

MINUTES



Meeting of Council

Held online via Zoom

On

Thursday 29 February 2024

The Agenda for the Meeting of Council, Thursday 29 February 2024, forms part of these Minutes and is attached in full at the end of the Minutes.

These Minutes are considered draft until adopted and confirmed at the next meeting of Council.

The meeting commenced at 6:05pm.

PRESENT:

<i>Cr J Dwight (Mayor)</i>	<i>Chandler Ward</i>
<i>Cr Y Allred</i>	<i>Baird Ward</i>
<i>Cr M Timmers-Leitch</i>	<i>Collier Ward</i>
<i>Cr M Baker</i>	<i>Dobson Ward</i>

Cr S Laukens *Friberg Ward*
Cr D Pearce *Taylor Ward*
Cr N Seymour *Tirhatuan Ward*

Mr B Dobson *Chief Executive Officer*
Mr G Curcio *Director - Customer and Performance*
Mr A Dowling *Manager, Governance and Risk*

THE MEETING OPENED WITH A STATEMENT OF ACKNOWLEDGEMENT AND A STATEMENT OF COMMITMENT

“Knox City Council acknowledges we are on the traditional land of the Wurundjeri and Bunurong people and pay our respects to elders, past, present and emerging.”

Councillor Dwight noted that due to the upcoming deadline for Council submissions to the proposed Local Government Reforms 2024 Consultation Paper, this Council Meeting was called to ensure Councillors could give due consideration to the proposed reforms within the small window of opportunity available before the deadline. Councillor Dwight also outlined that other workload demands and priorities prevented this item from being heard at the Council Meeting on Monday 26 February 2024.

Order of Business

1 Apologies..... 4

2 Declarations Of Conflicts Of Interest 4

3 Officer Reports 4

 3.1 Local Government Reforms 2024 Consultation Paper 4

4 Urgent Or Other Business 4

5 Confidential Items..... 5

1 Apologies

Apologies were received from Councillor Cooper and Councillor Grasso.

2 Declarations of Conflict of Interest

Nil.

3 Officer Reports

3.1 Local Government Reforms 2024 Consultation Paper

SUMMARY: Manager Governance & Risk, Andrew Dowling

On 31 January 2024, Local Government Victoria (LGV) released a consultation paper seeking feedback on proposed reforms to the Local Government Act 2020.

The report outlines a recommended submission regarding the proposed reforms in response to the consultation process. In addition to informing a formal council position, this report may be used for individual Councillor submissions (to LGV and or Peak bodies) and will be shared with LGV and Peak bodies.

RECOMMENDATION

That Council endorses the submission regarding the proposed reforms to the Local Government Act 2020 (Attachment 3).

RESOLUTION

MOVED: Councillor Dwight

SECONDED: Councillor Laukens

That Council endorses the submission regarding the proposed reforms to the Local Government Act 2020 (Attachment 3).

CARRIED

4 Urgent or Other Business

Nil.

5 Confidential Items

Nil.

MEETING CLOSED AT 6:15pm

Minutes of Meeting confirmed at the
Meeting of Council
held on Monday, 25 March 2024

.....
Chairperson

The Agenda for this meeting is attached in full at the end of the Minutes

AGENDA



Meeting of Council



To be held via Zoom

On

Thursday 29 February 2024 at 6:00 PM

Order of Business

1 Apologies3

2 Declarations Of Conflict Of Interest.....3

3 Officer Reports.....4

 3.1 Local Government Reforms 2024 Consultation Paper.....4

4 Urgent Or Other Business35

5 Confidential Items.....35

Bruce Dobson
Chief Executive Officer

This meeting was called by the Mayor, Councillor Jude Dwight, in accordance with Chapter 2, Part C, Rule 11 of Council’s Governance Rules to be held online only and livestreamed.

The order of business for this meeting is as specified by the Mayor, and no other business can be transacted unless all Councillors are present and unanimously agree to deal with additional matters.

1 Apologies

2 Declarations of Conflict of Interest

3 Officer Reports

3.1 Local Government Reforms 2024 Consultation Paper

SUMMARY: Manager Governance & Risk, Andrew Dowling

On 31 January 2024, Local Government Victoria (LGV) released a consultation paper seeking feedback on proposed reforms to the Local Government Act 2020.

The report outlines a recommended submission regarding the proposed reforms in response to the consultation process. In addition to informing a formal council position, this report may be used for individual Councillor submissions (to LGV and or Peak bodies) and will be shared with LGV and Peak bodies.

RECOMMENDATION

That Council endorses the submission regarding the proposed reforms to the Local Government Act 2020 (Attachment 3).

1. INTRODUCTION

On Friday 17 November 2023 Local Government Minister, The Hon. Melissa Horne MP announced legislative reforms would be implemented into the Local Government Act 2020 in early 2024, to be in place ahead of the October General Election (Attachment 1).

On 20 December 2023 at a joint State and Local Government Forum, Local Government Victoria provided limited additional information regarding the reforms and the reform timetable, with consultation expected to be conducted over the Christmas period. Advice indicated that the initial reforms would be to introduce relevant “heads of power” into the Local Government Act 2020, enabling the reforms to be subsequently implemented via regulation to be developed and introduced ahead of the October election.

A consultation paper (Attachment 2) was released on Wednesday 31 January with submissions invited on a prescribed template (Attachment 3) closing on 29 February 2024. Local Government Victoria expects a Bill to implement the reforms to be introduced to Parliament in March 2024.

2. DISCUSSION

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

The proposed reforms focus on three key areas. Each key area of reform has underlying proposals to support the implementation of the reform as follows:

- **Reforms to strengthen council leadership, capability and councillor conduct.**
 - Mandatory ongoing training for councillors and mayors.
 - Enable model Councillor Code of Conduct and other governance matters to be prescribed in regulations.

- **Reforms to improve early intervention and effective dispute resolution.**
 - Limit the Victorian Civil and Administrative Tribunal’s (VCAT) jurisdiction with respect to councillor conduct panel decisions.
 - Councils must not indemnify councillors in relation to the internal arbitration process and the councillor conduct panel process.
 - Broaden the scope of sanctions that may be imposed by an arbiter.

- **Reforms to strengthen oversight mechanisms.**
 - Suspending or disqualifying individual councillors.
 - Clarify the application of privileges and statutory secrecy to Municipal Monitors and Commissions of Inquiry.
 - Give the Chief Municipal Inspector the power to issue infringements for certain offences.

These reforms recognise the need to enhance the capability and leadership of elected representatives through proposed ongoing mandated training programs and professional development for mayors and councillors that will build upon the existing induction training requirements for councillors. The reforms also seek to support improved councillor conduct by introducing a mandatory uniform councillor code of conduct to ensure consistent standards of behaviour at all Victorian councils.

Officers have reviewed the consultation paper and have drafted a formal submission for Council review and endorsement (Attachment 3).

3. CONSULTATION

The consultation period closes on 29 February 2024. The sector’s peak bodies are conducting a range of engagements to help inform individual Council submissions, as well as gather feedback for their own submissions on behalf of the sector.

It is understood that the reforms will commence in October 2024.

4. CLIMATE CHANGE CONSIDERATIONS

The proposed reforms to the Local Government Act 2020 are considered to have no direct implications upon Council’s Net Zero 2030 target, the Community Net Zero 2040, exposure to climate risks or climate change adaptation.

5. ENVIRONMENTAL/AMENITY CONSIDERATIONS

Nil

6. FINANCIAL & ECONOMIC IMPLICATIONS

Officers resources will need to be allocated to the assessment of proposed reforms to the Local Government Act 2020 throughout 2024, to facilitate submissions to the reforms process and ultimately to implement the proposed reforms.

The reforms themselves have the potential to reduce the financial costs and resource burden of:

- Mandatory Councillor induction and annual training;
- Developing and reviewing the Councillor Code of Conduct; and
- Managing and resolving Councillor conduct disputes.

However, this is dependent on the final form of legislative and regulatory changes.

7. SOCIAL IMPLICATIONS

As set out in the consultation paper, the objective of the reforms is to:

- Strengthen council leadership, capability and councillor conduct;
- Improve early intervention and effective dispute resolution; and
- Strengthen oversight mechanisms.

These objectives have the capacity to foster a stronger sense of trust and confidence within the community towards its local government.

8. RELEVANCE TO KNOX COUNCIL PLAN 2021-2025

Civic Engagement & Integrity

Strategy 5.3 - Ensure our processes are transparent and decisions are accountable.

9. CONFLICT OF INTEREST

The officers contributing to and responsible for this report have no conflicts of interest requiring disclosure under Chapter 5 of the Governance Rules of Knox City Council.

10. CONFIDENTIALITY

There is no content in this report that meets the definition of confidential information from the Local Government Act 2020.

Report Prepared By: **Manager Governance & Risk, Andrew Dowling**

Report Authorised By: Director, Customer & Performance, Greg Curcio

Attachments

1. Attachment 1 - Ministerial Media Release - Reforms To Boost Confidence In Local Government [**3.1.1** - 1 page]
2. Attachment 2 - Local Government Reform Consultation Document - January 2024 [**3.1.2** - 15 pages]
3. Attachment 3 - Feedback Form Proposed LG Reforms [**3.1.3** - 12 pages]

Media Release

The Hon Melissa Horne MP
Minister for Casino, Gaming and Liquor Regulation
Minister for Local Government
Minister for Ports and Freight
Minister for Roads and Road Safety



Friday, 17 November 2023

REFORMS TO BOOST CONFIDENCE IN LOCAL GOVERNMENT

The Allan Labor Government will introduce legislation to improve the performance and accountability of councillors across the state, so Victorians can have confidence in their local government representatives.

Minister for Local Government Melissa Horne announced legislation to be introduced early next year will elevate governance and integrity standards in the state's 79 councils, encouraging quality candidates to put themselves forward at local government elections to be held statewide in October 2024.

Local government leaders and members of the community have called for action after confidence in local government in some areas has suffered due to poor councillor behaviour and ineffective performance.

Almost 30 councillors have resigned since January, while municipal monitors have been appointed as an urgent intervention to protect local communities eight times in 18 months – at Glenelg, Strathbogie (twice), Horsham, Darebin, Wodonga, Geelong and Yarra. Moira Shire Council was dismissed and replaced with administrators.

The Local Government Culture Project has been a key driver in the reform process, drawing more than 140 submissions from residents, mayors, councillors, council staff and peak bodies.

Reforms will introduce mandatory training for elected representatives, a uniform councillor code of conduct and strengthened powers for the Minister to address councillor conduct.

The Local Government Act 2020 mandates induction training for new councillors and the changes will take this focus on education and training further with a requirement for ongoing training for councillors.

Good governance is critical to ensure councils make sound decisions and deliver the services their communities need. Expanded powers to address councillor misconduct will discourage poor behaviour.

Reforms will give the Minister the ability to suspend or disqualify individual councillors found to have created a risk to health and safety or prevented the council from performing its function. The Chief Municipal Inspector will also have enhanced powers, including the ability to issue infringement notices.

A model code of conduct for councillors with tougher sanctions for misconduct will provide a uniform set of standards and reduce the regulatory burden on councils which will no longer need to establish their own codes.

The Government will consult with the sector in coming months about the legislation and throughout next year on developing regulations for the councillor model code of conduct and mandatory training. Legislation is planned to be introduced in the first quarter of 2024.

The amendments to the Local Government Act 2020 will address recommendations made by integrity bodies such as the Independent Broad-based Anti-corruption Commission (IBAC) and the Chief Municipal Inspector.

Quotes attributable to Minister for Local Government Melissa Horne

"Victorians rightly have high expectations of their local councillors and these changes will ensure residents can have confidence their best interests are being served."

"Having a model code of conduct and mandatory training makes sense and extend reforms we introduced before the last council elections. They will help encourage quality candidates to come forward for the 2024 polls."

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Government
Services

Local Government Reforms 2024 Consultation Paper

January 2024

OFFICIAL

Table of Contents

Introduction and overview	3
Introduction	3
Background	3
Consultation	4
Scope	5
Part 1: Reforms to strengthen council leadership, capability and councillor conduct	6
Overview	6
1. Mandatory ongoing training for councillors and mayors	6
2. Enable model Councillor Code of Conduct and other governance matters to be prescribed in regulations	7
Part 2: Early intervention and dispute resolution	9
Overview	9
1. Limit the Victorian Civil and Administrative Tribunal's (VCAT) jurisdiction with respect to councillor conduct panel decisions	9
2. Councils must not indemnify councillors in relation to the internal arbitration process and the councillor conduct panel process	9
3. Broaden the scope of sanctions that may be imposed by an arbiter	10
Part 3: Oversight Mechanisms	12
Overview	12
1. Suspending or disqualifying individual councillors	12
2. Clarify the application of privileges and statutory secrecy to Municipal Monitors and Commissions of Inquiry	13
3. Give the Chief Municipal Inspector the power to issue infringements for certain offences	14
Part 4: Other Miscellaneous Amendments	15

Introduction and overview

Introduction

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

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

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

Background

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

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

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

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

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

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

Key reports and recommendations that have informed the reforms

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

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

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

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

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

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

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

Consultation

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

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

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

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

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

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

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

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

Scope

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

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

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

Overview

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

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

1. Mandatory ongoing training for councillors and mayors

Background

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

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

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

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

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

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

Proposal

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

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

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

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

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

Background

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

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

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

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

Proposal

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

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

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

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

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

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

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

Part 2: Early intervention and dispute resolution

Overview

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

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

Background

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

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

Proposal

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

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

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

Background

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

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

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

Proposal

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

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

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

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

Background

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

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

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

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

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

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

Proposal

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

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

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

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

Part 3: Oversight Mechanisms

Overview

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

1. Suspending or disqualifying individual councillors

Background

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

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

Proposal

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

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

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

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

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

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

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

Background

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

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

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

Proposal

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

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

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

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

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

Background

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

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

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

Proposal

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

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

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

Part 4: Other Miscellaneous Amendments

Overview

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

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

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ATTACHMENT FEEDBACK FORM - KNOX CITY COUNCIL

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

Reform proposal	Support / Not Support	Comments (Please limit responses for each proposal to 500 words)
<p>1.Mandatory ongoing training for councillors and mayors</p>	<p>Council appreciates the reform intention but has a range of concerns that haven't been adequately addressed in the discussion paper</p>	<p>The results for the 2024 Council elections will be known by mid-November 2024, and the consultation paper suggests an induction program would need to be completed by mid-February 2025 with no allowance for the Christmas holiday period which may affect the availability of councillors, staff and trainers, and impact the prospects of delivery within the prescribed timeframe.</p> <p>As the consultation paper merely states that the scope and delivery of training will be prescribed in the regulations it is impossible to assess whether compressing the training timeframe will allow sufficient time to achieve the desired learning outcomes, let alone deliver improved outcomes in the longer term.</p> <p>Without reasonable information regarding the induction curriculum, or who will be responsible for design and delivery of the prescribed training, or the mode of delivery, it also impossible to determine:</p> <ul style="list-style-type: none"> • Whether the proposed delivery timetable or mode will reasonably accommodate Councillors with work or family commitments, or who may require reasonable adjustments to support their learning. • Whether it is even feasible to design the induction program in time for delivery following the 2024 elections. • Whether there will be resource impacts on Councils (any impacts must be clearly articulated well in advance of the June 2024 to ensure changes can be accommodated within Council budgets.) <p>The proposal also fails to recognise that simply completing training sessions doesn't necessarily guarantee meaningful learning and scheduling too many sessions in a short space of time may in fact lead to a more superficial understanding of the content.</p>

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FEEDBACK FORM - KNOX CITY COUNCIL**

Reform proposal	Support / Not Support	Comments (Please limit responses for each proposal to 500 words)
		<p>The paper also fails to acknowledge that the prescribed induction material is not the only learning Councillors face in their first three months. From day one, new Councillors especially face a significant learning curve to deepen their understanding of Council operations and the issues which will require their attention and deliberations. In this context, compressing the induction timeframe may result in an overwhelming amount of new and/or complex material leading to learning fatigue and compromised learning outcomes.</p> <p>The legislation and regulations should focus on a thoughtful and well-paced learning schedule over a longer period (whether 6, or even 9 or 12 months) which has equal if not greater potential to result more comprehensive and lasting educational outcomes.</p> <p>Legislative change should focus on supporting the sector to develop and prescribe a clear and consistent curriculum that is suitable for induction and annual refresher training for Councillors throughout their term. It is recommended that content be structured and delivered in a way that ensures essential learning is delivered at the right time, in manageable modules, and built-upon in later modules; progressively developing deeper understanding and retention of the material over time. This could be achieved perhaps through a mixture of face-to-face and self-paced e-learning modules accounting for individual learning preferences and availability.</p> <p>Consideration should be given to how the curriculum can be developed in conjunction with the MAV, VLGA and local government sector, with core elements delivered through Local Government Victoria (perhaps in partnership with the MAV and or VLGA) to ensure consistency across the sector.</p> <p>Genuine consultation with the sector on the curriculum will also be essential to ensure that sector wide training can be complemented with local or regional training tailored to the particulars of each individual local government.</p> <p>The proposed financial penalties for failure to complete the induction program are incompatible with a longer program, however financial incentives can still be simply achieved by suspending</p>

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FEEDBACK FORM - KNOX CITY COUNCIL**

Reform proposal	Support / Not Support	Comments (Please limit responses for each proposal to 500 words)
		payment of allowances for any Councillor who has failed to undertake prescribed training within the prescribed timeframe, which has already been proposed in the consultation paper.
2. Enable model Councillor Code of Conduct and other governance matters to be prescribed in regulations	Council appreciates the reform intention but has a range of concerns that haven't been adequately addressed in the discussion paper	<p>A model code of conduct across the sector is considered beneficial and will particularly enable consistent and centralised training of candidates and councillors.</p> <p>With regard to the content, the Model Code must improve on the current Standards of Conduct by providing clear and practical guidance. To be effective, the code must establish a comprehensive understanding of expected conduct and actively encourage desirable behaviours; and at the same time enable the straightforward identification of behaviours that diverge from the defined standards.</p> <p>While the consultation paper indicates further consultation with the sector will inform the development of the model code, this commitment is viewed with some scepticism in light of the inadequate detail and timeframes associated with consultation on these reforms to date.</p> <p>It is essential that the State Government commit to and undertake meaningful and genuine consultation with the sector, including reasonable opportunities to inform the development of the model code; to review and comment on a consultation draft; and an opportunity to comment on the final form of the code prior to it being introduced. It is essential that this consultation occur with the sector as a whole and not be funnelled through the MAV.</p> <p>Just as the Act mandates deliberative engagement for the development of a range of Council plans, so too the provisions for a model code of conduct should mandate deliberative engagement with the sector for the development and any subsequent amendment of the model code.</p> <p>It is also essential that this happen in a timeframe which enables Councils across the sector to identify, address and implement any consequential policy or procedural changes which may arise from the implementation of a model code. These include for example, changes arising in connection with Recommendation 21 from the Operation Sandon Special Report, which may</p>

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FEEDBACK FORM - KNOX CITY COUNCIL**

Reform proposal	Support / Not Support	Comments (Please limit responses for each proposal to 500 words)
		<p>require updates to procedures for managing interactions between Councillors and staff, having regard to the new code and the existing provisions in Section 46(3)(c) of the Act.</p> <p>Timeliness of this work is essential to ensure that decisions can be made, having regard to the commencement of the election caretaker period and the prospect that pending election results, some councils will be unable to convene a decision-making forum until late November 2024.</p> <p>Timeliness is also essential to ensure that the model code can be incorporated into mandatory candidate training.</p>

Part 2: Early intervention and dispute resolution

Reform proposal	Support / Not Support	Comments (Please limit responses for each proposal to 500 words)
<p>1. Limit the Victorian Civil and Administrative Tribunal's (VCAT) jurisdiction with</p>	<p>Council appreciates the reform intention but has a range of concerns that haven't</p>	<p>The current provision of the Act enables a full merits review of a Councillor Conduct Panel (CCP) decisions, meaning the CCP findings are essentially set aside, and the entire matter is re-prosecuted in VCAT. As the consultation paper highlights, this can prolong proceedings and delay resolutions. The reform proposal would leave in place the opportunity for a Supreme Court judicial review.</p>

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FEEDBACK FORM - KNOX CITY COUNCIL**

Reform proposal	Support / Not Support	Comments (Please limit responses for each proposal to 500 words)
<p>respect to councillor conduct panel decisions.</p>	<p>been adequately addressed in the discussion paper</p>	<p>Removing VCAT’s jurisdiction would mean the processes for appealing CCP decisions would be the same as Internal Arbitration processes (IAPs), bringing an additional measure of certainty to the outcomes of a CCP and as well as procedural consistency.</p> <p>The primary concerns with this reform appear to focus on the rights and ability of the applicant for the appeal to test any adverse findings against them. One of the major concerns expressed with this reform relates to the accessibility of the appeals process due to the significant costs associated with Supreme Court appeals in comparison to the cost of actions in VCAT. The high cost of appeals to the Supreme Court is perceived by some as an unreasonable barrier to justice, in cases where parties appealing consider there has been an error or miscarriage.</p> <p>While it is desirable to ensure an appellant’s rights are protected, it is important to note that there are always two parties to a dispute, and an appeals mechanism that unreasonably prolongs a dispute can be particularly taxing on the victim of inappropriate behaviour and their ability to perform the role of Councillor.</p> <p>It is inherent in the reform proposal that the CCP process is sufficiently robust that any appeal should focus not on the merits, as in the case of VCAT’s jurisdiction, but focuses on the legality of the CCP decision making and whether the process was fair and lawful.</p> <p>In this context, one benefit of this reform may be in the removal of low cost VCAT appeals which can encourage appeals with relatively little merit and low prospects of success, and which merely prolong the resolution process and defer (and potentially prolong) the consequences of inappropriate behaviour.</p> <p>The proposal has triggered feedback concerned about the rights of parties to procedural fairness and natural justice.</p>

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FEEDBACK FORM - KNOX CITY COUNCIL**

Reform proposal	Support / Not Support	Comments (Please limit responses for each proposal to 500 words)
		<p>Procedural fairness encompasses the idea that individuals affected by a decision should have the opportunity to present their case and respond to the case against them. Natural justice involves ensuring that the decision-maker is impartial and that individuals are given a fair hearing - and it is not considered essential to either that the appeals process include a full merits review.</p> <p>It is noted this reform does little to encourage or support early intervention that may encourage dispute resolution to occur before it escalates to a CCP.</p>
<p>2. Councils must not indemnify councillors in relation to the internal arbitration process and the councillor conduct panel process.</p>	<p>Council appreciates the reform intention but has a range of concerns that haven't been adequately addressed in the discussion paper</p>	<p>Indemnifying councillors in matters related to the internal arbitration process and the councillor conduct panel process can pose substantial financial risks for councils.</p> <p>This practice exposes councils to unpredictable financial burdens for several reasons. Firstly, when councillors are indemnified for costs associated with initiating or defending arbitration, conduct panel, or Supreme Court proceedings, councils have no control over the scale of expenses incurred. For instance, court lodgement fees and legal representation costs can escalate without council oversight, leading to unanticipated financial strains.</p> <p>Also, by indemnifying councillors, councils also surrender the ability to assess the merits of a case and the likelihood of success before allocating resources to it. Without the capacity to evaluate the validity and potential outcomes of the proceedings, councils may find themselves expending resources on legal matters with uncertain prospects, leading to inefficient use of public funds.</p> <p>A statutory bar to indemnification supports financial prudence and strategic control over resources in the face of legal challenges initiated by individual councillors.</p> <p>There are however, a range of opposing considerations in favour of indemnification:</p>

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Reform proposal	Support / Not Support	Comments (Please limit responses for each proposal to 500 words)
		<ul style="list-style-type: none"> • Encouraging Participation. The objective of dispute resolution processes is of course, resolution. Fear of personal financial consequences may dissuade councillors from engaging in the dispute resolution process (either initially, or as dispute escalate). This may hinder open dialogue and compromise the overall goal of disputes and conflict resolution. • Discouraging Frivolous Claims. Indemnification serves as a safeguard against potentially baseless or frivolous claims brought against councillors, whether as a primary or retaliatory action. Without indemnification, councillors might be hesitant, or unable to take necessary defensive actions against such claims. • Fairness. The reforms prohibit a Councillor who may be found guilty of misconduct from being indemnified by Council which at first glance seems reasonable, however they also prohibit the councillor bringing the action against the misconduct from being indemnified against a subsequent appeal, even if it is denied. It is fundamentally unfair that a Councillor could be financially penalized for carrying out their duties in the absence of misconduct. • Encouraging Effective Governance. While financial prudence is crucial, it is equally important to pursue effective governance. Indemnification allows councillors the freedom to pursue dispute resolution in the interests of the community and good governance, rather than have their dispute resolution options constrained by their personal financial circumstances. <p>It is noted this reform does little to encourage or support early intervention that may avoid formal actions that would trigger a liability to indemnify Councillors.</p>
<p>3. Broaden the scope of sanctions that may be imposed by an arbiter.</p>	<p>Council appreciates the reform intention but has a range of concerns that haven't been adequately</p>	<p>The reforms enabling an arbiter to prescribe the specific meetings at which a report will be tabled, and that a Councillor may not attend, are relatively procedural and generally supported.</p> <p>Reforms extending the period of suspension are less straightforward. While increased sanctions are consistent with the recommendations from IBAC, IBAC's specific recommendations were limited to provisions regarding eligibility to hold the office of Mayor or Deputy Mayor.</p>

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FEEDBACK FORM - KNOX CITY COUNCIL**

Reform proposal	Support / Not Support	Comments (Please limit responses for each proposal to 500 words)
	addressed in the discussion paper	<p>The consultation paper does not provide any detail regarding how extended suspension periods were identified as the most appropriate additional sanction to remedy repeated or egregious conduct breaches. The consultation paper does not indicate how consideration has been given to the impact extended suspensions may have on the community and effective representation, or decision-making, particularly in municipalities with a small number of Councillors to bear the load of additional representation.</p> <p>There is also no discussion in the consultation paper that clarifies the specific activities and behaviours a suspended Councillor is prohibited from engaging in whilst on suspension.</p>

Part 3: Oversight Mechanisms

Reform proposal	Support / Not Support	Comments (Please limit responses for each proposal to 500 words)
1. Suspending or disqualifying individual councillors	Council appreciates the reform intention but has a range of concerns that haven't been adequately	<p>In clear-cut, egregious cases of misconduct, these reforms as proposed appear relatively straight-forward and practical measures to protect the integrity of Councils, the health and safety of Councillors and Officers, and the broader public interest.</p> <p>However, as cases become less egregious and more marginal, these reforms give rise to a range of concerns, primarily in relation to whether it provides sufficiently for procedural fairness or natural justice.</p>

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FEEDBACK FORM - KNOX CITY COUNCIL**

Reform proposal	Support / Not Support	Comments (Please limit responses for each proposal to 500 words)
	addressed in the discussion paper	<p>It is presumed that the Minister’s and Governor in Council’s decisions would have an appeal avenue at least to the Supreme Court, however the availability of any appeals process is not addressed in the consultation paper. In light of Proposal 2.1, it seems highly unlikely in the reforms that a VCAT merits review would be available for either decision.</p> <p>Notwithstanding the lack of information regarding any appeals process, as previously discussed,</p> <ul style="list-style-type: none"> • Procedural fairness encompasses the idea that individuals affected by a decision should have the opportunity to present their case and respond to the case against them; and • Natural justice involves ensuring that the decision-maker is impartial and that individuals are given a fair hearing <p>The Minister’s decision to suspend an individual Councillor must be preceded by advice from the Municipal Monitor or a commission of inquiry. Provided the findings of the Monitor, or Commission, can be demonstrated to deliver natural justice and procedural fairness, the suggested reform giving additional powers of sanction to the Minister or Governor in Council don’t of themselves, breach either principle. However, while the paper notes a Councillor must be afforded procedural fairness to respond to the claims against them, there is nothing in the consultation paper which indicates they must be given that same right in relation to the proposed imposition of these sanctions, which may or may not be anticipated during the proceedings of the Monitor or Commission.</p> <p>With regard to the Governor in Council’s power to suspend a person from standing at elections, there is also nothing in the paper which identifies the protections for procedural fairness or natural justice that will apply between the Minister making their recommendation, and Governor in Council exercising their power. This includes a lack of procedural information regarding when such a recommendation may be made and whether it must be contemporaneous with the dismissal, or may be made some years later.</p>

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		<p>Appropriate procedural steps might include the opportunity for individuals to make submissions prior to the power not being exercised. This would ensure individuals could present the decision-maker with relevant information, for example relating to their conduct and reform in the period following their dismissal. This is particularly significant when considering Governor in Council's decision will impact a persons protected human right (the right to participate in public life).</p> <p>The consultation paper also indicates that the Minister's power cannot be exercised where a CCP is already considering an allegation of serious misconduct, but fails to articulate:</p> <ul style="list-style-type: none"> • why a CCP is not being given the power to recommend the dismissal of an individual Councillor, ensuring the Councillor has an opportunity to address this prospect as part of the procedures and deliberations of a CCP or VCAT. • Why the Chief Municipal Inspector is only required to attest that CCPs proceeding are not already on foot or under consideration, instead of being required to articulate why the sanctions should be considered by the Minister without the benefit of allegations supporting them being heard by a CCP or VCAT. <p>It is noteworthy too that where an entire Council is dismissed by the Minister, there are legislative provisions for the appointment of administrators which are not mirrored in these reforms. The consultation paper fails to address how the gap in representation and additional workload for remaining councillors is proposed to be addressed or resourced following the suspension of a Councillor.</p> <p>Given the significance of the sanctions and the potential consequences for communities and remaining Councillors, the lack of information makes it difficult to assess the overall merits of this reform proposal.</p>
<p>2. Clarify the application of</p>	<p>Council appreciates</p>	<p>Any reforms must impose limits and sanctions upon Municipal Monitors and Commissions of Inquiry to ensure any information disclosed to them is safeguarded against inappropriate</p>

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Reform proposal	Support / Not Support	Comments (Please limit responses for each proposal to 500 words)
<p>privileges and statutory secrecy to Municipal Monitors and Commissions of Inquiry</p>	<p>the reform intention but has a range of concerns that haven't been adequately addressed in the discussion paper</p>	<p>subsequent disclosure that unreasonably defeats the fundamental objective of legal privilege, or the statutory prohibition.</p> <p>While it is appreciated that the application of privilege, or prohibitions on the disclosure of information should ideally not impede the role and function of a Municipal Monitor or Commission, any concessions in favour of disclosure must be balanced with an obligation to safeguard the information and most importantly, the interests of the party in whose favour the protection exists.</p> <p>For instance, a Monitor may encounter data that enjoys legal privilege, and the subsequent disclosure of such information, even in a report to the Minister, holds the potential to unreasonably prejudice a Council and compromise the fundamental principle and purpose of legal privilege, or Parliament's intentions when establishing a statutory protection.</p> <p>Similarly, a Monitor may encounter information which forms part of a 'whistleblower's' complaint, or even protected disclosure under the Protected Disclosure's Act 2012, including information regarding their identity; and the subsequent use or disclosure of such information may be discourage disclosures, or be detrimental to the 'whistleblower' or an ensuing investigation by another agency.</p> <p>It may therefore be appropriate for the reforms to limit the scope of privileged or protected information, and/or prohibit the subsequent disclosure of otherwise protected information unless disclosure is essential to the outcome of the Monitor or Commission's investigation.</p>
<p>3. Give the Chief Municipal Inspector the power to issue infringements</p>	<p>Council appreciates the reform intention but has a range of concerns</p>	<p>It is evident from the reform proposal that a power to issue infringements would enable the Chief Municipal Inspector to investigate and act upon offences and breaches of the Local Government Act in a timely manner.</p> <p>Officers also note that there can be benefits to individual Councillors arising from infringement processes. For minor, procedural breaches they will typically attract smaller penalties that</p>

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Reform proposal	Support / Not Support	Comments (Please limit responses for each proposal to 500 words)
for certain offences.	that haven't been adequately addressed in the discussion paper	<p>might be imposed by a court (although no information on penalty scales has been provided). They might also attract less public scrutiny than a court proceeding.</p> <p>The Act indicates the Infringements Act 2006 would apply to regulate requests for review and collection of infringement penalties. It can be presumed therefore that infringement can be appealed and reviews would be required to be conducted in accordance with that Act.</p> <p>However, there is no information in the consultation paper demonstrating that the Inspectorate would be sufficiently resourced to manage such referrals in a timely and cost-efficient manner, if they aren't currently resourced to bring these actions to court in the first instance.</p> <p>Officers are also concerned that the introduction of penalties alone will be a meaningless reform unless the LGI is adequately equipped and resourced to investigate and act upon breaches and offenses in a timely manner and have addressed this in the draft submission.</p>

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4 Urgent or Other Business

5 Confidential Items