	<p>MCC supported this Direction has been borne out in the Draft Bill save that it does not appear to include reference to a discretion by the CMI. It goes without saying that the CMI has discretion in any matter it pursues however; this is not stated as being a threshold per se. The result however is the same and thus a green rating has been applied.</p> <p>Whilst applications for Councillor conduct panels for a finding of serious misconduct may be otherwise made by the Council, a Councillor or a group of Councillors or the CMI, an application alleging breach of conflict of interest may only be made by the CMI direct to the CCR (c 189(5)).</p> <p>The CCP may make a finding of misconduct or serious misconduct and, having done so, has various powers including to direct the Councillor in question to apologise, suspend the Councillor for a period not exceeding 2 months/6 months (misconduct/serious misconduct), direct that the Councillor is ineligible to hold the office of Mayor or Deputy Mayor for the remainder of the term (c202(2) (which is automatic in relation to a finding of serious misconduct) or ineligible to chair meetings of delegated committees (serious misconduct only) (c202(4)).</p>	
62.	<p>Retain the capacity to prosecute a person in court for a conflict-of-interest</p>	Yes.	<p>The Draft Bill provides that a breach in respect of a <i>material</i> conflict is an offence which carries a penalty of 120 penalty units.</p>	

No	Direction	Support Yes/No	Comment	<div style="display: flex; flex-direction: column; align-items: center; justify-content: center;"> <div style="width: 10px; height: 10px; background-color: #90EE90; margin-bottom: 2px;"></div> <div style="width: 10px; height: 10px; background-color: #FFD700; margin-bottom: 2px;"></div> <div style="width: 10px; height: 10px; background-color: #FF0000;"></div> </div> <div style="display: flex; flex-direction: column; align-items: center; justify-content: center; font-size: 8px;"> <div style="width: 10px; height: 10px; background-color: #90EE90; margin-bottom: 2px;"></div> <div style="width: 10px; height: 10px; background-color: #FFD700; margin-bottom: 2px;"></div> <div style="width: 10px; height: 10px; background-color: #FF0000;"></div> </div>
	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.		As noted above at 61 there is also the ability for the CMI to apply for a councillor conduct panel for a finding of serious misconduct.	
63.	Retain the current legislative provision on misuse of position.	Yes.	The Draft Bill contains essentially the same provision as in the current Act (DLGB c162; LGA s76D).	
64.	Retain the current legislative provisions on improper direction, noting they will be supported by the further legislative measures to clarify the roles and responsibilities of councillors, mayors and CEOs set out in Chapter 2 of this paper.	Yes.		
65.	Retain the current enforcement role, functions and powers of the CMI and the inspectorate.	No, see comments.	<p>All powers must be subject to and/or contain legal professional privilege exemption/provisions.</p> <p>MCC's reservations here were around legal professional privilege but it otherwise supported the direction.</p> <p>The production provisions which require a person to produce to the CMI and/or a Commission of inquiry are not stated as being subject to legal professional privilege as per Council's submission, however neither do the provisions state that it does not apply such as is the case currently.</p> <p>The balance of the direction, with which MCC agreed, has been taken in the Draft</p>	



No	Direction	Support Yes/No	Comment	<table border="1"> <tr> <td style="background-color: #90EE90;">Yes</td> <td style="background-color: #FFD700;">Partially</td> <td style="background-color: #FF0000;">No</td> </tr> </table>	Yes	Partially	No
Yes	Partially	No					
			Bill, accordingly a rating of orange has been applied.				
	<b>Chapter 6: Ministerial oversight of councils</b>						
66.	<p>Include in the Act principles to apply to a proposal to create a new municipality, that:</p> <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.	<p>As anticipated, the Draft Bill does contain provisions pursuant to which a restructuring advisory panel advising the Minister in this regard <i>must</i>, amongst other things, ensure that a process of community engagement is followed (c253(2) and <i>must</i> consider, amongst other things, all of the dot points listed in the Directions (c253(c)).</p> <p>The relevant clauses could be redrafted to ensure that they are couched terms creating a more positive obligation however, in reality, they would likely achieve the same regardless.</p> <p>For example, compare:</p> <p>'The panel must consider ... (c) whether the views of the local communities affected by the creation of the new Council have been taken into consideration' [<i>the wording in the Draft Bill</i>]</p> <p>with</p> <p>'The panel must consider ... (c) the views of the local communities affected by the creation of the new Council' [<i>the wording of the Direction</i>]</p> <p>The first version only strictly requires the panel to determine whether not the views have been taken into account whereas the latter actually requires the views to be taken into account. <b>That there is a minor but not insignificant change from the Direction is the reason for the orange rating.</b></p>				

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-around; width: 100px;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
67.	Other than the proposed direction above, retain the current provisions (in Part 10A) about altering external municipal boundaries.	Yes.	<p>The Draft Bill contains largely the same provisions as the current Act save that there is now a provision allowing for the appointment of a chairperson(s) to the new Council who will be deemed to be the Mayor until an election is held (c250(4)).</p> <p><b>This minor difference not specifically mentioned in the Direction has seen this rated orange.</b></p> <p>A redefined comparison of the relevant provisions is at <b>Appendix 1.</b></p>	
68.	<p>Retain the power of the minister to:</p> <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.	<p>The Draft Bill contains a definition of municipal monitor in the Definitions clause – a definition which is referable to the operative provisions (c213).</p> <p>The Draft Bill contains similar provisions to the existing Act in relation to the functions and powers of the municipal monitor, save that in relation to the powers, the provisions in the Draft Bill are arguably wider by being made more general, with main power now proposed as 'the power to do all things necessary or convenient to be done in connection with the performance of the functions of a Municipal Monitor ...' (DLGB c215; LGA s223CC). A redefined comparison on the relevant powers is <b>Appendix 2.</b></p> <p><b>The minor differences not specifically mentioned in the Direction has seen this rated orange.</b></p> <p>The current Act's specific provisions contained a power to require a person to answer questions under oath. Notwithstanding the apparent breadth of the redrafted general power to do all things, my interpretation would be that unless it is specifically set out, there is no longer a power to require questions to be answered under oath.</p> <p>The Draft Bill contains, in accordance with the Direction, provisions allowing the Minister to give directions to a Council in relation to its governance (c209(1))</p>	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
			<p>including and in addition to any recommendation of a municipal monitor, chief municipal inspector, commission of enquiry, Ombudsman or IBAC(c209(2)). These provisions are a minor extension on the current provisions which state that the Minister may in writing direct the Council to amend, discontinue or replace its governance process and policies as advised by a municipal monitor or chief municipal inspector (s218A).</p> <p>Also, the Draft Bill retains the existing provisions in relation the power to direct that certain financial statements be submitted to the Minister (c209(3); LGA s135).</p> <p>Further, the Draft Bill empowers the Minister to give a direction not to employ a new Chief Executive Officer [I am not clear here whether this means at all or is intended to apply to a particular person – the next subclause would imply the latter but this should be clarified because there is no provision which anticipates advising the Minister of an impending employment] or not to re-employ a Chief Executive Officer (c209(4)) provided that there has been recommendation by either a municipal monitor, CMI or commission of inquiry and the Minister is satisfied on reasonable grounds that such employment/reemployment could result in either a failure by the Council to provide good governance (as that term is defined) or the Council acting unlawfully (c209(5)).</p> <p>The current provisions allow for the Minister to publish a notice in the Government Gazette forbidding a Council to employ a new CEO or into a new contract with an existing CEO (s95B(3)(a)).</p> <p>The stand-down provision has been removed and replaced with the ability to suspend an individual Councillor. See further at 69 below.</p>	
69.	Empower the minister to recommend that a councillor be suspended by an	Yes.	The Draft Bill contains, as per the Direction, a provision allowing for the suspension of an individual Councillor. This provision replaces the current stand	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
	<p>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:</p> <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 been provided with detailed reasons for the recommendation and was given an opportunity to respond to their</li> </ul>		<p>down provision (DLGBc243; LGAs219F). The Minister may make a recommendation to the Governor in Council if satisfied on reasonable grounds that the Councillor has caused or contributed to:</p> <ul style="list-style-type: none"> <li>a serious risk to the health and safety of a Councillor or member of Council staff; or</li> <li>a failure by the Council to provide good governance (as that term is defined); or</li> <li>a failure by the Council to comply with a governance direction</li> </ul> <p><u>and</u></p> <ul style="list-style-type: none"> <li>the municipal monitor, CM, Ombudsman, IBAC or commission of enquiry have recommended the suspension, having first provided the Councillor with the reasons and recommendation and the opportunity to be heard. There is no mention of 'a Council (be resolution)' recommending a suspension as mentioned in the Direction (highlighted over). <b>This is the chief reason for the orange rating.</b></li> </ul> <p><u>and</u></p> <ul style="list-style-type: none"> <li>if the Councillor is not suspended, the creation of a serious risk to health and safety of a Councillor or Council staff, of failure to provide good governance or failure to comply with a direction <u>will</u> continue.</li> </ul> <p>The proposed clause is in more specific terms than the current stand down provisions, which refer to 'behaving in a manner that does not accord with the role of a Councillor' and 'preventing the Council from performing its functions'. The greater specificity and the use of 'ands' and 'will' rather than 'may' result if the suspension is not made, all combine and the make this a higher bar than was used for the stand down provision.</p>	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%; font-size: 8px;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
	recommendation and <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>		<p>The Draft Bill provides, like the current Act that a Councillor who is suspended ceases to be a Councillor for the term of the suspension, is not entitled to receive an allowance for the period of the suspension and must return all equipment at the beginning of any term of suspension (but now only where such period is exceeding 2 months in duration (DLGB c35; LGA s66A)</p> <p>Clause 210 of the Draft Bill provides that the Minister may take a failure to comply with written direction of the Minister into account when recommending the suspension of a Councillor or all Councillors of a Council. This is essentially the same as the existing section 218A which applies to a recommendation to suspend all Councillors of a Council.</p>	
70.	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.	Yes.	The Draft Bill contains provisions which, as anticipated in the Direction, leave the current provisions largely unchanged (DLGB c245 and 246; LGA s219).	
71.	Streamline the minister's power to conduct inquiries into councils into a single power to appoint commissions of inquiry consisting of one or more commissioners to inquire into and make recommendations to the minister about any matter as requested by the minister. This will include, but not be limited to: <ul style="list-style-type: none"> <li>• governance issues</li> <li>• financial probity issues</li> </ul>	Yes.	The Draft Bill contains provisions, albeit somewhat improved/redrafted, that are largely the same as the existing provisions in relation to Commissions of Inquiry (DLGB c221 to 242; LGA 209 – 218A)	

No	Direction	Support Yes/No	Comment	Yes Partially No
	<ul style="list-style-type: none"> <li>disputes between councils and other parties.</li> </ul>			
72.	Retain the existing power to forbid a council from employing a new CEO or entering into a new contract with an existing CEO but amend the power to provide that it can only be exercised on the recommendation of a municipal monitor or the CMI.	Yes.	The Draft Bill contains a provision which requires that there be a recommendation to the Minister from the two entities mentioned (municipal monitor and CMI) and adds Commission of Inquiry as another entities that can recommend to the Minister (c209(4)). Further, the Minister must not give the direction unless satisfied on reasonable grounds that the employment or re-employment <i>could</i> result in a failure by the Council to provide good governance (defined) or the Council acting unlawfully (DLGB s209(5); LGA s95B) .	
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.	MCC did not agree with this Direction and argued that the current fixed 5 year term should remain.  Contrary to Council's submission, the Draft Bill removes the provisions relating to Senior Officer employment matters save that it allows the CEO to determine which members of staff should be Senior Officers for the purpose of witnessing statutory declarations (c47(2)).	
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.	The Rating provisions are largely found in Part 5 of the Draft Bill. The provisions have been redrafted and are generally clearer.  Notwithstanding Melton's submission, the rate cap provisions remain with only minor changes, none of which are material changes from the current Act.  There are other changes to the rating provisions, including but not limited to that all Councils must use the capital improved value system of valuation (except Melbourne City Council (c102)).	
75.	Retain the general power for the	Yes, with	As a general rule all regulations should apply equally however some limited	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%; font-size: 8px;"> <span>Yes</span> <span>Partially</span> <span>No</span> </div>
	<p>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.</p>	<p>reservation.</p>	<p>circumstances might lend to relief but these circumstances must be predetermined.</p> <p>MCC supported this notion broadly but argued that it must be specific. <b>The resultant provision is not specific and thus a rating of orange has been applied.</b></p> <p>The Draft Bill contains a new provision which allows a Council to apply to the Minister for a 'compliance exemption' from a regulatory requirement of the Act or the regulations. The Council must be able to prove the ability to provide good governance and public interest in the granting of the exemption (c211).</p>	
76.	<p>Empower the minister to issue non-regulatory guidelines on any matter under the Act.</p>	<p>Yes, with reservations and noting comments.</p>	<p>MCC has set out its concerns with the use of regulations and guidelines in the Overarching Comments.</p> <p>MCC's concerns here were around the option not to take up non-binding guidelines without penalty or criticism. Essentially the reverse is proposed in the Draft Bill, that is, no penalty per se for non-compliance with the Guidelines however compliance will be good evidence of compliance with the Act. This still leaves the non-compliance with the non-binding guidelines being potentially detrimental to a Council and therefore only partially in line with Council's submission. Council was otherwise supportive of the use of guidelines.</p> <p>The Draft Bill contains provisions as per this direction. See overarching comments and 53 above.</p>	
77.	<p>Remove the requirement to request ministerial exemption from public tenders, as explained in Chapter 8.</p>	<p>Yes.</p>	<p>The Draft Bill contains provisions that remove this in line with the removal of the thresholds for tenders – instead leaving it to each Council to determine its own thresholds in line with its own Procurement Policy. The Procurement Policy must contain certain things including but not limited to, the circumstances in which a tender will be required and a description of how the Council will collaborate with other Councils (c147(3)). The Procurement Policy must be reviewed at least</p>	

No	Direction	Support Yes/No	Comment	Yes Partially No
78.	Remove the power requiring a contract for a senior officer: all employment matters for council staff will now be subject to employment law.	No.	Retain the maximum 5 year contracts. Notwithstanding Melton's submission, this has been removed. See also 73 above.	
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. There does not appear to be anything in the Draft Bill which addresses this specifically.	
<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 <b>community plan</b> , financial plan and asset plan—and short-term (1 year) reporting documents—being the budget and annual report (containing all performance reporting).	Yes.	The Draft Bill contains essentially all of this as per the Direction with the exception that 'community plan' is replaced with 'community vision'.	
81.	Include in Regulations and guidelines	Yes.	MCC notes the use of the word 'will' here. Any regulations need to be clear on	



No	Direction	Support Yes/No	Comment	Yes Partially No
	details about the information a council will include in each plan.		what <i>must</i> be included and what <i>may</i> be included, rather than references to 'will'.  The Draft Bill contains some detail, drafted using the word 'must' (see for example c 85 relating to the Council Plan) and also provisions allowing for regulations to be prescribed – see for example c85 relating to Council Plan. It is considered to accord with Melton's submission.	
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 services, infrastructure and amenity priorities for the council term.</li> </ul>	No, see comments.	MCC advocates to maintain the current requirements and timelines in relation to the Council Plan.  Notwithstanding Melton's submission the Draft Bill provides that the Council Plan must be prepared and adopted by Council by 30 June after a general election for a period of at least the next 4 financial years (c85).  The current provisions are 6 months after the general election or 30 June, whichever is the later (s125).  The Draft Bill does require that the Council Plan must be informed by a community engagement process (c54(3) and that it include information about the services, infrastructure and amenity priorities (c85(2)(e)).  See also 5, 28, 49 and 50 above.	
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.  MCC did not agree with the removal of the requirement to send to the Minister but otherwise supported the Direction. Notwithstanding its submission, the requirement to send to the Minister has been removed. The balance of the Direction is reflected in the Draft Bill.	

No	Direction	Support Yes/No	Comment	Yes Partially No
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.  MCC was not in favour of this given its lack of Control. The resultant Draft Bill does not contain a community Plan.  The Draft Bill does not contain a requirement of a community plan but rather simply a community vision (which this Council already undertakes).	
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.  See 84 above.	
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 management, and for council to review and approve this	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).  The Draft Bill contains provisions requiring a 10 year Financial Plan to be developed and kept <i>at all times</i> . Certain things must be included in the Financial Plan (c86). <b>To the extent that a deadline is not applicable in the current</b>	

No	Direction	Support Yes/No	Comment	Yes Partially No
	plan annually.		<b>Draft Bill, a rating of orange has been applied.</b>	
87.	Remove the requirement for a council to prepare a strategic resource plan.	Yes.	The Financial Plan referred to in 86 above essentially subsumes the strategic resource plan requirements.	
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.	<p>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.</p> <p>The Financial Plan described in the Draft Bill contains the matters listed in this direction save that community engagement is not specifically required (except in relation to the Council Plan insofar as the Financial Plan relates to it). The said, there is a requirement for a community engagement policy which may well dictate this, in line with the community engagement principles. See overarching comments and 48 above. Overall it is considered to accord with the Direction as put.</p>	
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.	<p>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).</p> <p>The Draft Bill provides, notwithstanding Melton's submission, for a rolling 10 year asset plan to be adopted and kept in force at all times (c87). <b>To the extent that a deadline is not applicable in the current Draft Bill, a rating of orange has been applied.</b></p>	

No	Direction	Support Yes/No	Comment	Yes Partially No
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 community engagement process.	Yes.	The Draft Bill contains this, as per the Direction (c87(3)(a)).	
91.	Set out requirements for what is to be included in the financial and asset plans in Regulations and guidelines.	Yes.	The Draft Bill contains some detail and also provisions allowing for regulations to be prescribed – see for example clause 87(3)(b).	
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.	The Draft Bill contains provisions allowing for 4 year budgeting – with annual budgets and 3 year projections – akin to State Budgets. This would appear to be a new Direction not previously mentioned by the Government and for this reason a rating of orange has been applied.  The Draft Bill provides for quarterly budget reporting and in addition, in the second quarter, must contain a statement by the CEO as to whether a revised budget is or may be required (c92(3)).	
93.	Include in the Act a clearer definition of material variation in order to clarify when a revised council budget must be struck.	Yes.	This does not appear to be included as anticipated by the Direction. It is assumed that it refers to accepted accounting standards/principles and to this end is probably not a critical omission.	
94.	Remove the requirement to submit a copy of the adopted budget to the	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.	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100px;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
	minister.		The Draft Bill removes the requirement to send to the Minister and is thus in contrast to MCC's submission.	
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 legislation</li> <li>• service reviews and continuous improvement</li> <li>• collaborative arrangements</li> <li>• the internal control environment.</li> </ul>	No, as amended and taking into account comments.	MCC broadly supports the expanded view of the audit and risk committee however makes the following points: <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 framework/process and its effectiveness but not looking at the operational level.</li> </ul> MCC broadly supported this Direction but had reservations as to The Draft Bill (c53(2)) provides that the composition and scope of the Audit and Risk Committee. Specifically MCC referred to the Committees task in relation to the existence of framework and process rather than the content of same. Despite its submission, the Draft Bill's gender equity provisions only apply to staff and the Audit and Risk Committee's brief is broad and, open to interpretation as to how operational it may be. <p>It is an 'inclusive' provision, rather than an 'exhaustive' one. On one view it is as limited as a Council may make it in its Charter. On another view the words of the clause are broadly drafted and use the term 'monitor' in most instances. It is therefore an orange rating of partially complying with Council's submission.</p> <p><i>(2) The Audit and Risk Committee Charter must specify the functions and responsibilities of the Audit and Risk Committee including the</i></p>	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
			<p><i>following—</i></p> <ul style="list-style-type: none"> <li><i>(a) monitor the compliance of Council policies and procedures with—</i></li> <li><i>(i) the overarching governance principles; and</i></li> <li><i>(ii) this Act and the regulations and any Ministerial directions;</i></li> <li><i>(b) monitor Council financial and performance reporting;</i></li> <li><i>(c) monitor and provide advice on risk management and fraud prevention systems and controls;</i></li> <li><i>(d) oversee internal and external audit functions.</i></li> </ul>	
96.	Require the audit and risk committee to include a majority of independent members and include councillors, but not council staff.	Yes.	<p>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.</p> <p>MCC supported this Direction but also argued for gender equity provisions as per 95 above and stipulation of expertise.</p> <p>The Draft Bill contains provisions largely in line with the Direction but not necessarily Council's comments above.</p> <p>The Draft Bill provides that the A&amp;R Committee consist of a majority of members who are not Councillors of the Council and who collectively have expertise in financial management and risk and experience in public sector management and not include staff (c52(3)(b) and (c)).</p> <p>There is no reference to gender equity, unlike the provisions relating to staff.</p>	

No	Direction	Support Yes/No	Comment	Yes Partially No
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.  The Draft Bill contains a requirement for biannual reporting (c53(5))	
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.	The Draft Bill contains these provisions as per the Direction (LGDB c93; LGA 131).	
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.  The Draft Bill does not contain a requirement to send to the Minister.	
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.  MCC disagreed with this Direction only to the extent that it seemed to imply a special meeting was required to present the annual report.  The Draft Bill contains provisions which require the Mayor to report on the Council Plan by way of the annual report at a meeting to be open to the public and accordingly, the Draft Bill accord's with Council's submission.  There is also provisions around the timing in election and non election years	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100px;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
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.	<p>(c95). The public notice requirements have been removed.</p> <p>MCC seeks clarification in relation to what 'take account of' means. MCC would advocate for a 'desktop review' only.</p> <p>MCC had concerns around what 'take account of' would mean but it otherwise supported this Direction. The Draft Bill does contain the requirement (by way of the overarching governance principles (c8(2)(h)) and to this extent it accords with MCC's submission however it remains unclear what 'taken into account' means.</p>	
	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.	<p>The Draft Bill accords with this Direction.</p> <p>The Draft Bill provides that the financial management policy is underpinned by the financial management principles (one of the 5 supporting principles) which are as follows:</p> <ul style="list-style-type: none"> <li>(a) finances must be managed in accordance with Council's financial policies and strategic plans;</li> <li>(b) risks must be monitored and managed prudently having regard to the economy;</li> <li>(c) financial policies and strategic plans including Revenue and Rating Plans must be developed in order to seek to provide stability and predictability in the financial impact on the community;</li> <li>(d) accounts and records must be kept and these must explain the financial</li> </ul>	



No	Direction	Support Yes/No	Comment	Yes Partially No
			<p>operations.</p> <p>The policy must give effect to the financial management principles (c96 and 97).</p>	
103.	<p>Include in the Act the following principles of sound financial management:</p> <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>	<p>No, see amendment and comments.</p>	<p>Terms in this section need to be clearly defined including 'strategic planning documents' and 'value-for-money' and 'stress testing'.</p> <p>MCC had concerns here around specificity. Whilst 'strategic planning documents' are not defined in the Draft Bill (and thus not completely in accordance with Council's submission), the Strategic Planning principles (one of 5 supporting principles) are set out in some detail. <b>To the extent that the Draft Bill does not accord with Council's comments it has been rated orange.</b></p> <p>See 12 above as to the Financial Management principles.</p> <p>The Draft Bill provisions would appear to be less prescriptive than those proposed in the Direction save that dot point 5 is included (almost verbatim) in the overarching governance principles.</p>	

No	Direction	Support Yes/No	Comment	Yes Partially No
104.	Remove the current best value provisions, as value for money is included in the new principles of sound financial management.	Yes.	The Draft Bill removes reference to 'best value'.	
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.	See 77 above. A Council must review its Procurement Policy at least once during each 4 year term of the Council (c147(4)). <b>To the extent that this varies from the Direction has put it has been rated orange.</b>	
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.	The Draft Bill contains a provision allowing for regulations – which remain to be seen - however it also specifically states that the Council's Procurement Policy must set out the circumstances pursuant to which a tender or EOJ must be invited. <b>To the extent that the law may ultimately only lie in the Act and not the regulations this has been rated orange.</b>	
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	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. MCC opposed this Direction. Whilst there is no such requirement in the Draft Bill	

No	Direction	Support Yes/No	Comment	Yes Partially No
	procurement policy.		relating specifically to the Procurement Policy. The Draft Bill does provide that the A&R Committee has a role in monitoring compliance with the Act, the regulations and any Ministerial direction (c53(2)(ii)) for this reason an orange rating has been applied.	
108.	Require a council to make its procurement policy available on its website.	Yes.	There is no specific requirement in the Draft Bill to publish the Procurement Policy on the Council internet site however it, like many other policies (in particular those required by the Act) it would likely be made public pursuant to Council's required Public Transparency Policy (underpinned by the Public Transparency Principles). See 51 above.	
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.	The Draft Bill accords with this Direction. See 77 above.	
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.	There is no specific provision in the Draft Bill however these would likely be in the form of regulations.	
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	Yes.	Despite this Direction, there is no specific requirement for an investment policy however this may be adopted pursuant to the requirement to adopt financial policies that give effect to the financial management principles. <b>Accordingly, a rating of orange has been given.</b>	

No	Direction	Support Yes/No	Comment	Yes Partially No
	accordance with that policy.		The Draft Bill contains provisions in relation to investments which are largely unchanged from the current Act, rather than allowing/requiring a local policy response as set out in the Direction.	
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.  See 111 above – no requirement for an investment policy however this may be adopted pursuant to the requirement to adopt financial policies that give effect to the financial management principles.  Also, as mentioned at 107 above, the A&R Committee has a role in ensuring compliance with the Act and regulations.	
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.	Despite this Direction, there is no specific requirement for a debt policy however this may be adopted pursuant to the requirement to adopt financial policies that give effect to the financial management principles. <b>Accordingly, a rating of orange has been given.</b>	
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.  See 113 above.	
115.	Remove the overdraft provisions and remove the requirement for the minister to approve the repayment of an overdraft from its borrowings.	Yes.	The Draft Bill removes these provisions in line with the Direction, with which Council agreed.	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
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.	<p>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.</p> <p>Notwithstanding Melton's submission, the Draft Bill contains a requirement to include any proposal to lease in the budget where the lease is for 1 year or more and the rent is \$100k or more per annum or the current market rental is \$100k or more or the lease is for 10 or more years.</p>	★
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 <del>where the matter has been considered as part of the budget consultation.</del>	No, see amendments and comments.	<p>See comments at 116.</p> <p>MCC did not agree with the budget submission element of this Direction but otherwise agreed with it's removal for the requirement of a submission process in relation to the sale, exchange or lease of land.</p> <p>The Draft Bill leaves it largely to the discretion of each Council as to these submissions, based on essentially a common law test.</p> <p>The Governance Rules <i>must</i> provide, amongst other things, for a Council to:</p> <ul style="list-style-type: none"> <li>(a) consider and make decisions on any matter being considered by the Council fairly and on the merits; and</li> <li>(b) institute decision making processes to ensure that any person whose rights will be directly affected by a decision of the Council is entitled to communicate their views and have their interests considered (c58(2)).</li> </ul> <p>This subsection replaces the s223 provisions of the current Act and also partially codifies the common law. That said regard should always be had to the common law and any person who rights or reasonable expectations may be affected by a decision or potential decision.</p>	
118.	Remove from the Act the requirement	Yes.	The Draft Bill removes these requirements as per the Direction.	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100px;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
	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.			
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 consistent with the revised role of a council under the Act.	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.  MCC supported this direction but with commentary that a local policy response should be mandated as well as provision for some oversight.  The Draft Bill contains revised powers refer to 'beneficial enterprises' and makes it a requirement that such beneficial enterprise align with Council's role as defined (c:149). The Draft Bill does not however call for a local policy response and therefore <b>only partially complies with MCC's submission resulting in an orange rating.</b>	
	Chapter 9: Fair rates and sustainable and efficient councils			
120.	Require a council to prepare a revenue and rating strategy that:	Yes.	The Draft Bill large accords with this direction.	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%;"> <span style="background-color: #90EE90; padding: 2px;">Yes</span> <span style="background-color: #FFD700; padding: 2px;">Partially</span> <span style="background-color: #FF0000; padding: 2px;">No</span> </div>
	<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>		<p>The Draft Bill provides for a revenue and rating plan to be prepared and adopted by the next 30 June after a general election for a period of least the next 4 financial years (c88). It does not contain proscription as to its contents save that it must be developed, along with other financial policies and strategic plans, so as to 'seek to provide stability and predictability in the financial impact on the municipal community' (c96(c) – Financial Management principles).</p> <p>To the extent that the Draft Bill varies to the Direction it has been given an orange rating.</p>	
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.	<p>The Draft Bill does not contain specific provisions in line with this direction. Broadly, it may be said that there is a requirement to align the strategy to the financial plan in that both must comply with the relevant principles however there would appear to be no requirement around or triggered by revaluation of properties. For this reason, an orange rating has been applied.</p> <p>The Draft Bill provides that the revenue and rating plan be developed in accordance with the Financial Management Principles and specifically that that plan (and other financial policies and strategic plans) 'seek to provide stability and predictability in the financial impact on the municipal community'. (c96(c)).</p>	
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</li> </ul>	No.  Yes.	<p>The Draft Bill provides that the exemptions are largely unchanged and, to the extent that MCC supported change, an orange rating has been applied.</p> <p>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.</p>	

No	Direction	Support Yes/No	Comment	<div style="display: flex; flex-direction: column; align-items: center;"> <span style="background-color: green; padding: 2px;">Yes</span> <span style="background-color: yellow; padding: 2px;">Partially</span> <span style="background-color: red; padding: 2px;">No</span> </div>
	<p>the common good)</p> <ul style="list-style-type: none"> <li>• land vested or held in trust for any charitable not-for-profit organisation and used exclusively for a charitable purpose (to be defined to mean the relief of poverty, the advancement of education, the advancement of religion or for other purposes beneficial to the community and the environment)</li> <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,</p>	<p>Yes.</p> <p>No.</p> <p>Yes.</p>		



No	Direction	Support Yes/No	Comment	Yes Partially No
	<p>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).</p> <p>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>			
123.	Retain the capacity for councils to grant rebates and concessions and apportion rates based on separate occupancies or activities.	Yes.	The Draft Bill provides that this has been retained.	
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. The Draft Bill contains provisions as per the Direction. There has been no explanation provided in the explanatory material as to the reasoning for the City of Melbourne exemption thus an orange rating has been applied.	
125.	Fix the municipal charge at a maximum of 10% of the total revenue	No, see comments.	The current maximum provides discretion. The explanation will be in the rating strategy.	

No	Direction	Support Yes/No	Comment	Yes Partially No
	from municipal rates and general rates in the financial year, divided equally among all rateable properties.		The Draft Bill provides as per the Direction, notwithstanding Council's submission. This halves the existing limit of 20 per cent.	
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. MCC did not agree with the Ministerial Guidelines element of this direction by supported the retention of differential rates. The Draft Bill provides for the retention of differential rates (c105) however it does include a power of the Minister to issue guidelines. In relation to the ability to issue Guidelines, the rating of orange has been applied.	
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. The Draft Bill does not appear to have specific provisions such as outlined in the Direction. These may be subsequently contained in Guidelines.	
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. Notwithstanding MCC's objection, c105(2) of the Draft Bill provides that the highest differential rate in a municipal district must be no more than 4 times the	


No	Direction	Support Yes/No	Comment	Yes Partially No
			lowest differential rate in the municipal district.	
129.	Retain service rates and charges, renamed 'service charges' but remove their application to the provision of water supply and sewage services.	Yes.	The Draft Bill accords overall with the Direction and has thus been rated green. It does however now include a catch all 'any other service prescribed by the regulations'.	
130.	As part of these changes, provide the minister with the power to prescribe the setting of other service charges in Regulations.	No.	MCC opposed this Direction (presumably because of lack of certainty) however the Draft Bill does include a catch all 'any other service prescribed by the regulations'.	
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. MCC's did not agree with simply amending the current provisions to make them clearer raising particular issue with the 90% requirement.  The Draft Bill provides for 'special charges' and with an appeal to VCAT. Reference to 90% requirement has been removed but replaced with a two thirds requirement. <b>Partially different to the Direction and also to Council's submission the rating here is orange.</b>  A redlined comparison of the provisions is at <b>Appendix 3.</b>	

No	Direction	Support Yes/No	Comment	Yes Partially No
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.	The Draft Bill provides for this in c121	
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 consistent with their role	Yes.	The Draft Bill provides for this in c124	
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.	The Draft Bill does not appear to contain process and/or timeline provisions or similar. These may be in Guidelines in due course.	
136.	Incorporate the municipal council rating provisions in the <i>Cultural and Recreational Lands Act 1963</i> in the	Yes, see comments.	MCC submits that all laws relating to rates and charges should be contained in the <i>Local Government Act</i> .	


No	Direction	Support Yes/No	Comment	Yes Partially No
	Local Government Act. Require in the Act that councils disclose the rates that are struck for cultural and recreational lands.		There is reference to the Cultural and Recreational Lands Act 1963 in the Draft Bill however more research would need to be undertaken to confirm the effect of this.	
137.	Incorporate the municipal council rating provisions in the <i>Electricity Industry Act 2000</i> in the Act.	Yes, see comments.	See 136 above. There is no reference to the <i>Electricity Industry Act 2000</i> in the Draft Bill.	
	<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. See overarching comments.	
139.	Include an overarching statement of the Act's objectives, intended outcomes and a plan of the remaining provisions in the Act.	Yes.	The Draft Bill proposes a very traditional approach of Objectives, Definitions, Provisions and includes a table of Proposal/Provisions.	
140.	Include high-level statements to frame	Yes, with	MCC agrees with this but notes that language will be extremely important here.	

No	Direction	Support Yes/No	Comment	<table border="1"> <tr> <td style="background-color: #90EE90;">Yes</td> <td style="background-color: #FFD700;">Partially</td> <td style="background-color: #FF0000;">No</td> </tr> </table>	Yes	Partially	No
Yes	Partially	No					
	the structure, language and content of the remainder of the Act, including new sections setting out the roles and functions and powers of councils.	reservations set out in comments.	See overarching comments.				
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.  Overall, the Draft Bill accords with this Direction.				
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.	The Draft Bill contains a new provision which allows a Council to apply to the Minister for a 'compliance exemption' from a regulatory requirement of the Act or the regulations. The Council must be able to prove the ability to provide good governance and public interest in the granting of the exemption (c211).  See also 75 above.				
143.	Include a general power for the	Yes, with	MCC agrees repeats its comments at 138.				

No	Direction	Support Yes/No	Comment	<div style="background-color: #92d050; padding: 2px;">Yes</div> <div style="background-color: #ffc000; padding: 2px;">Partially</div> <div style="background-color: #ff0000; padding: 2px;">No</div>
	minister to make guidelines to supplement Regulations on any issue related to the Act (such as best-practice versions of documents councils must adopt like councillor codes of conduct, budget documents, meeting procedures and councillor briefing processes). The presumption would be that, by adopting these best-practice documents, a council would comply with the Act and Regulations.	reservations set out in comments.	See overarching comments and 53 above.	
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.  The Draft Bill contains, in accordance with the Direction, provisions allowing the Minister to give directions to a Council in relation to its governance (c209(1)) including and in addition to any recommendation of a municipal monitor, chief municipal inspector, commission of enquiry, Ombudsman or IBAC(c209(2)) . These provisions are a minor extension on the current provisions which state that the Minister may in writing direct the Council to amend, discontinue or replace its governance process and policies as advised by a municipal monitor or chief municipal inspector (s218A).	
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</li> </ul>	Yes.	See overarching comments. All of these bullet points are taken in by the Draft Bill in some way.	

No	Direction	Support Yes/No	Comment	
	accountability <ul style="list-style-type: none"> <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>			
146.	Retain the current power of the minister to intervene where a council does not comply with the obligations set out in the Act or regulations by imposing a municipal monitor or by issuing a ministerial governance direction.	Yes.	See comments above regarding Ministerial power to issue directions and in relation to municipal monitor.	
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	Yes, with reservations set out in comments.	MCC refers to its Overarching Comments above regarding regulations. <a href="#">See comments above at 141.</a>	



No	Direction	Support Yes/No	Comment	
	about the conduct of elections and mandated obligations under the councillor code of conduct framework). Include in this power other relevant subordinate legislation.			
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	See comments above re compliance exemption.	
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. See comments above re Guidelines. Other informal guidelines are likely to be issued, although not mentioned in the Draft Bill.	
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. See comments above re Guidelines.	
151.	The minister will have a power under the new Act to require the council to adopt best-practice policies and procedures as part of a governance	No, see comments.	MCC requires more information about this direction and what amounts to 'governance issues' 'identified'. See comments above re Guidelines and power of Minister to issue directions.	

No	Direction	Support Yes/No	Comment	Yes Partially No
	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.	There is nothing to advise that this has been done or will be done at this time.	
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.	This does not appear to have been included in the Draft Bill.	
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. This is not contained in the Draft Bill however it may yet eventuate in the Bill.	
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>		MCC has no opinion in relation to this.	

No	Direction	Support Yes/No	Comment	<div style="display: flex; justify-content: space-between; width: 100%; font-size: 8px;"> <span style="width: 33%; background-color: #90EE90; text-align: center;">Yes</span> <span style="width: 33%; background-color: #FFD700; text-align: center;">Partially</span> <span style="width: 33%; background-color: #FF0000; text-align: center;">No</span> </div>
	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.			
157.	Consider matters relating to the <i>Municipal Associations Act 1907</i> independently of this directions paper in consultation with the Municipal Association of Victoria.	Yes.	This course has been taken.	
158.			There remains an ability to abstain however the Draft Bill makes it clear that this vote will be counted as a 'no' vote.  The relevant provision is:  "...for the purpose of determining the result of a vote, a Councillor attending the meeting who does not vote is to be taken to have voted against the question."	

Appendix 1

Redlined comparison of current Act, Part 10C from section 220Q with new Part 8, Division 8 from clause 249

Style Definition: Draft Heading 1

**220Q249 Power to make Orders**

Subject to this Division, the Governor in Council may, on the recommendation of the Minister, make an Order in Council to do any one or more of the following—

- (a) alter the boundaries of a municipal district by adding or removing an area to or from an existing municipal district or an outlying district;
- (b) constitute a new municipal district by amalgamating existing municipal districts;
- (c) declare an existing boundary of a municipal district;
- (d) re-constitute an existing Council;
- ~~(e) constitute a new Council;~~
- ~~(f) abolish an existing Council;~~
- ~~(g) constitute a Council as a Shire, Rural City or City;~~
- ~~(h) (c) give a name to, or alter the name of, a Council;~~
- ~~(i) divide a municipal district into wards;~~
- ~~(j) re-constitute a municipal district as an un-subdivided municipal district;~~
- ~~(k) alter the boundaries of the wards of a municipal district by adding or removing an area to or from an existing ward;~~
- ~~(l) alter the number of wards into which a municipal district is divided;~~
- ~~(m) give a name to, or alter the name of, a ward of a municipal district;~~
- ~~(n) alter the number of Councillors assigned to a Council or each ward;~~

\* \* \* \* \*

\* \* \* \* \*

S. 220Q(i) amended by No. 76/1995 s. 12.

S. 220Q(na) inserted by No. 33/1995 s. 19(3), substituted by No. 76/1997 s. 20, repealed by No. 109/2003 s. 7(4).

S.220(nb) inserted by No. 76/1997 s.20, amended by No. 52/2011 s.30(2)(e), repealed by No. 109/2003 s.7(4).

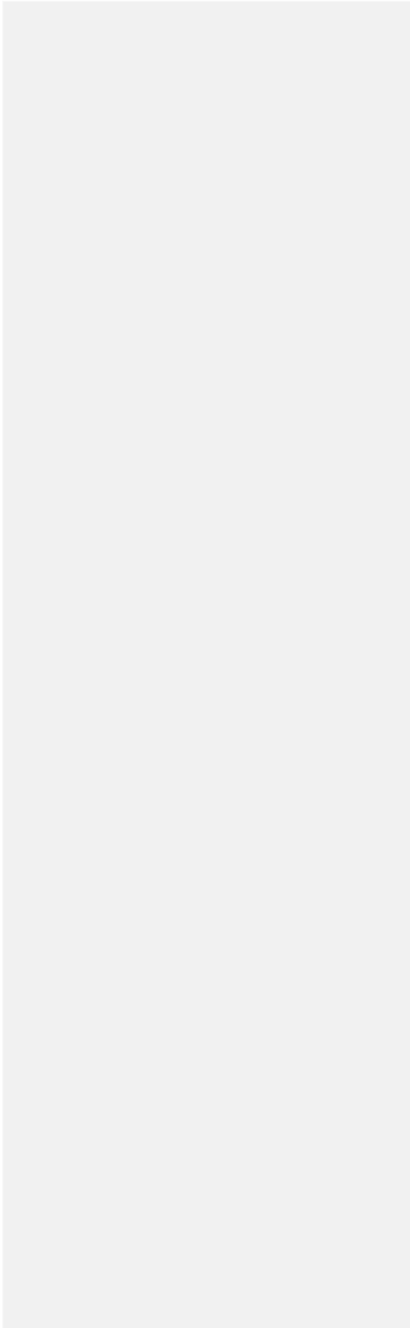
~~(e) - (f)~~ provide for the interim administration of a new or ~~re-constituted~~reconstituted Council until an election is held.

S.220R inserted by No. 43/1993 s.3.

~~220R~~ **250 Matters which may be included in Order**

- (1) The Governor in Council may by Order in Council provide for any matter necessary or convenient to give effect to this ~~Part or to any other Order in Council under this Part and to enable the effective implementation of any restructuring~~Division.
- (2) Without limiting the generality of subsection (1), an Order in Council may provide for ~~the following~~—
  - (a) any property, income, assets, rights, liabilities, expenses or other matters to be apportioned, settled, transferred, adjusted or determined;
  - (b) the appointment, transfer, redundancy or classification of members of Council staff and any matters relating to the remuneration and emoluments of such staff including superannuation and long service leave;
  - (c) the appointment, conditions of appointment and the powers and functions of any persons appointed to administer a new or ~~re-constituted~~reconstituted Council until an election is held;
  - (d) existing Councillors to go out of office and the election of new Councillors to be elected in the numbers, for the wards and the terms specified in the Order;
  - (e) the holding of elections having regard to the provisions of this Act and the regulations dealing with enrolment for and voting at Council elections and the election of Councillors, with such modifications as may be specified in the Order;
  - (f) the application, continuation, amendment or revocation of existing local laws;
  - ~~(fa) the holding of the first electoral representation review under Division 2 of Part 10 after the restructuring has been implemented;~~
  - (g) transitional provisions in relation to any act, matter or thing done or required to be done by or in relation to any Council affected by the Order in Council.
- (3) If an Order in Council provides for the appointment of persons to administer a new or ~~re-constituted~~reconstituted Council until an election is held, those persons by virtue of this Act—
  - (a) are deemed to be the Councillors of the Council and together to constitute the Council as Councillors; and

S.220R(2)(fa) inserted by No. 109/2003 s.33(4).



- (b) have and may exercise and discharge the responsibilities, liabilities, rights, powers, authorities, duties and functions conferred or imposed upon the following—
- (i) a Council or a former Council by or under any Act;
  - (ii) Councillors generally or upon the Councillors of a former Council by or under any Act;
  - (iii) the persons so appointed by the Order in Council.

~~220S (4) If an Order in Council provides for the appointment of a chairperson of persons appointed to administer a new or reconstituted Council until an election is held, the chairperson by virtue of this Act—~~

S. 220S  
inserted by  
No. 43/1993  
s. 3.

- ~~(a) is deemed to be the Mayor of the Council as if appointed or elected as Mayor in accordance with this Act; and~~
- ~~(b) has and may exercise and discharge the responsibilities, liabilities, rights, powers, authorities, duties and functions conferred or imposed upon the following—~~
  - ~~(i) Mayors generally or upon the Mayor of a former Council by or under any Act;~~
  - ~~(ii) the person so appointed by the Order in Council.~~

#### **251 General provisions relating to Orders**

- (1) An Order in Council made under this PartDivision—
- (a) must specify a day or days upon which the Order in Council comes into operation; and
  - ~~(b) may provide that the boundaries of a municipal district specified in the Order in Council are described in a map lodged in the Central Plan Office or with the VEC as specified in the Order in Council; and~~
  - ~~(c) upon being published in the Government Gazette has the like force and effect as if it were expressly enacted in this Act; and~~
  - ~~(ed) may be amended or revoked by another Order in Council; and~~
  - ~~(de) has full force and effect despite any non-compliance with any of the matters required by this Act as preliminary to the making of the Order in Council.~~
- (2) An Order in Council made under this PartDivision may—
- (a) apply generally or be limited in its application by reference to specified matters or things; and
  - (b) apply differently according to different factors or subject to specified exceptions; and
  - (c) leave any matter or things to be from time to time determined, applied, dispensed with or regulated by a person or body specified in the Order; in Council; and
  - (d) confer powers or impose duties in connection with the Order in Council on a person or body specified in the Order; in Council; and

- (e) apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act; and
- (f) contain provisions of a savings and transitional nature consequent on the making of the Order, including providing for the construction of references in any instrument or in any other document of any kind; and
- (g) provide that during a transitional period specified in the Order the provisions of ~~the Local Government Act 1989~~ specified in the Order apply as varied or modified by the Order; and
- (h) modify the application of the **Valuation of Land Act 1960** by providing that existing valuations are to be used until a date specified in the Order; and
- ~~(i) modify the application of section 3(2) of the **Local Government (Consequential Provisions) Act 1989**;~~
- ~~(j) (i) provide for the manner in which or conditions subject to which any contracts or leases may be entered into by or with a Council during any period specified in the Order and specify any penalty (including a surcharge under section 240A) which is to apply in respect of any non-compliance.~~
- (3) Without limiting the generality of subsection (2)(g), an Order in Council may provide for—
  - (a) the non-application of any specified sections 5(3) and 91(1) of this Act during a transitional period specified in the Order; and
  - (b) the fixing or alteration of the ~~entitlement date~~close of the roll for the purposes of any election; and
  - (c) the non-application of any specified sections 71, 74, 74A, 74B, 74C and 75 of this Act to persons appointed to administer a new or re-constituted Council; and
  - ~~(d) the fixing or the alteration of the date under section 130 by which a Council must adopt its first budget; by or within which any specified act, matter or thing under this Act must be done or any specified requirement under this Act must be complied with.~~
  - ~~(e) the period within which a **252 Restrictions on making of Order in Council Plan in accordance with**~~
    - (1) The Minister must not recommend to the Governor in Council that an Order in Council be made in relation to a matter under section 125 ~~must be prepared~~; 249(a), (b) or (d) unless the Minister—
    - (f) the non-application of all or any of the requirements of section 157 as specified in the Order during a transitional period specified in the Order;
    - (g) (a) established a restructuring advisory panel under section 253 to conduct a review of the matter; and

S.2205(2)(g) amended by No. 109/2003 s. 76.

S.2205(3)(c) amended by No. 109/2003 s. 56.

S.2205(3)(d) amended by No. 109/2003 s. 72(2)(b).

S.2205(3)(e) amended by No. 109/2003 s. 72(2)(c)(i)(ii).

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~~(b) has considered the alteration report of the date under section 158 by which restructuring advisory panel on the Council must declare its rates and charges matter.~~

~~220T Panel review not needed for minor boundary changes~~

~~(2) The Minister may, without complying with section 220P, recommend that an Order in Council be made to give effect to minor boundary changes if she or he without considering a report from a restructuring advisory panel if the Minister certifies to the Governor in Council that—~~

- ~~(a) the proposed changes are of a minor nature only; and~~
- ~~(b) any Council whose municipal district is affected by the proposed changes has approved of the proposed changes; and~~
- ~~(c) public notice of the proposed changes has been given in the municipal district or districts affected by the proposed changes.~~

**253 Restructuring advisory panels**

~~(1) The Minister may by a public notice published in the Government Gazette constitute a restructuring advisory panel to review a matter under section 249(a), (b) or (d).~~

~~(2) In conducting a review, a restructuring advisory panel must—~~

- ~~(a) consider the views of any Council affected by the matter under consideration; and~~
  - ~~(b) ensure that a process of community engagement is followed; and~~
  - ~~(c) comply with any direction specified by the Minister in the notice constituting the restructuring advisory panel; and~~
  - ~~(d) otherwise conduct the review in a manner that the restructuring advisory panel considers appropriate.~~
- ~~(3) The restructuring advisory panel must consider the following matters before recommending to the Minister that a new Council should be created—~~
- ~~(a) whether each Council affected by the creation of the new Council and the new Council will be viable and sustainable as separate entities;~~
  - ~~(b) whether the allocation of revenue and expenditure between each Council affected by the creation of the new Council and the new Council will be equitable for the local community of each Council;~~
  - ~~(c) whether the views of the local communities affected by the creation of the new Council have been taken into consideration;~~
  - ~~(d) whether the new Council will have sufficient financial capacity to provide the local community with a comprehensive range of municipal services and to undertake necessary investment in infrastructure;~~
  - ~~(e) any other matter specified in the notice published under subsection (1).~~
- ~~(4) A restructuring advisory panel must submit a final report to the Minister within the period specified by the Minister in the notice constituting the restructuring advisory panel.~~

S. 220T  
inserted by  
No. 43  
s. 3,  
substit  
No. 27/1997  
s. 23.

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**Appendix 2**  
**Redlined comparison of current Act, sections 223CA, 223CB, 223CC**  
**with clauses 213,214, 215**

**223CA\_213 Municipal Monitor**

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

**223CB\_214 Functions of a Municipal Monitor**

A Municipal Monitor has the following functions—

- (a) to monitor Council governance processes and practices;
- (b) to advise the Council about governance improvements the Council should make;
- (c) to report to the Minister on any steps or actions taken by the Council to improve its governance and the effectiveness of those steps or actions;
- (d) to ~~investigate any referred complaint received from the Minister under section 219AB;~~
- ~~(e) make recommendations to provide advice to, and prepare a report for, the Minister at the request of the Minister in accordance with section 219AC about a Councillor's relation to the exercise by the Minister of any power of the Minister under this Act or any other Act relating to governance matters in respect of whom a complaint has been made the Council;~~
- ~~(f)~~ (c) to monitor and report to the Minister on any other matters determined by the Minister.

**223CC\_215 Powers of Municipal Monitor**

- (1) A Municipal Monitor ~~may examine and investigate—~~
- ~~(a) any matter relating to a Council's operations or to Council elections or electoral matters; and~~

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**Style Definition:** Side Note

S. 223CB inserted by No. 53/2015 s. 44.

S. 223CC inserted by No. 53/2015 s. 44.

~~(b) a Councillor on receiving a complaint in respect of that Councillor from the Minister under section 219AB; and~~

~~(c) any possible breaches of this Act.~~

~~(2) A municipal monitor may, by notice in writing, require a person—~~

~~(a) to produce any document (whether or not specifically identified in the notice) in the person's custody or control that relates to any matter that the municipal monitor may examine or investigate; and~~

~~(b) to give has the power to do all reasonable assistance things necessary or convenient to be done in connection with an examination or investigation; and~~

~~(c) to appear before the municipal monitor for examination on oath and to answer questions.~~

~~(3) A municipal monitor may administer an oath.~~

~~(4) A municipal monitor may take possession of any document produced under subsection (2) for so long as the municipal monitor considers necessary.~~

~~(5) However, while a municipal monitor retains possession the performance of the document, the municipal monitor must permit any person who would be entitled to inspect the document if it were not in the municipal monitor's possession to inspect the document at any reasonable time functions of a Municipal Monitor under section 214.~~

~~(6) A person appearing before a municipal monitor is entitled to be represented by another person.~~

~~(7. (2) If a Municipal Monitor considers at any time that any matter referred to the Municipal Monitor by the IBAC under section 73 of the **Independent Broad-based Anti-corruption Commission Act 2011** appears to involve conduct that is corrupt conduct, the Municipal Monitor must inform the IBAC.~~

S.223CC(7)  
inserted by  
No. 30/2016  
s. 83(7)

Appendix 3

Redlined comparison of current Act, section 163 to 167  
with new clauses 111 to 119

**163(1) Special rate and special purpose charge**

- (1) A Council may declare a special ~~rate, a special purpose charge or a combination of both only on rateable land~~ for the purposes of—
- (a) ~~defraying~~ paying any expenses; or
  - (b) repaying (with interest) any advance made to, or debt incurred or loan raised by, the Council—
- in relation to the provision of works or services in the performance of a function or the exercise of a power of the Council, if the Council considers that the performance of the function or

~~(2) A Council must only declare a special purpose charge on rateable land if the owner or occupier of the rateable land will derive a special benefit from the exercise of the power is proposed works or will be of services to which the proposed special benefit to the persons required to pay the special rate or special charge purpose charge will relate.~~

~~(1A) A Council must not make a declaration under (3) For the purposes of subsection (1) unless it has given public notice of its intention (2), special benefit means a benefit that is additional to make the declaration at least 28 days before making, or greater than, the declaration.~~

~~(1B) In addition benefits available to any owners or occupiers of other requirements specified by this Act, the public notice must—~~

- ~~(a) contain an outline of rateable land which will not be subject to the proposed declaration; and special purpose charge.~~
- ~~(b) set out the date on which it is proposed to make the declaration; and~~
- ~~(c) advise that copies of the proposed declaration are available for inspection at the Council office for at least 28 days after the publication of the notice.~~

~~(1C) A Council must send may declare a copy of the public notice to each person who will be liable to pay the special rate or special charge within 3 working days of the day on which the public notice is published purpose charge in relation to non-rateable land for the purposes of street construction, as if the non-rateable land was rateable land.~~

~~(2)~~

**112 Conditions relating to special purpose charge**

- (1) Before making a declaration ~~under subsection (1), the of a special purpose charge, a Council must determine—~~
- (a) the total amount of the special ~~rates and special charges purpose charge~~ to be levied; and

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S. 163(1A) inserted by No. 27/1997 s. 10.

S. 163(1B) inserted by No. 27/1997 s. 10.

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S. 163(1B)(c) amended by No. 109/2003 s. 80(1). S. 163(1C) inserted by No. 109/2003 s. 80(2).

S. 163(2) substituted by No. 109/2003 s. 81(1).

S-163(2A)  
inserted by  
No. 10 of 2003  
s. 81(4)

(b) the criteria to be used as the basis for declaring the special ~~rates and special charges~~ purpose charge.

~~(2A) For the purpose of subsection (2)(a) the total- (2) Before determining the matters specified in subsection (1), the Council must be satisfied on reasonable grounds that the proposed special purpose charge complies with the conditions specified in subsection (3).~~

~~(3) The specified conditions are as follows—~~

~~(a) the estimated cost of the proposed works and services must be comparable with the estimated cost of works and services of that kind;~~

~~(b) the proportion of the estimated total cost of the proposed works and services to be collected by levying the proposed special purpose charge must not exceed the proportion of the special benefit to be derived compared to the benefit to the municipal community;~~

~~(c) the criteria to be used to apportion the proposed special purpose charge between the persons who will be required to pay the special purpose charge must be fair and reasonable having regard to the nature of the proposed works and services and the relative special benefit to each person.~~

### **113 Engagement requirements relating to special purpose charge**

~~(1) Before declaring a special purpose charge, a Council must—~~

~~(a) undertake an engagement process in respect of the proposed special purpose charge; and~~

~~(b) ensure that the engagement process includes the matters specified in this section.~~

~~(2) The Council must provide the following to any person who will be required to pay the special purpose charge—~~

~~(a) a written notice of intention to levy the proposed special purpose charge in accordance with subsection (3);~~

~~(b) the opportunity to make a submission and be heard in relation to the proposed special purpose charge;~~

~~(c) if section 114 applies, an opportunity to object in writing.~~

~~(3) A written notice of intention to levy a proposed special purpose charge must specify the following—~~

~~(a) the proposed works or services;~~

~~(b) the total cost of the works or services;~~

~~(c) the amount of the special ~~rates~~ purpose charge that the person would be required to pay;~~

~~(d) the repayment arrangements that would apply;~~

~~(e) how the person may make a submission and be heard.~~

- (4) If section 114 applies, the written notice under subsection (3) must also state the following—
- (a) that the person has a right to object to the proposed declaration;
  - (b) how the person may object;
  - (c) that objections in writing must be lodged with the Council within 28 days of the day specified on the written notice as the date of issue of the written notice.

#### 114 Objection process

- (1) A Council can only make a declaration of a special charges to be levied must not exceed the purpose charge to recover an amount calculated in accordance with the formula—
- $$R \times C = S$$
- where—
- R is the benefit ratio determined by the Council in accordance with subsection (2B);
  - C is that exceeds two-thirds of the total cost of the performance of the function or the exercise provision of the power under subsection (1);
  - S is the maximum total amount that may be levied from all the persons who are liable to pay the special rates or special charges.
- (2B) The benefit ratio is the estimated proportion of the total benefits of the scheme to which works and services in the performance of the function or the exercise of the power relates, including special benefits and community benefits, that will accrue as special benefits to all the persons who are liable to pay the special rates or special charges power in accordance with this section.
- (2BA) (2) Before a Council can make a declaration of a special purpose charge to which this section applies, the Council must send a written notice in accordance with section 113 to every person who will be required to pay the special purpose charge.
- (3) The following persons have the right to object to a special purpose charge to which this section applies—
- (a) an owner of the land;
  - (b) if the land is non-residential land, an occupier of the land.
- (4) A Council must not make a declaration of a special purpose charge if the Council receives written objections from persons who are entitled to object under subsection (1) in respect of a majority of the rateable properties on which has been altered from the Council had proposed to impose the special purpose charge.

#### 115 Declaring and levying a special purpose charge

- (1) A Council must not declare a special purpose charge if—

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S. 163(2B) inserted by No. 409/2003 s. 61(1).

S. 163(2BA) inserted by No. 67/2008 s. 56.