

2007

Better Local Governance

Consultation Paper

Better Local Governance

Consultation Paper

Reforms to Support Councillor Conduct and Other Matters

November 2007

Submissions

Submissions must be lodged by **29 February 2008**

- By email to local.government@dpcd.vic.gov.au, or
- By post to Local Government Victoria,
GPO Box 2392, Melbourne, 3001

For a ***Submission Template***

- Download from <http://www.localgovernment.vic.gov.au>,
- Email request to local.government@dpcd.vic.gov.au, or
- Telephone Local Government Victoria 03 9208 3430

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Preface

The Victorian Government recognises local government as a distinct level of government that is essential to the wellbeing of Victorian communities. The Government has publicly stated its intention to continue to empower and strengthen local communities through improvements in democratic processes. In support of this, the Government is committed to a reform agenda with associated initiatives to support Better Local Governance.

One part of this Better Local Governance reform is the Government's commitment to address issues of councillor conduct. This responds to concerns raised within local government and in the wider community. Other parts of the broader package include the review of councillor remuneration and the development of improved training and development opportunities for councillors which are the subject of other consultation arrangements.

While I believe that the overwhelming majority of councillors behave ethically and professionally, there are occasions when the actions of individual councillors can obstruct effective local governance. It is essential to address such matters. In doing so however, it is important to ensure a proper balance between the democratic nature of local government and the need to support effective governance.

My Department has prepared this paper to propose a way forward on supporting councillor conduct and to provide an opportunity for councils to respond to the specific proposals. The Paper also seeks feedback on a number of other significant matters that appear to warrant legislative reform.

I encourage you to carefully consider the proposals and then convey your views to Local Government Victoria using the template provided.

I look forward to the opportunity to progress this important issue in the interests of good local governance.

A handwritten signature in black ink, reading "Richard Wynne". The signature is written in a cursive, flowing style.

RICHARD WYNNE MP
Minister for Local Government

Better Local Governance

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Introduction

A: Introductory matters

A1. Consultation

Purpose The purpose of this paper is to seek feedback on proposals for legislative reform. Councils are particularly encouraged to give careful consideration to the matters detailed in the paper and to provide considered feedback. Submissions in response to this consultation paper must be lodged by 29 February 2008 to ensure due consideration.

Assistance A template for consultation responses is available to assist with this process. In addition, Local Government Victoria will conduct briefings for councillors and council officers on the matters covered in the paper – details to be provided separately.

A2. Structure of Paper

Councillor Conduct Part 1 of the paper deals with the issue of councillor conduct. This follows discussions with the local government peak bodies and addresses matters that have been of particular concern to a number of councils.

The Paper proposes a new framework to support councillor codes of conduct and to address councillor conduct generally. The proposed framework seeks to be consistent with the constitutional status of local government in Victoria, as a distinct and essential tier of government.

The first part the paper is in four sections.

- B. – Discussion of some background considerations;
- C. – Identification of types of councillor conduct problems;
- D. – Outline of a proposed framework; and
- E. – Consideration of two important related matters.

Other Matters Part 2 addresses a number of other matters that appear to warrant legislative reform. It concentrates on matters that appear to be of substance for councils, rather than trying to address every minor anomaly.

Matters in this Part are grouped into three sections:

- F. – Elections;
- G. – Council; and
- H. – Administration.

Part 1

Supporting Councillor Conduct

B: Background Considerations

Introduction

Local communities rely on their councils for the provision of many services and activities that are important in their day-to-day lives and which have significant impact on local and regional environments.

As part of a reform package of initiatives to support Better Local Governance, the Government has made a commitment to develop a mechanism to support councillor conduct. This Consultation paper puts forward a set of proposals for consultation feedback.

Other components of the package, which include the review of councillor remuneration as well as councillor development and training, are the subject of other consultation arrangements.

Expectations

The office of councillor, while having its own rewards, is a demanding role. It requires a person to consider and decide on many, often contentious, issues that directly affect the way people live, work or conduct business in the municipality.

As a result, expectations on the way councillors behave are very high. The vast majority of councillors act responsibly and genuinely try to exercise their responsibilities in the best interests of the community.

Concerns

From time to time, the conduct of an individual councillor may become a cause for concern. The seriousness and nature of such conduct can vary substantially.

At a very basic level, a councillor may fail to act appropriately in meetings and may improperly disrupt statutory decision making processes. (This should not be confused with legitimate debate, where an individual councillor expresses opinions different from the majority). At a far more serious level, a councillor may have acted in a criminal manner that brings the office of councillor into disrepute. Of course, most inappropriate conduct falls between these extremes.

It is recognised by the Government and by the local government community that the existing legislative and institutional framework could better address councillor conduct matters.

Recognition

Any actions to address councillor misconduct must recognise the democratic nature of local government. The ability to be a councillor relies on the support of residents and ratepayers entitled to vote in a council election.

Unlike people in professions, a councillor's entitlement to hold office is not related to having particular qualifications, abilities or characteristics. Nevertheless, the right to hold the status as a councillor should require that a person exercise their authority in a manner appropriate to their office.

C:

Issues with Existing Arrangements

C1. Councillor Codes of Conduct

Existing Laws

The *Local Government Act 1989* (the Act) was amended in 2004 to require all councils to adopt Codes of Conduct for councillors. The purpose of the new provision was to support good local governance and to encourage councils to develop frameworks for good conduct and dispute resolution that are consistent with public expectations and with the law.

Codes of conduct are required to address councillor conduct, including:

- The rules of conduct from section 76B of the Act, which include acting honestly, exercising reasonable care and diligence, not making improper use of their position and not making improper use of information;
- Processes for resolving internal disputes between councillors;
- Procedures for the disclosure of interests and conflicts of interest; and
- Other matters relating to councillor conduct that the council considers appropriate.

Two main areas of difficulty have arisen in the implementation of codes of conduct. Firstly, there has been significant variability in councils' codes. Secondly, many councils have indicated concerns about their ability to enforce their codes.

Consistency of Codes

Existing codes of conduct are highly variable. This was illustrated in the 2006 Review of Councillor Codes of Conduct, which documented the results of a survey of councils' codes and the processes used to develop codes.

The survey demonstrated a wide variation in the nature of councils' adopted codes, particularly in relation to dispute resolution processes. While some councils undertook extensive work in developing their codes, others included little more than the minimum statutory requirements in their codes.

While the adoption of codes of conduct with minimal compliance is legally permitted, such codes are of limited value and are likely to be found wanting if serious internal conflicts arise.

Enforcement

The capacity to enforce a council's code of conduct, under existing legislation, is fairly limited. This is a frequent concern of councils.

Avenues identified or used to enforce codes of conduct have included fines (where a code of conduct is enforceable under a local law), limitation of councillor status (such as committee memberships or representation on other bodies) and public censure. These disciplinary options have been rarely adopted by councils. This may be because they are regarded as being of limited effectiveness.

The practical result is that a council may take considerable care in developing and adopting a comprehensive code of conduct but have very little capacity to deal with a councillor who chooses not to comply.

C2. Serious Misconduct

Disqualification Provisions

The *Local Government Act 1989* specifies certain circumstances where a person ceases to be eligible to be a councillor.

Section 29 of the Act states that a person is not capable of becoming or continuing to be a councillor for 7 years if they have been convicted of certain types of offences. These are:

- Convictions for behavioural breaches as a councillor or member of a special committee, such as conflict of interest, misuse of position or disclosure of confidential information;
- Convictions for breaches of specified electoral provisions of the Local Government Act, such as forgery of a ballot paper, voting more than once, bribery or interfering with a voter in the casting of their vote; or
- A conviction for a criminal offence that has a maximum possible penalty of 5 years imprisonment or more when the person is 18 years of age, or older.

If the person is a councillor at the time of the conviction, their position becomes vacant. However, a councillor convicted of one of these offences has the same legal rights as any other citizen and may seek to appeal their conviction to a higher court. In such an event, the conviction is stayed until the appeal is heard and the councillor continues to hold office during that time.

In addition, a councillor convicted of one of these offences has the right, under the Local Government Act, to seek relief from disqualification by applying to the Court that imposed the sentence or to the Supreme Court. In this event, the councillor would take leave of absence until the matter was heard.

Recent court appearances and appeals by some councillors have raised concerns about the appropriateness of allowing them to continue in office during those processes. This can impact on the level of public confidence in local government and on the reputation of the office of councillor.

Nevertheless, while such concerns may warrant review of existing arrangements, principles of justice require that the legal rights of councillors should not be reduced below that applying to other citizens.

Other Breaches

The Local Government Act includes some other offences that may result in a councillor being prosecuted in a Court. These include failure to lodge primary or ordinary interest returns and failure to lodge campaign donation returns.

In these cases, the prescribed penalty is a fine. A councillor's right to hold office is not currently affected by being found guilty of these offences.

Suspension

A remaining disciplinary action that might be taken in response to councillor misconduct is to suspend all the councillors of a council.

The Act empowers the Minister to seek an Order in Council to suspend all the councillors of a council in the event of a serious failure to provide good local government or in the event of serious illegality. Before seeking such an order for a failure of governance, the Minister must consider what steps the council has taken to address the failure.

This course of action is only taken in extreme situations and is not considered appropriate where misconduct is on an individual basis. Nevertheless, individual misconduct left unchecked can undermine effective governance and raise questions about the ongoing effectiveness of the entire council.

D: Proposed Framework

Framework overview

It is proposed that changes to support Better Local Governance should include a suite of initiatives to support councillor conduct and Councillor Codes of Conduct. These initiatives should recognise the role of councils in managing their own governance matters, while establishing mechanisms to deal with issues of councillor conduct and disputes at the most appropriate level.

The proposed framework to support Better Local Governance has three main components:

- Principles of Councillor Conduct;
- Councillor Conduct Panels; and
- VCAT to deal with serious misconduct.

**Proposed
Direction**

1-a. THE PACKAGE OF REFORMS TO SUPPORT BETTER LOCAL GOVERNANCE SHOULD INCLUDE A SUITE OF INITIATIVES TO SUPPORT COUNCILLOR CODES OF CONDUCT AND TO ADDRESS COUNCILLOR CONDUCT ISSUES.

D1. Principles of Councillor Conduct

Purpose

It is proposed that the Act include “Principles” to establish standards for the proper conduct of councillors at all times while holding the office of councillor.

Failure to follow the Principles would not be a matter for the Courts. Instead, they would serve the following purposes:

- The Principles would be a standard element of each council’s code of conduct, replacing matters currently prescribed in section 76C of the Act.
- The Principles would be the point of reference for consideration of misconduct by a Councillor Conduct Panel or by VCAT.

**Proposed
Principles**

The following draft Principles of Councillor Conduct are suggested as a basis for consultation and comment:

Impartiality - Councillors must endeavour to make decisions solely in the public interest and on the basis of merit. They must never improperly confer advantage or disadvantage on any person or organisation.

Integrity - Councillors must not place themselves in circumstances where they have financial or other obligations to other persons or organisations that may unduly influence them in the performance of their official duties.

Openness - Councillors must be open and transparent about any of their personal interests that would influence, or could reasonably be perceived to influence, their decisions and actions as a councillor.

Accountability - Councillors are accountable to the public for their decisions and actions and, wherever possible, must be open and transparent about the reasons for their decisions.

Responsibility - Councillors must exercise due care and diligence in the performance of their duties and must submit themselves to whatever lawful scrutiny is appropriate to their office.

Honesty - Councillors must act honestly in the performance of their duties, avoiding words and actions that are intended to mislead or deceive fellow councillors, council officers or persons having dealings with the council.

Respect - Councillors must treat all people with due courtesy and respect, not discriminating improperly against any person, and respecting the impartiality and integrity of the officers of the council.

Stewardship - Councillors must do whatever they are able to ensure that public resources are used prudently in the public interest.

Lawfulness - Councillors must uphold all laws and act in accordance with the trust that the public is entitled to place in them in both their public and private capacities.

Leadership - Councillors must support and promote these principles by leadership and example and should act in a way that secures and preserves public confidence in the office of councillor.

**Proposed
Direction**

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| <p>1-b. PRINCIPLES OF COUNCILLOR CONDUCT SHOULD BE SPECIFIED IN THE LOCAL GOVERNMENT ACT FOR INCLUSION IN COUNCILLOR CODES OF CONDUCT IN PLACE OF THE EXISTING REQUIREMENTS IN SECTION 76C.</p> <p>1-c. COMMENTS ARE INVITED ON THE DRAFT PRINCIPLES AND WHETHER THEY ADEQUATELY REPRESENT COMMUNITY EXPECTATIONS OF COUNCILLOR STANDARDS OF CONDUCT.</p> |
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D2. Councillor Conduct Panels

Purpose

A key initiative proposed to be included in the framework is the establishment of Councillor Conduct Panels that have powers to deal with minor breaches of codes of conduct.

Councillor Conduct Panels:

- Should fall within the sphere of local government, rather than being State Government instrumentalities;
- Must be demonstrably independent of the parties involved in a hearing (which may include the relevant council); and
- Must be available when needed, while minimising the cost and administrative burdens associated with permanent bodies.

Appointment

It is proposed that the Municipal Association of Victoria (MAV) be required to establish two lists of the names of people who are suitable to be members of Councillor Conduct Panels.

- List A will include people with legal qualifications; and
- List B will include people with local government experience.

A person included on a list must be of sound public repute. They may not be employee, contractor or board member of the MAV. Neither may they have been an employee or board member of the MAV in the preceding two years.

When a Panel is required, a Panel Chair is appointed from List A and a Panel Member is appointed from List B. The selection of members from each list would be on a rotational basis.

A person who is appointed to a council's Panel may not be a councillor, employee or contractor of the council.

The Parties

An applicant for a Panel hearing may be a council, a councillor or a group of councillors.

- If a council resolves to apply for a Panel hearing, a Panel must be established and must hear the matter.
- If a councillor, or councillors, apply for a Panel hearing, a Panel must be appointed and hear the matter unless the Chair of the Panel determines that the application is trivial, vexatious or unreasonable.

A respondent in a Panel hearing may only be a councillor.

Procedure

The council CEO must appoint an officer to be the Councillor Conduct Panel Registrar. The Registrar must notify the MAV if and when a Panel is required.

The MAV informs the council of the names of the Panel members. The Panel then receives administrative support from the Registrar and any costs will be paid by the council.

The following arrangements would apply.

- Panel hearings would be conducted in the council area and be closed to the public;
- If the council is the applicant, it must appoint a councillor as its representative;
- Parties would not otherwise be represented unless the Panel considers it necessary for procedural fairness;
- Panel hearings will be reasonably informal; and
- A Panel must give reasons for its decisions in writing to the parties and to the council.

Powers

If a Panel considers that a councillor has breached the Code of Conduct it may:

- Issue a warning to the councillor;
- Instruct the councillor to make an apology (either public or private);
- Instruct the councillor to attend mediation, training or counselling; and
- Instruct the councillor to take leave of absence for up to two months while undertaking mediation, training or counselling.

Where a Panel instructs a councillor to attend mediation, training or counselling, it may specify the person or organisation to provide the relevant service (which may be a local government representative body such as the MAV or VLGA).

In addition, a Panel may authorise an application to VCAT for a “serious misconduct” hearing:

- If a councillor fails to comply with an instruction of a Panel;
- If a councillor has committed a second or subsequent breach of the council's Code of Conduct; or
- If a councillor appears to have breached the Principles of Councillor Conduct to a serious extent.

Appeals

A party may appeal a Panel decision to VCAT.

Proposed Direction

- 1-d. PROVISION SHOULD BE MADE TO ESTABLISH COUNCILLOR CONDUCT PANELS WHICH MAY HEAR ALLEGED BREACHES OF COUNCILS' CODES OF CONDUCT.**
- 1-e. COMMENTS ARE INVITED ON THE PROPOSED PROCESS FOR ESTABLISHING COUNCILLOR CONDUCT PANELS.**
- 1-f. COMMENTS ARE INVITED ON THE SUGGESTED POWERS OF COUNCILLOR CONDUCT PANELS.**

D3. Victorian Civil and Administrative Tribunal

Purpose

Another key element of the proposal would be granting specific powers to the Victorian Civil and Administrative Tribunal (VCAT) to hear more serious matters of councillor misconduct.

Appointment

For the purpose of councillor conduct matters, VCAT will comprise a panel of two persons:

- A senior member of VCAT with legal qualifications; and
- A person with local government experience.

Procedure

The relevant provisions of the *Victorian Civil and Administrative Tribunal Act 1998* would apply to procedures for councillor conduct matters.

Appeals

VCAT will hear appeals against decisions of Councillor Conduct Panels by parties to Panel hearings. However, the Tribunal may dismiss an appeal that it considers frivolous, vexatious, misconceived, lacking in substance or an abuse of process.

When considering an appeal against a decision of a Councillor Conduct Panel, VCAT may:

- Overturn a Panel decision;
- Require a Panel to re-hear a matter;
- Alter a Panel decision; or
- Refuse the application.

**Serious
Misconduct**

It is also proposed that VCAT hear cases alleging serious misconduct on the part of a councillor.

VCAT currently exercises disciplinary powers in regard to professional misconduct in the legal and medical professions, under the *Legal Profession Act 2004* and the *Health Professions Registration Act 2005*.

“Serious misconduct” is defined to exist in the following circumstances:

- When a councillor fails to comply with an instruction from a Councillor Conduct Panel;
- When a councillor has committed a second or subsequent breach of a council’s code of conduct; or
- When a councillor has acted in a way that constitutes a serious breach of the Principles of Councillor Conduct.

Applications to VCAT in regard to serious misconduct may be made by parties to a Panel hearing if the Panel has authorised an application to VCAT.

The Department responsible for administering the Act may make an application, but only in relation to an alleged serious breach of the Principles.

The Powers exercisable by VCAT, in relation to serious misconduct, would be:

- The powers of a Councillor Conduct Panel;
- Power to suspend a councillor for a period of up to six months in conjunction with a requirement to undergo counselling, training or mediation;
- Power to declare a councillor ineligible to hold the office of mayor and/or ineligible to chair a special committee for a period of up to four years;
- Power to disqualify a person from being a councillor for up to four years;
- Power to order a person to reimburse the council for costs arising from their improper or illegal actions as a councillor;
- Power to refuse an application; and
- Power to order a party to pay costs.

**Proposed
Direction**

1-g. VCAT SHOULD BE GIVEN POWERS TO HEAR CASES OF SERIOUS MISCONDUCT BY A COUNCILLOR AND APPEALS AGAINST DECISIONS OF A COUNCILLOR CONDUCT PANEL.

1-h. COMMENT IS INVITED ON THE PROPOSED FUNCTIONS AND POWERS OF VCAT.

E: Related Issues

Additional matters directly related to the implementation of the councillor conduct framework are:

- Councillor Disqualification Provisions; and
- Conflict of Interest Provisions.

E1. Councillor Disqualification

Disqualification

The *Local Government Act 1989* states that a person is disqualified from being a councillor for 7 years if they are:

- Convicted of an offence that is punishable, on first conviction, of a prison term of 5 years or more; or
- Convicted of specified offences under the Local Government Act.

The existing legislation provides two levels of appeal for a person convicted of a relevant offence.

- Firstly, they may appeal the initial Court decision to a higher Court; and
- Secondly, they may apply to the Court for relief from the disqualification as a councillor.

Relief from Disqualification

It would not be appropriate to vary appeal processes in relation to the Court decision, as this is an accepted right of all citizens. However, there are some concerns about the provision allowing a person to seek relief from the disqualification. This particularly relates to the timing of such applications, which may only be made within 30 days of the conviction.

Two specific concerns are:

- The process can be used inappropriately for the purpose of delaying the effect of the disqualification (A councillor continues to receive an allowance until the application is decided).
- The ability to seek relief within 30 day of the conviction is effectively limited to sitting councillors. Other people affected by the disqualification would not normally consider seeking relief until and in case they decided to nominate for council.

It is proposed that an alternative provision be made enabling a person to seek relief from disqualification after a period of 4 years has expired. An application for relief would be able to be sought from VCAT.

VCAT would consider the following matters when deciding whether to grant relief:

- The severity of the offence that gave rise to the disqualification;
- Any subsequent offences committed by the person; and
- The conduct of the person since the disqualification, having regard to the Principles of Conduct.

Leave pending Court or Appeal.

Concerns have also been raised about the appropriateness of people continuing to act as councillors after they have been charged or convicted of an offence that may result in their disqualification. It is therefore proposed to make special provisions that would apply in these circumstances.

- The first provision would apply when a councillor has been charged with an offence that, if convicted, would disqualify them from being a councillor. In this circumstance, the Department could apply to VCAT for the councillor to be required to take leave of absence until the matter is heard in Court. (By way of comparison, under the *Legal Professions Act 2004*, VCAT may impose conditions on the practicing certificate of a lawyer who has been charged with a relevant offence)
- The second provision would apply if a councillor has been convicted of an offence that would disqualify them from being a councillor, but the councillor has appealed the Court decision. In this circumstance, the councillor would be deemed to be on leave of absence, without a hearing, and their councillor allowance is withheld, pending the outcome of the appeal.

Proposed Direction

- 1-i. **THE EXISTING RELIEF PROVISIONS SHOULD BE REPLACED BY AN ABILITY TO APPLY TO VCAT FOR RELIEF FROM DISQUALIFICATION AFTER A PERIOD OF 4 YEARS.**
- 1-j. **PROVISION SHOULD BE MADE FOR A COUNCILLOR TO TAKE LEAVE OF ABSENCE WHEN AWAITING A COURT DECISION THAT MAY HAVE THE EFFECT OF DISQUALIFYING THEM AS A COUNCILLOR.**

E2. Conflict of Interest

Background

It is important that local communities have confidence that their elected councillors are making decisions dispassionately and in the public interest, as they promise to do when they take the Oath of Office.

To ensure this occurs, the *Local Government Act 1989* provides for the disclosure of interests and conflicts of interest whenever a council or committee is considering any matter.

Revised Legislation

The Act was amended in 2004 to alter pecuniary interest provisions in two ways:

- To extend the scope of the pecuniary interest provisions to ensure that people who have non-pecuniary conflicts of interest disclose those interests and do not vote; and
- To require all interests to be disclosed as a matter of public transparency, irrespective of whether they constitute a conflict of interest.

Conflict of Interest

A conflict of interest is now defined to exist in relation to a matter in either of the following circumstances.

- If the councillor has a direct or indirect pecuniary interest in the matter. That is, if the councillor has an interest that is measurable in monetary terms, including such interests held by a spouse or an organisation of which the councillor is a member or employee.
- If the councillor has a non-pecuniary interest but, in the opinion of the councillor, there may be a conflict between their personal interest and their public duty.

A councillor who has a conflict of interest must disclose the nature of his or her conflict of interest immediately before the matter is considered. The councillor must not move or second the motion and must leave the room when the vote is being taken.

Issues

Since the amendments were made in 2004 there has been considerable attention paid to conflicts of interest, both by councils and by the general public.

The following is a list of some of the issues that have been raised about the existing arrangements. These points are not endorsed in any way or intended to be exhaustive. They are provided as a prompt for consultation.

- a) Councillors find the distinction between “interests” and “conflicts of interest” confusing.
- b) It is unclear how much discretion a councillor has when forming an opinion about whether a non-pecuniary interest is a conflict of interest.
- c) A conflict of interest should be declared when a councillor has received a gift of donation from someone with a financial interest.
- d) Conflicts of interest are limited to formal council and special committee meetings, but should also apply to other council meetings and processes.

- e) While the Act identifies some exemptions from pecuniary interest, it doesn't actually explain what comprises a pecuniary interest.
- f) The Act requires a councillor to disclose the "nature" of their conflict of interest, but is unclear how much detail is required.
- g) The penalties in the Act, for offences such as a conflict of interest, are inadequate.
- h) Matters disclosed in primary and annual returns do not cover all matters that are considered conflicts of interest.

Comments are generally invited about what matters are of particular concern in regard to conflicts of interest, as well as proposals for improvement.

**Proposed
Direction**

1-k. COMMENTS ARE INVITED ABOUT SPECIFIC WAYS IN WHICH CONFLICT OF INTEREST REQUIREMENTS CAN BE MADE CLEARER AND MORE EFFECTIVE (PARTICULARLY IN RELATION TO THE ISSUES REFERRED TO IN THE CONSULTATION PAPER).

Part 2

Other Matters

Legislation From time to time it is appropriate to consider whether the existing provisions of the Local Government Act adequately support the activities of councils and whether they continue to reflect community expectations of local government.

As part of this process, a number of possible amendments have been identified that may impact on councils. As part of the process, it is important that consideration be given to the issues raised and comment provided on the proposed changes.

F. Elections

F1. Voting Processes

Current arrangements Section 41A of the *Local Government Act 1989* empowers a council to decide that all voting at a council election will be by postal voting.

The option of using postal voting was initially taken up by two thirds of councils in elections in 1995, 1996 and 1997. Since then the overall number using postal voting has increased more gradually. During the 2004 and 2005 elections, 70 councils conducted all-postal elections and 9 retained attendance voting.

The procedures to be followed in conducting either postal or attendance elections are detailed in the *Local Government (Electoral) Regulations 2005*.

Alternative systems There have been many debates about the merits and demerits of the postal and attendance systems, and the arguments have been quite complex. The following is provided as a very brief overview of matters raised in these debates to assist consideration of consultation responses.

Attendance Voting In attendance voting systems, most voting is done at voting centres within the municipality and mainly on election day. The attendance voting system includes provision for postal voting, by application as well as early voting at voting centres.

Attendance voting was the system of voting in all Victorian local government elections prior to 1995. It is also the system used for Federal and State parliamentary elections.

Advantages of attendance voting include:

- Familiarity to voters, because it is the same system used for Federal and State elections;
- Greater direct involvement of voters and candidates in a process that requires voting in person; and
- A community event that can provide opportunities for community fund raising activities.

Disadvantages of attendance voting include:

- Difficult for residents with mobility difficulties or ratepayers who live outside the municipality to attend voting centres to vote; and
- More costly system to conduct, particularly in country areas where voters are more dispersed.

Postal Voting

In a postal election, all voters are sent voting material by post, without prior application. Voters usually return their ballots by post, although some deliver their votes to the Returning Officer's office.

Elections where all voting is conducted by post are a relatively recent phenomenon. While not used at State or Federal level, postal elections are conducted at local government level in most Australian States. As noted above, this system is now used by 89% of councils in Victoria.

Advantages of postal voting include:

- Higher voter participation and significantly lower informality, resulting in higher effective participation in the order of 9%;
- Generally preferred by voters, who like the greater convenience of postal voting and the capacity to consider preferences in their own time; and
- Ready provision of information about candidates to assist voters, included along with other postal voting information for voters.

Disadvantages of postal voting include:

- Apparent greater use of "dummy" candidates to exploit the distribution of candidate's preference recommendations by the Returning Officer; and
- Concerns by some people about the security of the postal voting process.

Considering changes

As it is now over a decade since postal voting was introduced, it is appropriate to consider whether amendments should be made to the existing arrangements.

Currently, the decision about which system to use is left up to each council to decide. While there are some concerns that councillors could be unduly influenced by personal political concerns in this matter, there appears to be little pressure for change to this arrangement at this stage or any clear alternative direction.

However, one aspect of the current arrangement does appear to warrant reform. That is in regard to when and how council decisions on voting systems are made.

The existing legislation was drafted at a time when all council elections were conducted by attendance voting, whereas most councils now use postal voting. At present, unless a council makes a decision to use postal voting for an election, the situation will automatically default to an attendance election.

General elections

It is proposed to change the existing arrangement to one where a council's election will be conducted using the same system of voting as the previous election unless the council resolves otherwise.

There are good reasons for this arrangement:

- Councils do not often change their voting method, so a new decision at each election should not be necessary;
- Retaining attendance voting as the default system is inconsistent with most common arrangements; and
- Frequent changes to voting systems can be confusing for voters and are not advisable.

In order to facilitate election preparations, by both the council and the Electoral Commission, it is suggested that a council decision to change voting systems should be made well in advance of the election day.

The timeframe suggested is eight months, which would result in any decision to change systems being made by the end of March for elections at the end of November. This has the added attraction that cost impacts can be better calculated as part of budget deliberations.

By-elections

Consideration also needs to be given to the voting system for by-elections.

Currently a council can decide to conduct a by-election by postal voting, or allow the default attendance system to apply. As there is very little time in which such a decision can be made, given the timelines for a by-election, councils can face pressure to make a fast decision.

Given the proposed approach for general elections, it needs to be considered whether the voting system should be able to be varied for a by-election. Some councils that hold attendance elections, prefer to use postal voting for their by-elections, however, it is arguable that the same system should be used for both general elections and by-elections.

The main options appear to be:

- Use the same voting system for a by-election as that used for the previous general election; or
- Allow the council to decide that a by-election be conducted by a different voting system from the general election.

It should be noted that decisions under these two options would be made by the previous council or the current council respectively.

**Proposed
Direction**

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| <p>2-a. COUNCILS SHOULD CONTINUE TO DECIDE WHETHER TO USE ATTENDANCE OR POSTAL VOTING FOR COUNCIL ELECTIONS.</p> <p>2-b. A COUNCIL ELECTION SHOULD BE CONDUCTED USING THE SAME VOTING SYTEM AS THE PREVIOUS ELECTION UNLESS THE COUNCIL RESOLVES TO CHANGE NO LATER THAN EIGHT MONTHS BEFORE THE NEXT ELECTION.</p> |
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F2. Countbacks

**Current
provisions**

Extraordinary vacancies arising between elections are filled by a countback when the original election was conducted by proportional representation.

Prior to the use of computers, Returning Officers conducting countbacks were required to seek prior agreement from candidates before including them in the countback. This was to avoid having to undertake a lengthy recount in the event that the successful candidate was no longer eligible or no longer wished to be elected.

The prior nomination of candidates had two negative consequences.

- Firstly, it involved an unnecessary delay in filling the vacancy, as the Returning Officer had to notify candidates within 14 days and a further 14 days for candidates to agree to participate before conducting the count.

- Secondly, the ability of candidates to choose not to participate in a countback can allow manipulation of the result where the decision by one or more candidates to not participate would alter the flow of preferences and generate a different result.

With the advent of computer counting, this prior agreement from candidates was no longer necessary, as the computer counting process could be relatively immediate. An alternative process was therefore included in the Act to be used where a countback could be conducted by computer.

The alternative process did not require candidates to agree to participate in the countback. Rather, the count was conducted and the successful candidate was invited to confirm their eligibility and accept election. If no acceptance was received within 48 hours another count would be conducted. (It is worth noting that several countbacks have been conducted since the new legislation and the successful candidate has accepted election in every case)

Issues & Proposal

Some concerns have been raised that the Act now contains two alternative countback processes, one where candidates can exclude themselves from the count and one where they cannot. It is therefore proposed to amend the Act to provide a single countback process to be used in both computer and manual counts.

The proposed process would be conducted as follows:

- Within 14 days of the vacancy, the Returning Officer notifies all candidates of the countback;
- Before the countback is conducted, the Returning Officer may exclude a candidate that is no longer eligible to be a councillor;
- The countback is conducted (Manual or computer);
- The successful candidate is invited to confirm their eligibility and accept election (In which case the result is declared); and
- If the winner doesn't accept within 48 hours, the Returning Officer conducts a new countback within seven days with that candidate excluded.

Proposed Direction

2-c. ALL COUNTBACKS SHOULD BE CONDUCTED IN ACCORDANCE WITH THE PROCESS DESCRIBED IN THE CONSULTATION PAPER.

F3. Election Dates

Nomination Dates

The existing provisions of the Local Government Act specify that the date for the close of nominations should be 31 days before the election day for an attendance election and 32 days before the election day for a postal election.

With the move to a common election date for all councils from November 2008, it would be useful for all nominations to close on the same date to facilitate communication with potential candidates.

The nomination date for postal elections needs to be the 32nd day before election day to enable sufficient time to print election material. It is therefore proposed to amend the Act to require all nominations to close 32 days before election day.

In addition, the Victorian Electoral Commission has requested that the time for the close of nominations be at 12 noon, rather than at 4 pm, as currently provided, to allow time to check nomination details before conducting the draw for the ballot paper. This change would bring local government into line with the nomination time for State elections.

By-Election Dates

Where a by-election is required, the Local Government Act provides for the Minister to set a date for a by-election that is within 100 days of the vacancy occurring.

As the process of preparing for and conducting a by-election requires most of those 100 days there is, in practice, very little flexibility in setting enrolment and election dates. Particular problems arise when the date of the vacancy necessitates key election processes occurring during the Christmas and summer holiday period.

To avoid these situations it is proposed to amend the Act, as follows, to allow dates to be set in a way that avoids such occurrences.

- The election day may be delayed by up to 50 days; and/or
- The entitlement date may be specified to be a day that is more than 57 day before the election day

It should be emphasised that these variations may only be used to the extent necessary to avoid clashes of enrolment and voting times with the Christmas and summer holiday period.

**Proposed
Direction**

- 2-d. ALL NOMINATIONS FOR LOCAL GOVERNMENT ELECTIONS SHOULD CLOSE AT 12 NOON ON THE DAY THAT IS 32 DAYS BEFORE ELECTION DAY.**
- 2-e. DATES FOR BY-ELECTIONS MAY BE ALTERED TO AVOID A CLASH OF ENROLMENT OR VOTING PERIODS WITH CHRISTMAS OR THE SUMMER HOLIDAY PERIOD.**

F4. Voters Rolls

**Corporation
enrolments**

Arrangements for the preparation of council voters' rolls were amended by legislation that came into operation on 31 December 2004. This included limiting the term of enrolment of people, whose enrolments were subject to application, to a single term of the council.

This arrangement was considered appropriate because councils generally have no reasonable way of determining the continuing entitlement of such voters. (To ensure such people are not disenfranchised at the next election, the council is required to send them a notice and an enrolment form before the rolls close for that election.)

A ratepaying corporation is entitled to appoint a voting representative who must be a Director or company secretary of the corporation. The 2004 amendment applied the term of enrolment limit to corporations that occupied rateable property, but not to corporations that owned rateable properties. This was done on the basis that councils had the capacity to verify corporation ownership but not occupancy.

It has been noted that, while councils can check if a corporation continues to own a property, they cannot readily check the continuing entitlement of the appointed voting representative. It is therefore proposed that the enrolment of all corporation voting representatives be required to be renewed for each general election.

**Proposed
Direction**

- 2-f. ALL CORPORATION VOTING REPRESENTATIVES FOR COUNCIL ELECTIONS SHOULD BE REQUIRED TO BE REAPPOINTED FOR EACH GENERAL ELECTION.**

G. Council

G1. Council Meetings

Notice of Meetings

Section 89 of the *Local Government Act 1989* requires a council or a special committee to provide reasonable notice to the public of a meeting. The Act provides no further guidance in this matter however, and this has been the source of some confusion.

It is proposed to establish clearer guidelines in the Act about the notification of council meetings. This is intended to assist council administrations in dealing with some difficult circumstances. It will also provide a clear indication of what notification members of the public can expect.

The specific proposal is that:

- A council or special committee should give at least 7 days public notice of a meeting; and
- Where extraordinary circumstances exist that prevent the council giving such notice, the reasons must be recorded in the minutes of the meeting.

This change is not proposed to apply to special committees with members who are not councillors or council officers.

Secret Ballots

Section 89 of the Act also provides for council meetings to be open to the public except in certain specified circumstances.

Some concerns have been raised about councils conducting secret ballots at open meetings. This practice is generally inconsistent with the requirements of the Act. The single possible exception is when a council is voting to elect the mayor.

It is proposed that councillors must vote openly at meetings, except when electing the mayor.

Proposed Direction

2-g. COUNCILS AND SPECIAL COMMITTEES SHOULD GIVE 7 DAYS PUBLIC NOTICE OF MEETINGS OR EXPLAIN IN THE MINUTES WHY SUCH NOTICE WAS NOT GIVEN.

2-h. EXCEPT WHEN ELECTING A MAYOR, COUNCILLORS SHOULD VOTE OPENLY AT COUNCIL AND SPECIAL COMMITTEE MEETINGS.

G2. Council Committees

Delegations

Recent amendments to the Local Government Act included a requirement for councils to review all delegations to council staff in the 12 months following a general election. This amendment does not apply to committees with delegated powers.

It is important that councils are aware of what decisions are being made in their name. The requirement to review delegations should therefore be extended to special committees, including committees that do not contain councillors.

In addition, section 81(2A) of the Act allows a council to decide whether the members of a special committee, other than councillors and senior officers, need to lodge primary and ordinary interest returns. It is proposed that these decisions be reviewed at the same time as delegations.

Audit Committees

Section 139 of the Act requires each council to establish an audit committee.

As audit committees are advisory committees, members of the committees are not bound by the provisions of the Act applying to special committees. This includes the provisions relating to confidential information.

Given the access that audit committee members may have to significant and sensitive information, it is proposed that:

- Information provided to members of an audit committee should be considered confidential information under section 77 of the Act; and
- The prohibition against misusing information or position, in section 76B of the Act, should also apply to members of audit committees.

Proposed Direction

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| <p>2-i. COUNCILS SHOULD REVIEW DELEGATIONS TO ALL SPECIAL COMMITTEES, AS WELL AS EXEMPTIONS UNDER SECTION 81(2A) OF THE LOCAL GOVERNMENT ACT, WITHIN 12 MONTHS AFTER A GENERAL ELECTION.</p> <p>2-j. PROVISIONS RELATING TO CONFIDENTIAL INFORMATION AND MISUSE OF POSITION SHOULD APPLY TO MEMBERS OF AUDIT COMMITTEES.</p> |
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G3. Councillors

Unenrolled Councillor

Section 28 of the Local Government Act states that a councillor ceases to hold office if they no longer have an enrolment qualification and do not obtain another such qualification and notify the CEO of their new qualification within 30 days.

Two particular difficulties have been identified with this provision.

- Firstly, changes in the *Electoral Act 2002* can result in a person continuing to be on the State register of electors for an address in the council area for a period after they have left that address. As it is intended that councillors enrolled as residents should reside in the municipality, the Local Government Act should be amended to deem a councillor who ceases to live in the municipality to have lost their qualification as a resident voter.
- Secondly, while it may be appropriate that a councillor cease to hold office if he or she no longer has an enrolment qualification, it is not appropriate that this occur merely because he or she has failed to notify the CEO of a change of enrolment qualification. It is therefore proposed that the disqualification provision should only apply in relation to the loss of enrolment qualification itself. (The requirement to notify the CEO of a change of entitlement should be retained but a failure to provide the notice would not be a basis for vacating the councillors' position.)

Councillor Resignation

Section 68A of the Act allows a councillor to resign by delivering a notice to the CEO. The resigning councillor may specify a future date on which the resignation takes effect.

Some recent occasions have arisen when resigning councillors wished to time the effect of their resignation with the election of their replacement. However, it is unclear that this can be done under existing provisions.

The process of filling the vacancy, either by by-election or countback, commences from the date that the notice of resignation is given to the CEO. It cannot be clear, at that time, precisely when the replacement will be elected.

To assist ongoing representation in these circumstances, it is proposed to specify that a councillor may state, in their notice of resignation, that their resignation takes effect when the result of the by-election or countback is declared.

**Proposed
Directions**

- 2-k. A COUNCILLOR WHO CEASES TO LIVE IN THE MUNICIPALITY SHOULD BE CONSIDERED TO HAVE LOST HIS OR HER ENROLMENT QUALIFICATION AS A RESIDENT VOTER FOR THE PURPOSE OF SECTION 28 OF THE LOCAL GOVERNMENT ACT.**
- 2-l. A COUNCILLOR WHO CHANGES HIS OR HER ENROLMENT ENTITLEMENT SHOULD NOT CEASE TO HOLD OFFICE MERELY BECAUSE OF A FAILURE TO NOTIFY THE CEO OF THEIR NEW ENTITLEMENT.**
- 2-m. A COUNCILLOR SHOULD BE ABLE TO RESIGN IN SUCH A WAY THAT THEIR RESIGNATION TAKES EFFECT WHEN A REPLACEMENT COUNCILLOR IS ELECTED.**

G4. Public Consultation

**Current
Requirements**

Section 223 of the Local Government Act specifies the basic requirements that apply when a council is required to undertake statutory consultation. The section comes into effect when the Act states that a person has a right to make a submission under section 223.

The section 223 process involves:

- Public notice inviting written submissions within 14 days;
- Submitters may ask to be heard by council or committee;
- Council must consider all submissions; and
- Council must notify submitters of its decision, with reasons.

Many matters require section 223 processes, including:

- Approval of Council Plan or budget;
- Review of councillor allowances;
- Proposed local law;
- Proposed change to valuation base for rating;
- Proposed special rate or special charge; and
- Proposed sale or lease of council land.

Timing

The time allowed for submissions, of 14 days, is short. It allows very little time for interested people to obtain relevant information and prepare a considered submission.

Some proposals subject to section 223 can have significant effect on individuals, either by impacting on their properties or their finances. There are common complaints that 14 days is insufficient for consultation on such important matters.

Many councils recognise this and allow a longer period for submissions or allow consideration of late submissions. Nevertheless, it is appropriate that people have sufficient time, in law, to reasonably respond to matters that may have significant impact on them. It is therefore proposed to extend the statutory submission period to 28 days.

Process

In its current form, section 223 is unclear about the relationship between who considers submissions and who makes the relevant decision. The Act sometimes refers to the council and other times refers to the council or the committee.

This has given rise to occasional complaints that submitters are not always heard by the decision making body. It is noted that the Act is silent about the composition of a committee that may hear submitters.

Given these concerns it is proposed that, in cases where submissions are heard by a committee and the final decision is made by another committee or by the council, the decision making body must be provided with a full report on the submissions.

Proposed Direction

- 2-n. THE PERIOD ALLOWED FOR PUBLIC SUBMISSIONS UNDER SECTION 223 OF THE LOCAL GOVERNMENT ACT SHOULD BE EXTENDED TO 28 DAYS.**
- 2-o. SECTION 223 PROCESSES SHOULD BE CLARIFIED TO ENSURE THAT, WHEN SUBMISSIONS ARE HEARD BY A COMMITTEE THAT IS NOT MAKING THE DECISION, A FULL REPORT ON SUBMISSIONS MUST BE PROVIDED TO THE COUNCIL OR SPECIAL COMMITTEE MAKING THE DECISION.**

H.

Administration

H1. CEO Appointment

Issue & Proposal

The Chief Executive Officer of a council is an important statutory position that exercises certain responsibilities and obligations under the Local Government Act.

Section 94 of the Local Government Act provides for the CEO to be appointed by the council. The provision also allows a council to appoint an acting CEO for a period of up to 12 months.

Some concerns have been raised about the length of time taken by councils to appoint permanent CEOs, and about the uncertainty generated by extended periods under acting CEOs.

While it is not considered practical to place more stringent limits on the time that a person may act as CEO, it is appropriate to amend the Act to require councils to appoint a new CEO "as soon as practicable" when the permanent position becomes vacant.

**Proposed
Direction**

2-p. A COUNCIL SHOULD BE REQUIRED TO APPOINT A NEW PERMANENT CEO AS SOON AS PRACTICABLE AFTER THE PERMANENT POSITION BECOMES VACANT.

H2. Public Information

Public Notices

The Act requires councils to give public notice in regard to a range of matters. The existing provision, in section 3 of the Act, states that a public notice means a notice in a newspaper circulating generally in the municipality chosen by the council.

A problem with this existing provision is the limited availability of local papers, particularly for ratepayers who are not residents of the municipality or who reside outside the circulation area of the selected newspaper.

All Victorian councils now have web sites that are accessible to residents and ratepayers. Councils are increasingly using these web sites as a means of communicating with their communities.

It is proposed to extend the definition of public notice, to include publication of a notice on the council's web page in addition to publication in a local newspaper.

Local Laws

It is becoming standard practice for all governments to make their laws available on the internet. Most Victorian councils follow this practice and already publish their local laws on their web sites.

As the general availability of local laws is important for promoting compliance, and occasionally for showing why a council has acted in a particular way, it is recommended that the Act be amended to require local laws to be published on a council's web site.

Council Plan

Section 125 of the Act requires each council to approve a Council Plan following each general election.

A Council Plan must include:

- Strategic objectives;
- Strategies for achieving the objectives;
- Indicators for measuring achievement of objectives; and
- The Strategic Resource Plan.

In practice, Council Plans also often include additional information about the actions that the council will take each year to implement its strategies.

The currency of a Council Plan is required to be confirmed each year by the council and, if adjustments are required, the public must be consulted.

The purpose in requiring public consultation is for councils to confirm long term directions with their communities. In practice, councils often find themselves conducting consultation about implementation details that can require adjustment on an annual basis. This appears to be an unnecessary imposition and cost for councils.

In order to ensure that community consultation is more suitably focussed, it is proposed that public consultation on adjustments to a Council Plan should only be required where the council proposes to modify the objectives, strategies or indicators.

Council Plans would continue to be available for public inspection, however, and councils are entitled to conduct public consultation on implementation details where they consider it to be appropriate.

**Proposed
Directions**

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| <p>2-q. THE DEFINITION OF A “PUBLIC NOTICE” SHOULD INCLUDE PUBLICATION ON THE COUNCIL’S WEB SITE IN ADDITION TO PUBLICATION IN A LOCAL NEWSPAPER.</p> <p>2-r. THE CURRENT LOCAL LAWS OF A COUNCIL SHOULD BE PUBLISHED ON THE COUNCIL’S WEB SITE.</p> <p>2-s. PUBLIC CONSULTATION, UNDER SECTION 125(9) OF THE LOCAL GOVERNMENT ACT, ABOUT CHANGES TO AN APPROVED COUNCIL PLAN SHOULD ONLY BE REQUIRED FOR CHANGES TO THE STRATEGIC OBJECTIVES, STRATEGIES OR INDICATORS.</p> |
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H3. Special Rates and Charges

Payments

Section 163 of the Local Government Act empowers a council to levy a special rate or special charge on a person who will derive a special benefit from the performance of the relevant council function. The most common uses of this power are in relation to road construction or drainage schemes and to retail promotion schemes.

Section 167 of the Act ensures that ratepayers are allowed to pay their general rates and charges in instalments. In contrast, no similar guarantee exists for the payment of special rates and special charges, which can be substantial amounts for individual households.

In practice many councils allow the payment of special rates and charges by instalments, but this is not a universal practice.

It is proposed that the Act include a requirement that a council must provide for special charges to be paid in quarterly instalments over a period of at least four years.

This proposed provision would apply to capital works projects but not to service based projects, which may have quite short periods of application. The new provision would allow a council to recover its reasonable interest costs as part of instalment payments.

Costs Included

Section 163(6) specifies how a council may use funds raised under a special rate or special charge. This effectively defines what costs can be included in a special rate or charge.

The very general nature of the provision provides limited guidance for councils in determining which costs may reasonably be included. Particular concerns have been raised about two matters:

- Interest costs; and
- Costs of VCAT appeals.

Practices appear to vary significantly between councils when it comes to interests costs in special rates and charges. Properly speaking, the only interest costs that may be included are those that a council reasonably expects to incur. The complexity of this matter may be partly addressed by making specific provision for interest charges in instalment payments.

The issue of legal costs is difficult. While some ratepayers may lodge unreasonable appeals to VCAT, it is unreasonable for a council to impose a levy on all affected ratepayers to cover costs associated with defending such appeals. In addition, section 109 of the *Victorian Civil and Administrative Tribunal Act 1998*, empowers VCAT to award costs and it is inappropriate for a council to pre-empt this.

It is noted that most councils place significant emphasis on detailed consultation in advance of any formal proposals to levy special rates and charges. This continues to be the most appropriate way to minimise legal disputes.

Amendments

Sections 163A and 163B provide avenues for public feedback on proposed special rates and charges.

- Section 163A allows any person to make a submission on any proposed scheme.
- Section 163B allows an affected ratepayer to lodge an objection to a scheme that proposes to raise over two thirds of total costs under a special rate or charge.

The Act does not provide clear guidance to councils about whether, and to what extent, they may vary a proposed scheme in response to submissions or objections. In most cases, of course, scheme details have been well refined through prior consultation.

Particular concerns have been raised about late changes to proposed schemes that are not in response to submissions or which impose burdens on ratepayers that were not documented in the proposal.

It is proposed to clarify this matter in the following ways.

- Where a section 163B objection process applies, and objections have been received from a majority of affected properties, the council may not make the scheme, even in an amended form (this implicit requirement will be clarified).
- A council may amend a proposed scheme, as part of the process under section 163A, but only in response to public submissions and only to reduce the burden on ratepayers.

**Proposed
Directions**

- 2-t. SPECIAL RATES AND CHARGES FOR CAPITAL WORKS PROJECTS SHOULD BE ABLE TO BE PAID IN QUARTERLY INSTALMENTS OVER AT LEAST FOUR YEARS.**
- 2-u. THE LOCAL GOVERNMENT ACT SHOULD BE AMENDED TO EXCLUDE THE COSTS OF POSSIBLE VCAT APPEALS FROM THE AMOUNTS LEVIED UNDER SPECIAL RATES OR CHARGES.**
- 2-v. COUNCILS MAY ONLY AMEND FORMALLY PROPOSED SPECIAL RATES OR CHARGES IN RESPONSE TO PUBLIC SUBMISSIONS AND IN A WAY THAT REDUCES THE BURDEN ON RATEPAYERS.**

H4. Procurement Policies

**Current
Arrangements**

Section 186 of the Local Government Act requires councils to undertake specified public notification processes before entering into contracts valued at \$100,000 or more. Otherwise, the Act is relatively silent about councils' procurement practices.

While most councils have documented their procurement arrangements in various forms, it is unclear if many have their procurement policies in a single policy document.

Other levels of government have fully documented procurement policies that can be accessed by people and organisations interested in tendering for government contracts. This provides a public guarantee of transparent and consistent procurement practices.

Issue & proposal

It is important that similar arrangements for transparency and consistency operate in local government as exist at other levels of government. Ideally, councils should have the primary role in determining their procurement policies. However, there are principles that apply generally to all public bodies and it may be appropriate to have the capacity to specify common standards to apply to all councils.

It is proposed that the Act be amended to require each council to develop and adopt a Procurement Policy and to provide for statutory guidelines or regulations to be made if required.

Proposed Directions

2-w. EACH COUNCIL SHOULD DEVELOP AND ADOPT A PROCUREMENT POLICY AND THE LOCAL GOVERNMENT ACT SHOULD ALLOW FOR STATUTORY GUIDELINES OR REGULATIONS ON PROCUREMENT.