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| Regulatory impact statementLocal Government (General) Regulations 2015 |

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Executive Summary

The Local Government (General) Regulations 2004 were made on 26 October 2004. They were scheduled to expire (sunset) after ten years of operation, in October 2014, however the operation of the 2004 Regulations was extended for 12 months to October 2015.

This Regulatory Impact Statement (RIS) describes the analysis undertaken by the Department of Environment, Land, Water and Planning in reviewing the operation of the 2004 Regulations and preparing draft Local Government (General) Regulations 2015 which will replace them.

The proposed regulations will be made under the *Local Government Act 1989* (the Act).

Local Government

Local government is a key level of government in Australia. It comprises democratically elected councils that provide many essential services for their communities and regulate particular activities within their local areas. In Victoria, there are 79 separate councils.

Each council comprises an elected body of councillors who have the primary responsibility for making decisions on behalf of the communities that elected them. A council also includes an administration headed by a chief executive officer (CEO). CEOs and council staff have many duties and decision making responsibilities delegated to them by their elected councils.

The RIS

This RIS has been prepared to fulfil the requirements of the *Subordinate Legislation Act 1994* and to facilitate feedback from councils and from the general public about the proposed regulations.

The RIS is divided into five parts:

* Part 1 – The Introduction, which discusses the purpose and structure of the RIS
* Part 2 – Public Accountability, which considers issues relating to the register of interests, conflict of interest and council information available to the public
* Part 3 – Information Provision, which examines information provided by councils in in notices of rates and charges and land information certificates
* Part 4 – Council Functions, which considers matters relating to the performance of council functions, including contracting for legal services and obtaining property sales information.

WHO IS affected by the proposed regulations

The draft regulations cover a broad range of matters and affect the following:

* Members of the public who wish to inspect councillors’ and senior staff registers of interest
* Councillors and council staff required to fill out returns of interest
* All councils, which require legal services
* Councillors who are appointed by the council to certain organisations where the appointment may give rise to a conflict of interest
* Buyers, sellers and others who need to find out about council statutory property charges usually in the lead up to a property sale
* Councils, the State Revenue Office and Valuer-General’s office which receive property data through notices of acquisition
* Buyers of property who must lodge notices of acquisition in relation to that property.

what is proposed in the new Regulations

The following changes are proposed in the draft regulations:

* Documents that councils are required to make available to the public in the “public registers” should be refined to focus on information that is important for a council’s public transparency that are not readily available to the public in other forms.
* Documents that a council publishes on its web site should no longer be required to be included in the public registers.
* Land information certificates should no longer need to include flood level information, which is available under planning schemes.
* The fee for a land information certificate should be specified in fee units that are updated annually to reflect changes in costs.
* The fee for a land information certificate should be 1.82 fee units, which is currently equivalent to $24.71.
* Notices of disposition should be discontinued.

Regulations regarding the following matters are proposed to be remade with only minor or technical changes:

* Register of interests
* Conflict of interest exemptions
* Notice of rates and charges
* Legal services exemption from section 186
* Notices of acquisition

In summary, the proposed regulations:

* will impose an estimated burden in excess of $2 million annually Victoria-wide to persons within the community, primarily in relation to seeking a land information certificate from their local council which is expected to cost around $75.12 million over ten years (in NPV terms).
* will impose a burden on local councils for the purpose of transparency and providing relevant information to the community.

The benefits of having these regulations will assist councils:

* in ensuring they are able to maintain accurate property records for the purpose of levying an collecting statutory rates and charges and preparing voters’ rolls.
* by providing appropriate forms for declaring councillors’ and senior staff interests.
* by codifying instances where it is reasonable and in the public interest for certain exemptions to apply from the conflict of interest rules by councillors (in addition to those exemptions already set out in the Act).
* by allowing them to recover their reasonable cost of providing land information certificates to property buyers and sellers.

The regulations will provide benefits to the public including:

* enabling them to have ready access to important information held by councils to improve the transparency and accountability of councils.
* allowing buyers and sellers to obtain comprehensive information on council land charges at a reasonable fee.
* enabling ratepayers to be properly informed of their rights and obligations when receiving notices of rates and charges.
* streamlining the statutory information to be provided to councils following a property sale, including no longer being required to lodge both notice of acquisition and disposition.

Consultation

Consultation has been undertaken with the local government sector by Local Government Victoria before the commencement of the review process. In addition, the process of preparing this RIS has involved targeted consultation with many practitioners in local government as well as the government’s State Revenue Office, Valuer-General’s Office and Land Victoria, and the conduct of surveys on particular matters.

Feedback is invited from councils and from member of the public to the proposed regulations. Submissions must be lodged with the Department by no later than **5.00pm** on **25 September 2015**.

Submissions may be made:

* By mail to:

Local Government Victoria

Department of Environment, Water, Land and Planning

GPO Box 2392

Melbourne Vic 3001

*or*

* By email to:

tim.presnell@delwp.vic.gov.au

Any questions about the RIS or the proposed regulations may be made to: tim.presnell@delwp.vic.gov.au or by phone to (03) 9948 8058.

The RIS canvasses a number of issues and submitters may wish to address any of them when responding. Some questions include:

* Are there any instances (in addition to those currently set out in the Act and proposed in the regulations) where it would be appropriate for a councillor to be exempted from the conflict of interests because of a conflicting duty to another body? Why or why not? (Refer Part 2.2)
* Is the proposed removal of the existing regulatory requirement to include section 223 submissions in the public registers warranted? Why or why not? (Refer Part 2.3)
* Is the proposed removal of the existing regulatory requirement to include flood level information in land information certificates warranted? Why or why not? (Refer Part 2.3)
* Is a single fee in fee units (at 1.82 fee units or $24.71 in 2015/16) across all councils for Land Information Certificates the best approach to fee setting? Why or why not?
* Are there are services other than legal services that should be considered for a general exemption from the requirement for a councils to undertake a competitive tendering process? Why or why not? (Refer Part 4.1)

***Has the VCEC assessed the RIS as meeting the Victorian Guide to Regulation requirement? YES***

1. Introduction

The Local Government (General) Regulations 2004 will sunset in 2015. The following Regulatory Impact Statement considers the merits of proposed new regulations in addressing identified problems and provides a basis for public consultation.

Throughout this report, the following terms will be used:

* “the Act” – refers to the Local Government Act 1989
* “2004 Regulations” – refers to the Local Government (General) Regulations 2004
* “2015 Regulations” – refers to the proposed Local Government (General) Regulations 2015
* “RIS” – refers to this Regulatory Impact Statement.

1.1 Local government in Victoria

Local government is a key level of government in Australia. It comprises democratically elected councils that provide many essential services for their communities and regulate particular activities within their local areas. In Victoria, there are 79 separate councils.

Each council comprises an elected body of councillors who have the primary responsibility for making decisions on behalf of the communities that elected them. A council also includes an administration headed by a chief executive officer (CEO). CEOs and council staff have many duties and decision making responsibilities delegated to them by their elected councils.

As elected public bodies, councils are expected to act entirely in the public interest and maintain a high level of public transparency about their actions. The Act and regulations made under the Act are essential for this purpose.

1.2 Purpose of this report

A Regulatory Impact Statement (RIS) must be prepared for any proposed new regulations that impose a significant economic or social burden on any sector of the public.

A RIS report has two primary purposes. It describes the analysis undertaken in scrutinising new regulations and it provides a basis for public consultation.

Scrutiny

It is important that any proposed regulations are subject to proper scrutiny to decide whether there is a justified need for regulation and to consider the impacts of any proposed regulations on the public. Steps to undertake in scrutinising a proposed regulation include:

* identifying the nature of the problem to be addressed by the regulation
* clarifying the precise objective of the regulation
* identifying the options available to address the problem
* analysing the options against specified criteria.

Where possible, the analysis assesses the costs and benefits of the options. While a quantitative analysis is preferred, most of the regulations considered in this report do not lend themselves to measurement and will be subject to more qualitative scrutiny. It is intended that the proposed regulation will yield a benefit that is greater than any costs they impose.

Consultation

The publication of this report provides a further opportunity for consultation. Any person who may be affected by the proposed 2015 Regulations or who has a particular interest in the matters considered in this report is encouraged to make a submission.

As these regulations have specific impacts on local governments, councils are encouraged to make submissions. In doing so, it is recommended that councils give particular attention to any resourcing or transitional impacts arising from the proposed 2015 Regulations.

1.3 Legislative context

The place of local government in Victoria is enshrined in the *Constitution Act 1975*, which states that it is an essential tier of government that has the functions and powers determined by the Parliament.

The *Constitution Act 1975* gives the Parliament the authority to make laws regarding local government, including its constitution, objectives, functions, powers and duties. The principal Act applying to local government is the *Local Government Act 1989*. However powers and duties of councils are also prescribed under many other Acts, including the *Planning and Environment Act 1987*.

The Minister for Local Government has general responsibility for the administration of the Act and may recommend to the Governor in Council that regulations be made under the auspices of the Act. In addition to the 2004 Regulations, other specific purpose regulations made under the Act include regulations dealing with council elections, planning and reporting and long service leave.

The Regulations

The 2004 Regulations were due to expire in October 2014 after 10 years of operation. This time limit was extended for one year because of anticipated changes to the Act and to allow a consultation process to be completed.

The 2004 Regulations deal with matters relating to:

* the public accountability of councils
* specific information needs of people in the community
* the effective performance of council functions.

1.4 Report summary

This report considers the proposed 2015 Regulations under three broad headings that reflect the types of problems and objectives being addressed. These are:

* public accountability matters
* information required by ratepayers
* issues relating to the performance of council functions.

public accountability

Part 2.1 considers the requirements for council registers of interest and recommends remaking the provisions in the existing 2004 Regulations.

Part 2.2 considers exemptions from conflicts of duty to enable councillors to vote on certain matters without having conflicts of interest. It is recommended that the existing provisions be substantially remade.

Part 2.3 considers the types of information prescribed to be available for public inspection in a council’s public registers. Substantial change is recommended, including:

* removing a number of documents from the registers because they have little relevance for public accountability or are available elsewhere
* exempting information from inclusion in the public registers if it is published on the council’s website.

Information for ratepayers

Part 3.1 examines the provision of information in notices of rates and charges and recommends that the existing 2004 provisions be substantially remade.

Part 3.2 considers the provision of land information certificates and recommends the following changes:

* land information certificates should be limited to information relating to rates and charges
* the fee for a land information certificate should be specified as 1.82 fee units (Currently equivalent to $24.71).

Council functions

Part 4.1 recommends retaining an exemption from public tendering for legal services.

Part 4.2 reviews provisions relating to property information notices and recommends that:

* notices of acquisition should be retained
* notices of disposition should be discontinued.

2. Public Accountability

A council is a public institution subject to democratic processes. As such, it is accountable to the public and expected to operate with a high degree of transparency. People in public office in local government can take actions or make decisions that affect many individuals and groups in the community. Under a democratic system of government, the authority for these actions or decisions ultimately derives from the community itself through the democratic process.

Important components in the public accountability and transparency of local government include the availability of information about the council and its decisions as well as transparency about private interests of the people in local government that may affect their decision making. Coverage of these matters is in the following order:

* part 2.1 considers the register of interests, including forms for lodgement of returns as well as forms for public inspection of the register
* part 2.2 considers conflict of interest exemptions for some public duties of councillors
* part 2.3 evaluates information that councils should make available for public inspection – often referred to as the “public registers”.

2.1 Register of interests

The Act requires a designated public official to lodge a “primary return” of interests when they take up their position and then to lodge an “ordinary return” every six months while they hold office.

2.1.1 Problem and objective

It is important that people have confidence that elected and appointed officials are acting in the public interest and not for their own private benefit. Members of the public don’t normally have access to information about the private interests of officials, however it is important that there is a reasonable degree of transparency about any interests that might affect decisions of the Council or its delegates.

The established process at all levels of government in Australia is for elected members and senior officials to make regular disclosures in interest returns. The Act applies similar requirements for local government in Victoria. However, the provisions of the Act cannot be put into effect unless specific forms are prescribed in regulations.

Objective

The objective is to ensure appropriate transparency about the relevant private interests of people who make decisions as the council or on behalf of the council.

2.1.2 Primary and ordinary returns

The Act requires the following people to lodge primary and ordinary returns:

* all councillors
* members of council audit committees
* members of special committees, unless exempted by the council
* all senior officers
* other staff nominated by the CEO.

The Act requires the following matters to be disclosed in primary and ordinary returns:

* bodies in which the person holds office
* bodies in which the person holds a beneficial interest above specified values
* land in the municipality or adjoining municipality the person owns
* trusts in which the person has a beneficial interest or is trustee
* gifts received that are valued above specified thresholds (ordinary returns only)
* any other substantial interest that may raise a material conflict of interest.

This regulation is machinery in nature. The Act specifies who has to lodge returns, what matters must be disclosed and when returns must be lodged. The regulations can only specify the form to be used. The significance of the precise form is very limited, as section 53 of the *Interpretation of Legislation Act 1984* makes it clear that strict compliance with prescribed forms is not necessary.

As the substantive requirements of the returns are imposed by the Act rather than the Regulations, therefore they are not analysed in the RIS.

2.1.3 Inspecting the register

The Act entitles any member of the public to inspect the register of interests if they have made a written application.

As the inspection of a return may give a member of the public access to private information about an official, such as their place of residence, the Act requires CEOs to keep records of the names of people who have inspected the register. A person who has lodged a return can inspect the list of people who have viewed their returns.

The Act allows the regulations to specify requirements to be met by a person wanting to inspect the register of interests. The 2004 Regulations prescribe a simple form to be completed by a person wanting to inspect the register. The form requires the person to disclose:

* their name
* their address
* the name of the person whose returns they wish to inspect.

This provision is machinery in nature, as the substantive requirements of the form are imposed by the Act, the provision is not analysed in the RIS.

2.1.4 Proposed 2015 Regulations – Register of interests

Proposed 2015 Regulations 6 to 7 prescribe forms for the lodgement of primary returns and ordinary returns and proposed Regulation 8 prescribes a form to be completed by a person wishing to inspect the register of interests.

2.2 Conflict of interest

It is important that councillors, members of special committees and council staff avoid conflicts of interest when undertaking their public duties.

2.2.1 Problem and objective

Nature of the Problem

A conflict of interest arises when a person has a personal or other interest in a matter in which they have a public duty. To remove concerns that a person with a conflict of interest might misuse their position for a private purpose, councillors and staff who have conflicts of interest are required to disclose those interests and refrain from participating in decision making in regard to the particular matter.[[1]](#footnote-1)

The Act describes several types of private interests that give rise to a conflict of interest, including direct interests indirect financial interests, close associations, gifts and being an interested party. One type of indirect interest, where the Act provides for the regulations to specify exemptions, is a “conflicting duty”. A conflicting duty arises where a person has a separate duty to another person or organisation that may conflict or overlap with their duty to the council in relation to a particular decision.

In some situations, a blanket prohibition can have undesirable consequences. It may prevent a councillor who has particular expertise because of another public position, from participating in the decision making process, or in meetings of councillors where the matter is discussed. This can have a detrimental effect on the quality of council decisions that are out of proportion with the scale of any potential conflict of interest. This is particularly the case for some duties associated with other public positions.

While the numbers of councillors that hold affected public positions is not quantified, and will vary with each election cycle, the Department assumes that the overall number is low as it would rarely affect more than one or two councillors at any one council. However, the impact on a particular council of having one or two members unable to participate in the consideration of certain matters can have a significant impact on decision making, particularly where the absence of a councillor means that a sector of the community is under-represented. For example, a matter affecting a particular ward might be determined without the councillor representing that ward being allowed to vote.

This issue is essentially a trade-off between the quality of council decision making and the risks of conflict with private interests. It is not just a matter of whether or not a council has access to information. Council officers generally liaise with relevant external bodies to obtain information when preparing reports for council consideration. Councillors’ participation in certain external bodies allow them to bring back to the council specialist knowledge gained from those organisations not always readily publicly available (for example, industry trends/developments) or general expertise in technical matters gained over time, that would assist in informed decision making.

To address this issue, the Act includes a number of standard exemptions to the conflicting duty rule. For example, a councillor does not have a conflicting duty in regard to a decision affecting the Municipal Association of Victoria (MAV) just because he or she is the council’s representative on the MAV. It should be noted that non-remunerated positions as a council representative on another body are separately exempt under the Act.

The Act also provides for the regulations to specify additional exemptions to a conflict of duty. Such exemptions will have a deregulatory effect because they are exceptions to the general prohibition in the Act. This is the only way that an additional duty can be exempted the conflicting duty provision in the Act unless the Parliament determines that the Act will be amended.

When considering which duties might be exempted, it should be noted that there is no simple definition to identifying those duties that entail significant potential for conflict with a person’s duties as a councillor or council officer and those that do not. Each matter needs to be evaluated on its own merits. The identification of the currently exempted duties was done through consultation and evaluation of practical situations. This included consultation with councils and the community during a review of conflict of interest matters in 2010. These exemptions were broadly supported in that process and no particular concerns were raised about any possible negative impacts.

Objective

To ensure that councillors are not excluded from council decisions because of public duties that involve no significant risk of conflict with their council responsibilities.

2.2.2 Analysis of options

A number of circumstances have been identified where it is considered to be in the public interest that councillors should not be excluded from voting because of conflicts of interest. These are:

* where a councillor has been appointed by the council to be on the board of a waste management body
* where a councillor is a member of the governing body of the Country Fire Authority
* where a councillor is a member of the governing body of a referral authority under the Planning and Environment Act and the council is considering a matter that was referred to that body.

Each of these possible exemptions needs to be considered in relation to the “no regulation” option.

When assessing whether an exemption is desirable, the benefits of having a councillor participate in the consideration of a matter must be weighed against the risk that a substantial conflict may exist. The weighting of these criteria must reflect the overall public interest in ensuringthat decisions are made in the best public interest and not in the interests of another entity.

Reflecting these considerations, the criteria and their weightings are:

* the benefits of allowing participation in decision making – 40%
* the degree of risk of a conflict – 60%

The higher weighting for risks over benefits reflects the serious importance placed on councillors by the legislative framework in ensuring conflicts of interest are avoided thereby enhancing probity in decision making.

The following analysis assesses the advantages of participatory decision making against the disadvantages posed by the degree of risk of a conflict.

In essence, the decision about whether to exempt a particular duty is a trade-off between the quality of decision making and the risks of conflicts with other interests.

Analysis

Waste management bodies

The management of waste is a key function of councils. Under the *Environment Protection Act 1970*, regional oversight of many waste management matters is undertaken by “Waste and Resource Recovery Groups”. This includes regional infrastructure planning and facilitation and community education. Half the members of each Waste and Resource Recovery Group are representatives of the councils in the region.

In addition, for each region there is a Local Government Waste Management Forum that has members from each council. These forums nominate members to the Waste and Resource Recovery Group and provide advice to those groups.

***Participation benefit*** – This exemption rated very high for participation benefit. This is because of the large number of councillors who are members of waste management bodies. There are significant benefits for councils in having their representatives on Waste and Resource Recovery Groups or Forums able to participate in decision making on waste management matters. Those councillors have generally developed a level of expertise and knowledge of the subject, for example gaining information on industry developments/trends in waste and resource recovery that would not be readily available to councils. The councillor representative also becomes an important conduit of information between the council and the waste management body.

***Conflict risk*** – There is a small risk of conflict associated with this exemption because it is possible for a conflict to arise between the state and regional focus of a waste management body and the local and financial needs of a council. For example, a waste management board may want to establish a regional recycling facility in a location that is further removed from an existing facility for one council, so that a tension arises between regional and council needs. However, a councillor on a waste management group is appointed to that position by the council as its representative and any potential conflicts would be between entities that function for a public purpose and that have broadly common objectives.

Country Fire Authority

Until recently, the governing body of the Country Fire Authority (CFA) had to include a councillor member nominated by the MAV. While the legislation was changed in 2014 to remove this prescription, the roles played by local government in emergency management mean that the relevant minister may still appoint councillors on the CFA.

***Participation benefit*** – This exemption provides a potential benefit for one council with a member on the CFA board. When a council considers matters relating to emergency management, it can benefit from the expertise of a person that the Minister considers qualified to be on the governing body of the CFA, so this option has a moderately positive advantage for participation. The scale of this benefit overall is low, however, as it will generally only apply to a single council.

***Conflict risk*** – The risk of conflict in this case is virtually non-existent. A councillor who is a member of the CFA serves a duty to the broad community in that role. That duty is generally consistent with a councillor’s duty to the council and is highly unlikely to involve any conflict of interest. It should be noted that a councillor who has another duty to the CFA, such as holding office in the local CFA brigade, is not exempted from a conflict of duty to that position by this provision (this is because that position held is at the initiative of the councillor in a private capacity not connected with the council). Given the very limited scope for conflict between duties to the council and the CFA board, this option has only a minimal negative score for conflict risk.

Referral Authorities

Under the Planning and Environment Act 1987, councils are required to refer many planning applications to other authorities before deciding whether to grant a permit. This includes local water catchment management authorities. An issue can arise when a councillor is also on the board of the relevant referral authority.

***Participation benefit*** – There are substantial advantages of this exemption and it rates high for participation benefit. Without this exemption, a councillor in this position would be unable to vote on many planning applications because of a conflict of duty. This can be a significant disadvantage for a council if one or more of its members is excluded from such planning decisions, as it would exclude the affected councillors from voting on a large number of applications. The benefit of participating in such council decisions means that all councillors are able to contribute to planning decisions, many which affect their local ward and benefit from their input as the direct representative for that ward.

***Conflict risk*** – There is very little risk of conflict between duties in this case and this option scores very low for conflict risk. Firstly, almost all referrals are dealt with at officer level within a referral authority, with no active participation by board members. Secondly, even if a councillor was personally confused about their respective obligations, councils generally have no authority to ignore or override the conditions on a planning application determined by a referral authority.

It is important to note that this exemption only applies to referrals on planning permits, as these are determined within given policy frameworks. It does not apply to planning scheme amendments which set the policy frameworks and which can impact on the authority of a body to be a referral authority for particular applications.

Other duties

As noted above, these types of duties have been previously identified as not entailing significant risks of conflict and as the circumstances have not substantially changed it is proposed that the exemptions be retained.

As part of the Department’s ongoing role in assisting councils in identifying and addressing issues relating to conflicts of interest, no council has identified any other specific duties as warranting exemptions at this stage. However, submitters may wish to consider if there are other public duties that should be considered for exemptions.

Comparing exemptions with no regulation

Table 2.1 summarises the scores for the types of exemptions. It should be noted that the regulatory options are each considered separately in comparison to the no regulation option. They are not alternatives to each other.

Where an option has a positive score, meaning that the benefits of having councillors participate in decision making outweigh the risk of possible conflicts of interest, the Department proposes that the duty should be exempted from the conflicting duties prohibition.

Table 2.1 – Evaluation of exemptions from conflicting duty

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Participation benefit**(40%) | **Risk of conflict**(60%) | **Weighted score** |
| No regulation | 0 | 0 | **0.0** |
| Waste management body exemption | +8.0 | -3.0 | **+1.4** |
| Country Fire Authority exemption | +2.0 | -0.1 | **+0.74** |
| Referral authorities exemption | +7.0 | -1.0 | **+2.2** |

2.2.3 Proposed 2015 Regulations – Conflict of interest

Proposed Regulation 9 will remake exemptions to conflicts of interest for councillors when their interests only arise from a separate duty as:

* a council representative on a waste management body
* a member of the governing body of the Country Fire Authority
* a member of the governing body of a referral authority in relation to a planning permit referral.

*Question for submitters*

Are there public duties other than those considered in this RIS or included in the proposed Regulations that should be considered for exemptions? Why or why not?

2.3 Information available to the public (Public Registers)

There are various ways in which key council information can be made available to the public. Council meetings are open to the public, except for particular confidential matters. The Act also specifies some documents which must be available for public inspection, such as annual reports and budgets. Section 222 of the Act says that the regulations can prescribe additional documents to be available for public inspection. These are commonly referred to as the “public registers”.

2.3.1 Problem and objective

Nature of the Problem

It is important that there is a suitable level of transparency about a council’s operations to allow proper public accountability.

If councils are not compelled to provide certain information, information available to the public may be limited or difficult to obtain. This can potentially limit the accountability of councils/councillors, and the ability of residents to reflect their preferences either through participation in council decision making processes or through their votes at council elections.

Information types

The Department considers information that should be readily available to the public to support accountability includes information about the council’s decisions and actions that may have a significant impact on people in the community or that reflect on the propriety of the council’s internal operations. This may include information about:

* the way council operates
* council plans and specific decisions
* the expenditure of public funds
* private interests of council decision makers.

Other availability

The proposed regulations form part of a broader legislative framework for local government. Councils are already required to make available to the public through other legislative means including:

* information required to be published in a council’s annual report under section 131 of the Act and Part 4 of the Local Government (Planning and Reporting) Regulations 2014 (the Planning and Reporting Regulations), particularly information relating to the financial performance of a council
* information required to be published on council websites under section 82A of the Act, including local laws, council plans, budgets and annual, reports
* Information otherwise expressly required to be made available to the public under other provisions of the Act, such as primary and ordinary returns of interests and information required to be released as part of a section 223 consultation process.

The Department considers that these legislative requirements do not cover all types of information needed for public accountability. The provisions in section 222 of the Act provide a means to address the gaps by specifying in regulations additional documents that must be made available for public inspection.

It needs to be noted that information can also become available under the *Freedom of Information Act 1982 (FOI Act).*  However, this means of obtaining information is of limited value as a public transparency measure because of the costs and delays involved. The FOI Act requires a person making an application and pay a fee ($27.20 in 2015-16). It may also include access charges that are calculated in accordance with the Freedom of Information (Access Charges) Regulations 2014. Obtaining information under the FOI Act can also involve a time delay while the application is considered and information is compiled. In addition, the scope of information available under the FOI Act is limited and does not include personal information about other people, legal advice or information provided to the council under conditions of confidentiality.

When considering whether information should be prescribed in the regulations, it is worth noting that councils do not always require a legislative requirement before they will make information available to the public. Legislative provision is required where information is necessary for public accountability and would otherwise be unavailable.

Objective

The objective is to ensure information essential for a council’s public accountability available to the public.

2.3.2 What information should be available?

This part considers what information should be available to the public to support the accountability of a council. Part 2.3.3 considers the options available in the regulations to make information available.

Criteria

Each type of information is evaluated for this purpose by considering the following key questions:

* Is the information important for public accountability? (Accountability value)
* Is the information otherwise available?
* If, based on the first two questions, inclusion in the public registers might be justified, are there cost factors that outweigh the benefits?

Information types that are considered to have significant accountability value and are not otherwise readily available are further considered in section 2.3.3, which looks at options for making the information available to the public.

Accountability value

This refers to the extent to which the particular information is important for the public accountability of a council, particularly noting its importance for communicating council decisions and actions that affect the community or reflect on the propriety of council actions.

Many types of information can have accountability relevance. The purpose of the analysis is to identify the actual value of the information for council accountability. There are two key parts this evaluation:

* Does the information help hold the council accountable to the community for its actions?
* Do members of the public need the particular council information for their own purposes?

Availability

As already noted, some information that is important for public accountability is already available because it is prescribed in the Act or in other regulations. In most cases, where information is already available, it will not be necessary to further regulate to make it available in the public registers. This is not automatically the case, however, and each type of information is considered on its particular merits.

Costs

Normally a RIS considers costs as a key factor in deciding whether to regulate, by weighing costs against benefits. This stage of the analysis, however, is concerned with deciding whether there is sufficient reason to include particular types of information in the public registers. The Department has made the following rules to guide decision making:

* Where an information type has a low accountability value and/or it is readily available elsewhere, there is no real reason to include in in the register, irrespective of cost. As a result, the costs of providing this information type is not analysed.
* Information types that may warrant inclusion in the register might be excluded if the costs of compiling the information outweigh the benefits. This is analysed for each relevant information type. (Note that costs associated with publication are considered in section 2.3.3)

*Survey*

As part this RIS, a survey was conducted of the extent to which members of the public request information in the public registers. Responses to the survey are summarised in the Appendix and are used to helps evaluate the extent to which embers of the public require the different types of information.

Identifying Information types

The 2004 Regulations prescribed a large number of matters to be included in the public registers. Most of these were also included in previous regulations made in 2001 and 1990 and appear not to have been substantially reviewed over the period of the past two decades. The need for many of these prescriptions is open to question in 2015, particularly given the extensive changes made to local government legislation over the period in question and also given the developments made in the way information id communicated.

For the purpose of this RIS, it is useful to review each type of information currently prescribed to be included in the public registers.

Evaluation of Existing information types

This section considers each of the information types in comparison to the criteria and the Department’s assessment on whether it should be included in the register.

Councillor allowances

Councillor allowances are set by each council after each election and within allowance ranges specified by Orders in Council for particular categories of councils. The specific levels of allowances are automatically adjusted each year in line with an adjustment factor determined by the Minister.

The level of councillor allowances set by a council has a high accountability value. As allowances are set by councillors for themselves, it is important that there be public transparency of their decisions.

Information about councillor allowances is readily available to the community without the need for prescription. The review of allowances conducted after each election is required to involve a public consultation process which specifies the proposed allowance levels. In addition, from 1 July 2015 the Local Government (Planning and Reporting) Regulations 2014 require the allowance levels to be published in each council’s annual report.

Assessment - Councillor allowance levels have a high accountability value but the information is readily available to the public. This document does not warrant inclusion in the register.

Senior Officer remuneration

The 2004 Regulations require the register to include a table that summarises the salary packages of senior council staff on an organisation wide basis. It provides a general picture of what council resources are being paid to senior staff. It does not include the salary details of individual members of staff.

This information, by itself, is of little accountability value. It is one part of the broader set of information about the allocation of council resources for paying council staff. In addition, from 1 July 2015 the Local Government (Planning and Reporting) Regulations 2014 made it mandatory for senior officer remuneration information to be published in councils’ annual reports.

Related information of staff matters in the form of a “statement of human resources” is required to be included in the council’s budget and Strategic Resource Plan which must be published on the council’s web site.

Assessment - This document does not warrant inclusion in the register. Information about senior officer remuneration is not a significant accountability issue in itself. This information is now publicly available in councils’ annual reports. More information about staffing costs is also readily available in other forms, such as in the council budget and Strategic Resources Plan.

Overseas/interstate travel

Information about the nature and cost of overseas and significant interstate travel by councillors and senior officers is included in the existing registers under the 2004 Regulations.

When significant public funds are used to pay for travel and accommodation by public officials the Department considers that it should be open to public scrutiny to help ensure that public officials are not using their positions inappropriately or at excessive public cost.

There are no other formal sources for this information, although summary information may be accessible through FOI applications. Councils responding to the survey indicated that this register was one of the most commonly requested.

There are costs for council administrations in compiling travel registers, particularly as this record must always be current for the preceding 12 months. Councils therefore have to establish and maintain processes to record relevant travel. This is done by ensuring that the processes for approving travel, either by a council committee or by management, include keeping a record of each event and verifying its accuracy with the financial records.

Actual costs at each council will vary, depending on the frequency of interstate and overseas travel. If an average council has one travel event per month and each event takes 30 minutes to record and verify by a band 6 officer, then the total cost per council is estimated to be $429 per year.

Assessment - The register of overseas and interstate travel provides transparency about the use of public resources by public officials that may not otherwise be available. The benefits of this transparency outweigh the costs of compiling the information. This information should be included in the register or made available to the public in some other form.

List of officers required to lodge interest returns

The 2004 Regulations requires a list of officers who were required to lodge interest returns to be included in the registers.

All senior officers at a council must lodge interest returns. So must other staff with significant duties, as determined by the CEO. The requirement to include a list of these officers in the register is of little accountability value.

A member of the public wants to check the interests of an officer doesn’t ask to see this list (as shown in survey results and supported by anecdotal evidence). Instead, they apply to see the register of interests for that officer under section 81 of the Act.

Assessment - This document has little accountability value and does not warrant inclusion in the register.

List of Councillors lodging interest returns

The 2004 Regulations also required a list of councillors who had lodged interest returns to be included in the register. All councillors must lodge interest returns.

The requirement to include a list of councillors who have complied with this requirement in the register has some limited accountability benefit. In principle it allows a person to check if all councillors have complied with their legal obligations to lodge interest returns.

In practice this list is not used. People concerned about the compliance of their councillors are able to apply to directly inspect the register of interests under section 81 of the Act rather than the list of councillors.

Assessment - This document has low accountability value and does not warrant inclusion in the register because the information is available elsewhere.

Agendas & minutes of council meetings

Council agendas and minutes include the reports provided to council meetings and the decisions made by the council. This, is frequently of public interest and should be available to members of the community. The only exceptions being confidential information from closed meetings.

The inclusion of council agendas and minutes in the public registers has a substantial public accountability benefit. It is the main way that members of the public can access details of council decisions.

While it is common practice for councils to publish agendas and minutes on their websites, this is not a formal requirement and is not guaranteed to be undertaken by all councils. In response to the survey, 17 councils reported over 150 requests in total to view the register in the past year. Most of these were in country Victoria where internet use may be less prevalent.

There are no preparation costs for this matter as council agendas and minutes are separately required to be prepared for council meetings under section 93 of the Act.

Assessment - These documents have a very high accountability value and should be made widely available. This is not mitigated by the common practice of publishing the documents on council web sites as it may not always be undertaken by all councils.

Lists of special committees established

The 2004 Regulations require the public registers to include lists of special committees established. Special committees are committees with delegated powers to make decisions on behalf of council

A list of the names of special committees has little accountability value.

Information about special committees is a duplication of information included in the register of delegations, which also includes the powers of the committees (see below). A list of special committees and their powers is also required to be included in council annual reports.

Assessment - This document is not required in the register as it adds minimal value to existing available information.

Lists of special committees abolished

The existing regulations also require a list of special committees that were abolished in the previous financial year.

The purpose of this list is unclear. It appears to have no particular accountability value. Decisions by council to abolish special committees will be included in minutes of council meetings.

Assessment - This document is not required in the register as it adds minimal value to existing available information.

Special committee minutes

Special committees include a range of types ranging from council decision making committees to community committees of management for local facilities. The 2004 Regulations require minutes of these committees to be included in the public registers.

Providing public access to the minutes of special committee meetings is important, although the degree of importance can vary depending on the types of decisions being made by each committee.

Some councils publish minutes of special committees on their websites. Councils report that there are fewer requests to see these minutes than those of council meetings. Nevertheless, this remains an important form of public accountability.

There are no preparation costs for this matter as committee minutes are separately required to be prepared under section 93 of the Act.

Assessment – Special committee minutes are important for accountability and should be retained in the public registers or made publicly available in some other form.

Registers of delegations

Sections 87 and 98 of the Act empower a council to delegate some of its authority to special committees or to council officers. These delegations must be recorded in “registers” which describe the power being delegated to each committee or person. The existing regulations require these registers to be included in the public registers.

Public access to these registers is important for transparency and accountability. They document the powers delegated by council to special committees and to council officers. Including these in the public registers allows members of the public to check who or what may make particular decisions affecting them.

While the registers of delegations are not generally available in full in any other way, annual reports are required to include some details of the purposes of special committees. Councils report few requests to view this register.

There are no preparation costs for this matter as records of delegations are separately required to be prepared under sections 86 and 93 of the Act.

Assessment – despite the limited interest in the registers of delegations and the inclusion of some information about committee powers in the annual report, the importance of the registers for accountability is significant. They should be retained in the public registers or made publicly available in some other form.

Section 223 submissions

Some decisions of councils are subject to public consultation in accordance with section 223 of the Act. Section 223 requires councils to follow a particular process that includes giving public notice, receiving written submissions and giving submitters an opportunity to speak in support of their submissions.

It is difficult to assess the accountability value of section 223 submissions. They are not accountability documents in any normal sense as they do not record the actions or decisions of the council or reflect on the proper conduct of councillors or officers. At most, submissions contain feedback that a council considers when making its final decision on a matter.

While section 223 submissions are not otherwise required to be made public in any formal way, the process of considering submissions is a public process. A public meeting must be held to allow submitters to speak to their submissions and, if that committee hearing submission is not the decision maker, it must provide a summary of submissions to the council or committee that makes the final decision. In addition, it is the practice of council administrations to provide a report on submissions to the council or committee making the final decision and that report is included in the council minutes in accordance with section 93 of the Act.

It should be noted that the existing section 223 provisions are quite dated. They apply to some quite diverse matters including consultation on strategic or policy matters such as the Council Plan and the council budget as well as matters relating to particular property owners such as special charge schemes for road or drainage works. In some of these situations, compulsory inclusion of submissions in the registers risks inadvertent disclosure of private information about submitters.

The cost to councils in making available submissions would be generally low (mainly in copying charges and staff time). This cost would vary depending on the number of submissions that a council receives on a particular matter (some councils can receive large numbers of submissions if the relevant matter is contentious).

Assessment – On balance, the Department considers that a requirement that councils include section 223 submissions in the public registers as a legal requirement is unnecessary given their limited accountability value, and the fact that they have been part of a public process. However, given the complexities with section 223 submissions and the diverse matters they cover, further consideration of the process would be warranted during the forthcoming review of the Act.

Submitters may wish to comment specifically on this particular matter.

Regional library agreements

Councils that enter into agreements with other councils to form regional libraries do so by entering into an agreement. The 2004 Regulations require these agreements to be included in the public registers.

Public availability of these agreements has no more accountability value than any other decision of a council to enter into an agreement with another organisation. As with other council decisions, these agreements will be recorded in the minutes of the meeting when the agreement decision was made. Request to view this register are very rare.

Assessment - This document is not required in the register as it has little accountability value.

Council leases - Property

The existing regulations require public registers to include details of leases where the council is either the lessor or the lessee. This includes all property, finance and operating leases involving land, buildings, plant, computer equipment and vehicles. For the purpose of analysis, a distinction is made between leases of council, properties and other leases.

When a council enters into a contract to lease out council owned land, it is providing use of a publicly owned resource to another person or organisation for a fee. It important that councils are accountable for their management of public resources, particularly where there is scope for improper dealings.

Information about council property leases is not generally available through other means. Anecdotally, public requests to view the existing register are almost exclusively in regard to property leases.

Maintaining this record will involve some administrative time. However, the time involved will be minimal, as records of all property leases will be already kept by the council’s property area and the public document only needs to be updated when there is a change to the status of a lease.

Assessment – A record of council property leases is important for public accountability and may not be available through other means. While it involves a small amount of additional administration time, this is not significant in comparison the benefits. It should be available for public inspection.

Council leases – other

Other leases to which a council is a party include leases for various types of outdoor vehicles and equipment as well as communications and information technology equipment. These leases are of a general operational nature and have no more accountability significance than other council transactions for the purchase of use of equipment or materials.

This type of information is not normally available to the public except possibly in aggregated form in financial reports or unless it has been the subject of a council decision in an open council meeting or committee meeting. Anecdotally, members of the public rarely if ever ask to view this information.

Assessment – Despite its general unavailability, these records do not have an accountability significance that warrants having to be available for public inspection.

Register of Authorised Officers

Authorised officers are people who are appointed to exercise particular responsibilities under Section 224 of the Act or under another Act. Authorised officers include health inspectors, parking officers and other local laws officers.

The register of authorised officers is a key document for a council as it is a record of who is entitled to exercise particular powers under an Act of Parliament. It is important that members of the public can verify that a person who, for example, issues an infringement notice or enters their property to investigate a matter, is properly authorised to do so. It is also important that this information be up-to-date so inclusion only in documents published annually would not be sufficient.

The register of authorised officers is not generally available to the public in any other way.

There are no preparation costs for this matter as the register of authorised officers is separately required under section 224 of the Act.

Assessment – The register of authorised officers is an important public record and should be available for public inspection in the public register or in some other form.

Donations and grants

The 2004 Regulations require a list of council donations and grants to be included in the public registers. Councils frequently give donations or grants to persons and bodies for particular purposes.

This is an aspect of council operations that can be open to improper conduct and should be fully transparent. The Local Government Investigations and Compliance Inspectorate conducted a review of councillor discretionary funds in 2013 and identified a number of risks, including risks of corrupt or fraudulent practices.

Information about donations and grants will generally, but not always, be in council and committee minutes. Requests to view this register are rare.

Costs of compiling this document are negligible. Grants and donations are approved by councils or special committees, usually annually. Lists of such donations and grants are recorded in minutes of the relevant meetings and only need to be transcribed for the purpose of the register. This may take an officer an hour each year.

Assessment – While records of donations and grants may often be included in council meeting records, this may not always be the case. To ensure certainty and given the importance of these records as accountability documents, the documents should remain available for public inspection.

Council memberships

The existing regulations require a council to include the names of organisations of which it was a member in the previous financial year along with membership fees and other amounts and services provided. Councils are usually members of local government peaks bodies and regional council bodies. Sometimes they also hold membership in organisations formed to promote the local areas for business or tourism.

This record has little accountability value. Decisions regarding such memberships are made in council meetings and recorded in publicly available minutes. Requests to view this register are particularly rare.

Assessment – Records of organisation of which the council is a member has little public accountability relevance and is not required in the public register.

Contracts contrary to s.186

The 2004 Regulations require a council to disclose in the public register any contract that it has entered into contrary to section 186 of the Act. This includes any council contract with a value of $150,000 for services or $200,000 for works where the council did not conduct an open competitive process or resolve that the matter was urgent or where there was no prescribed exemption.

This is a difficult provision to assess. Councils consulted during the preparation of this RIS indicated that the relevant document in their register had no content (because they had complied with section 186). Possibly, having publish a document recording a breach of the Act may act as a disincentive to such a breach and this may have nee the intent of the provision. However, councils consulted advised that they had received no requests to view the document.

The Planning and Reporting Regulations require a council’s annual report to include information about all contracts above the defined threshold values, including a list of all contracts entered into without undertaking a competitive process, irrespective of whether that constituted a breach of the Act or not.

Assessment – Given the questionable value of the existing regulation and the fact that more complete information in annual reports, there is no value of including this information in the public register.

Other Information types

While it is worth considering if any other documents should be considered for inclusion in the public registers The Department consider that there is limited scope to identify gaps in the existing legislative framework. There are several reasons for this:

* The most significant information, from an accountability perspective, is usually separately identified in the Act for disclosure in some other way, such as the process for inspecting the register of interests.
* Recent improvements in the public disclosure requirements for council’s annual reports have resulted in greater levels of transparency through those reports.
* The existing provisions in the regulations are already extensive.

information types suitable for the public registers

The following information types are considered suitable for inclusion in the public registers or to be made available to the public in another way:

* agendas and minutes of council meetings
* minutes of special committee meetings
* the register of delegations
* the register of authorised officers
* details of overseas travel by councillors and officers
* details of council donations and grants
* details of leases over council land.

This is based on the previous assessment of information types, where the benefit of making available each information type was weighed up against the cost of collecting that information type.

The next section considers the options to ensure this these documents are available to the public.

Information types specified in the 2004 Regulations that are excluded on the basis of the analysis are:

* councillor allowances
* senior officer remuneration
* list of officers require to lodge interest returns
* list of councillors who have lodged interest returns
* list of special committees established
* list of special committees abolished
* section 223 submissions
* regional library agreements
* non-property leases
* council memberships
* contracts contrary to section 186.

2.3.3 Assessing options

Options

There are numerous ways in which information can be made available for public scrutiny. It has already been noted that information is also available in annual reports, on council websites and through freedom of information requests. In addition, councils publish information in local newspapers and in response to direct requests from members of the public.

For the purpose of the current analysis, the focus is on ways in which the regulations can help achieve the accountability objective.

During consideration of this issue it was noted that several types of information currently prescribed for inclusion in the public register are already published by councils on their websites. All councils maintain websites where they publish a large amount of information.In 2008, the Act was amended to specify that councils must provide certain information on their website including copies of all local laws and public notices and a list of the documents available for inspection under section 222 of the Act.

While these regulations cannot prescribe matters to be included on council, websites, they can specify that a document is only required to be included in the public register if it not available on the council’s website. This option could effectively make the internet an alternative to a physical public register for many documents.

Considering these factors, there are two options that should be considered in comparison to the base case:

* require information to be in the public register
* require information in the public register only if not on the council’s website.

Assessment Criteria

Three criteria are considered to assess each option:

* Administrative cost – which is the costs of the option to the council, which are ultimately costs borne by the public through the payment of council rates. This criterion has a 30 per cent weighting, reflecting the need to consider the cost each option imposes on the community.
* Accessibility (user cost) – which is the ease with which members of the public can inspect information relevant to public accountability, including any costs they might incur. This has a weighting of 20 per cent.
* Accountability benefit– which is the level of importance in the information being made available to support the accountability of councils to their communities. This has a weighting of 50 per cent.

Existing Cost details

The administration of the public registers is undertaken by council staff. There is generally a member of staff who has the responsibility to keep the registers up to date. This usually includes checking that other members of staff keep and report information for which they are responsible.

Feedback from five of councils (three metropolitan and two rural) indicates that the total staff time per council is, on average, around ten per cent of the workload of a band 6 officer or about 150 hours per year. The average total annual cost to a council of maintaining the registers in their current form is therefore estimated at:

[Band 6 hourly rate] X [hours] X [On-cost factor] => $40.87[[2]](#footnote-2) x 150 x 1.75[[3]](#footnote-3) => **$10,728**

Considering that there are 79 councils this represents a total current annual cost in excess of $800,000.

It is worth noting that the extent of the burden varies significantly between the different registers. Some forms of information are required to be compiled or kept by the Act. This includes the registers of delegations and authorised officers as well as agendas and minutes of council and **s**pecial committee meetings. In addition, some forms of information are kept by councils as good management practice. For example, more than half the councils surveyed indicated that information about council leases is kept for other purposes.

Councils receive no financial benefit from the registers. While section 222 of the Act allows a council to charge a reasonable fee to a person who wants to view or copy a document from the registers, the limited number of requests negates any potential financial gain. Feedback from councils indicates that they rarely, if ever, charge a fee.

Analysis

As noted above, the current total average cost to a council of maintaining the current registers is over $10,000. If the registers are reduced to include only those documents that provide information of significance for accountability and that are insufficiently available elsewhere, the Department assumes that the costs will be considerably lower. The precise costs have not been calculated, however, the bases for this assumption are:

* The overall reduction in the number of documents required to be included in the public register will reduce administration time
* Agendas, minutes and registers of delegations and authorised officers are documents councils are separately required to keep and will incur very little cost to include them in the register
* The most time consuming document, being the list of all operating leases, is no longer included.

*Base case*

It is worth noting that if no regulations are made, it will be at the discretion of each council whether they make particular information available to the public. Based on existing practice it is likely that most, if not all, councils will continue to publish council minutes on their web sites. Other forms of information may only be available on an ad hoc basis, in response to specific requests or following FOI applications.

For the purpose of assessing the accessibility costs in comparison the base case, it is assumed that

* council agendas and minutes continue to be available online
* documents already prepared by councils, such as registers of authorised officers and registers of delegations would be available on request by a member of the public
* documents not normally prepared for any particular purpose, such as the travel register and details of property leases would only be available in response to an FOI request.

*The options*

The option of excluding internet published material from the prescribed public register is projected to reduce the costs to councils even further. Particularly as information, such as agendas and minutes are already published on websites as standard practice by all councils.

Considering accountability benefits, the proposed information types have already been identified as having significant accountability benefits and have high accountability scores compared to no regulation. There is no difference between the internet-exemption and non-internet options as both ensure the same information is available.

When considering accessibility costs, the differences between the internet-exemption option and the existing process is more marked. Access to information formally listed in the registers currently requires a person to attend the council office during office hours and request to see the information. This can be difficult for people who work full-time and cannot get to the council office during working hours, as well as for people who have mobility difficulties or limited access to transport. Publishing on the internet makes the information available at all times to any person with access to the internet. For people without private internet access, council libraries provide a range of internet services that are more accessible than council offices. Libraries operate outside normal office hours and are frequently located in more accessible locations. In addition, library staff are trained to assist people who are unfamiliar with the internet.

Compared to the base case, where information may only be available following a request or an FOI application, both these options have substantial positive values, with the internet option being the highest rated for the reasons outlined above.

While there is no measurable way to determine how councils would respond to the option of publishing documents on their websites instead of keeping them in physical public registers, it is anticipated that most councils would adopt this approach for most, if not all the specified documents. All councils currently publish council agendas and minutes on their websites and many councils publish special committee minutes in the same way. The option of publishing documents on the internet also simplifies the process for councils, as they would no longer have to update physical records for public access at the council office (or offices).

*Table 2.3: Evaluation of options for high scoring information types*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Administrative cost**(30%) | **Accessibility (user cost)**(20%) | **Accountability benefit**(50%) | **Weighted Score** |
| No Regulation | 0 | 0 | 0 | **0.0** |
| Council office | -2 | +5 | +7 | **+3.9** |
| Internet or council office | -1 | +7 | +7 | **+4.6** |

Additional Note

The analysis in this RIS is limited to options that can be addressed in the 2015 Regulations under the existing provisions of the Act. It is noted however, that a broader range of options to support transparency and public accountability may warrant consideration in the forthcoming review of the Act.

During the preparation of this RIS, it became apparent that the reliance on a physical register as a means of making information available to the public may be no longer appropriate at a time when much information is communicated more effectively by more electronic means. For example, an option that required all documents in the public registers to be published on a council’s website would have scored highly in the assessment above, but is not a feasible option under the existing Act.

2.3.4 Proposed 2015 Regulations – Public registers

Proposed 2015 Regulation 11 provides that a council must make the following (high rated) documents available for inspection at the council office unless the information is published on the council’s internet site:

* agendas and minutes of council meetings
* minutes of special committee meetings
* the register of delegations
* the register of authorised officers
* details of overseas travel by councillors and officers
* details of council donations and grants
* details of leases over council land.

3. Information provision

This part deals with some types of property related information that councils should provide to people. Unlike part 2, which considered information provided for public accountability purposes, this information is required to address the needs of ratepayers.

Two particular forms of information are relevant to this report:

* the information that a council must provide in a notice of rates and charges
* the information that a council must provide in a land information certificate.

Consideration is also given to the fee for a land information certificate.

3.1 Notice of rates and charges

Councils are provided with the power to levy rates and charges on land within their local government area as a primary means of funding municipal services. Rates and charges are levied on the owners of land and based on the value of that land. The Act provides that a council must levy a rate or charge by sending a notice to the ratepayer.

3.1.1 Problem and objective

Nature of the Problem

Councils are required to calculate the rates and charges they levy on a ratepayer according to specific formulae. This includes using the value of the land as a basis for calculating rates.

The Act provides a number of protections for people who are required to pay rates and charges to help ensure that they are not improperly disadvantaged due to lack of information on their obligations and rights (for example payment deadlines, rights to object). A person who has received a notice from the council to pay municipal rates or charges has a reasonable right to know:

* the basis on which the rate or charge has been imposed
* what avenues for objection or appeal are available under the Act.

Many people are not familiar with the Act or the specific way that rates and charges are calculated. Even fewer people are aware that they have certain rights to object to a valuation, rate or charge. A person will generally want to know about these rights if they have a concern about the way that they have been rated or about what they consider an excessive increase in their rates.

The issue is how to ensure ratepayers know their rights. The Act requires a rate notice to advise when rate payments must be made but does not require a notice to include details about how the rate was set or about objection rights. It does, however, allow regulations to prescribe information to be included in rate notices.

Objective

The objective is to ensure that ratepayers have sufficient information about their rights regarding the council rates and charges they are required to pay.

3.1.2 Analysis of options

Options

Three options are considered:

* no regulation
* require notices to include detailed information about the basis of the rate, how it can be paid and a ratepayer’s rights of objection (the current arrangement)
* modify the existing requirements by requiring notices to direct ratepayers to the council’s website where information about objection rights is published.

The 2004 Regulations specify information about the basis of a rate or charge as well as objection rights that must be disclosed in a rate notice. The current practice is to publish this information on the reverse side of the rate notice.

The reason for suggesting an internet option is that rate notices contain a lot of information, which can result in a degree of clutter, so that information about a ratepayer’s rights may go unnoticed.

Assessment Criteria

These options are assessed on two criteria that have equal weighting:

* the extent to which ratepayers are informed about their rights – 50%
* any administrative burden on councils – 50%.

Analysis

The key question is how to best ensure ratepayers are informed about their rights:

* The no regulation option does not prevent a council from providing ratepayers with information about the basis of their rates or charges and their rights of appeal. In fact, most council rates officers will provide this information if asked. However, this option does not guarantee the availability of such information. This means that information currently published in rate notices may be replaced by other information over time and the availability of ratepayer rights information will become more ad hoc.
* The current arrangement, while not perfect, does ensure that relevant information is published somewhere on a rates notice. While the information may be hard to find on a fairly complex form, it is there if a person wants to look for it. This option therefore scores positively for ratepayer information.
* The alternative option of providing information about objection rights on the council’s website has advantages and disadvantages. It would mean that the information is constantly available and not just on rate notices and it may help reduce the clutter on rate notices. However, under this option, information about objection rights becomes one step removed for ratepayers, some of whom may not have easy internet access. In addition, rights to object or seek review are time limited and these limits are currently described on rate notices. Removing information about time limits may result in ratepayers missing out on legitimate appeal rights. The score for ratepayer information is therefore lower than for the current arrangement.

Any administrative costs of the current arrangement are relatively minor. Maintaining the existing details on rate notices will involve no transitional costs and minimal ongoing costs. This may include some opportunity costs because of the limited access to space for other information on rate notices.

The costs of altering information on rate notices to refer ratepayers to the council website would only involve small transitional costs, as the notices are based on a template that provides identical information to all ratepayers. Publishing information on a council’s website would also require a small cost to update existing rates information but little or no ongoing costs once a website is updated.

*Table 3.1 – Evaluation of notice of rates and charges*

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Ratepayers informed**(50%) | **Administrative burden**(50%) | **Weighted score** |
| No regulation | 0 | 0 | **0.0** |
| Details in rates notices | +6 | -1 | **+2.5** |
| Referral to website | +4 | -3 | **+0.5** |

The existing arrangement is considered the best. It ensures ratepayers have enough information to know the basis on which they have been required to pay a rate or charge and the different types of mechanisms open to them if they want to dispute the rate of charge.

Updates to details

It should be noted that the proposed 2015 Regulations include updated provisions to reflect the current requirements of the Act, particularly in regard to differential rates. The Act now requires councils to publish detailed information for ratepayers about the basis of any differential rates it levies.

3.1.3 Proposed regulation - Notice of rates and charges

Proposed 2015 Regulation 9 substantially remakes provisions from the 2004 Regulation and requires a notice of rates and charges to include specific information about:

* the basis on which the rate or charge has been levied, including information on the classification of land for differential rating, if relevant.
* rights to object against the rate or charge or against the basis on which it was charged (including differential rates).

3.2 Land information certificate

When land is to be sold, some debts owed to governments transfer to the new owner with the land. To help provide transparency about this matter, the Act requires a council to provide a land information certificate (LIC) to a person who requests one. This primarily includes information about rates and charges owed to the council in respect of the land.

This part considers both:

* the content of an LIC
* the fee to be paid.

3.2.1 Problem and objective

Nature of the Problem

Ownership of land, whether developed or not, entails an obligation to pay rates and charges to the relevant municipal council. The only exceptions to this obligation are for land that is non-rateable, such as government owned land or land used for charitable purposes.

When a person or company purchases land in a municipality, they take on the liabilities attached to that land to pay council rates and charges. They also become liable to pay any unpaid or overdue rates and charges, plus any interest owing on unpaid rates and charges.

Money owed to a council for the payment of rates and charges is not like an ordinary debt. Like land taxes, unpaid rates and charges become a charge over the land. That is, the debt is attached to the land and is transferred with the land if ownership changes.

A person selling land is required by section 32 of the *Sale of Land Act 1962* to provide a prospective purchaser with a statement containing information about any charge over the land that has been imposed under an Act of Parliament. When land is sold any outstanding rates and charges debts are resolved at settlement, with the purchase price being adjusted downward by the value of any unpaid or overdue amounts.

Applications for land information certificates are made either through the Victorian Government’s online LANDATA [[4]](#footnote-4)system or direct to the relevant council. Applications may be made by any person, including:

* people selling land (or their agents) – in order to comply with section 32
* people purchasing land (or their agents) – in order to verify information provided by sellers.

Occasionally land information certificates are sought when a person is arranging a loan against the value of their land. Such a request may be made by the loan applicant or by the financial institution.

It is imperative that a person purchasing land can ascertain the current and future liabilities that will transfer to them with the sale of the land. If no regulations are made in this matter, sellers will continue to be responsible to provide information to prospective purchasers, as required under the Sale of Land Act, but purchasers may be unable to separately verify the information because it is information held only by the council and the seller. In addition, as sellers may lose a reliable source of information for their section 32 certificates.

Objective

To ensure that parties to land transfers have access to accurate information about rates and charges liabilities that are attached to the land.

3.2.2 Options and criteria

Section 229 of the Act entitles a person to apply to a council for an LIC in relation to any land in the council’s municipal district. An application must be accompanied by the fee prescribed in the regulations.

The Act further provides for an LIC to contain information prescribed in the regulations as well as any additional information about the land that the council considers relevant.

The existing 2004 Regulations require an LIC to contain information about rates and charges and about debts owed to the council in respect of the land, including:

* information about the land valuations on which the rates and charges are calculated
* if the land is currently not rateable, whether it is potentially liable to become rated
* details of rates and charges levied on the land and whether the rates and charges have been paid
* the amount of any rates and charges owed to the council that are in arrears
* the amount of any money owed to the council for works on the land
* the amount of any money owed to the council as interest on unpaid debts

The 2004 Regulations also require an LIC to include information about the flood level specified by the council for that land.

options

Options considered in regard to the content of LICs:

* require an LIC to provide information about rates and charges
* require an LIC to include information about both rates and charges and flood levels (the existing arrangement).

Other options are not considered in this report. The primary purpose of a land information certificate has always been to provide information about money owed to the council that will transfer to the purchaser if the land is sold. The reasons for the past inclusion of flood levels, which were peripheral to the purpose of an LIC, are no longer known. If submitters believe that there is other information that should be included in a land information they are encouraged to provide details.

Assessment Criteria

The assessment criteria for consideration of options for information included in LICs are:

* What are the costs of preparing and issuing an LIC? These are the administrative costs to the council, some or all of which is paid by the applicant as the prescribed fee.
* How well does the LIC satisfy the information needs of people applying for certificates?

3.2.3 Analysis of options

No regulation

While the Act requires a council to provide an LIC when requested, it does not specify any details about the contents of an LIC. The “no regulation” option would allow each council to decide what, if any, information it will provide in an LIC. In theory this would allow councils to use LICs for any purpose, including one that bears no relationship to rates and charges.

Councils are responsible organisations that have an interest in ensuring that debts owed to them are paid. They are unlikely to fail to provide information about unpaid rates and charges to applicants. However, the Act states that a council doesn’t incur a liability for non-prescribed information that it provides in an LIC in good faith. The ‘no regulation’ option would therefore remove a protection for LIC applicants. A purchaser who was given inaccurate information about rating debts would have no legal recourse unless he or she could prove the council provided incorrect information in bad faith.

Rates and Charges Only

This option involves retaining existing requirements for an LIC to disclose information about rates and charges, but removing the existing requirement to include flood level information. It includes information about the ongoing rating status of the land, including potential changes that might increase the amount of rates and charges payable on the land.

As noted above, the purpose of an LIC is to provide details of money owed to the council by the current owner that will transfer to a new owner, including any unpaid rates and charges. This is essential information for any purchaser of land and it is needed to determine the final settlement amount for any land sale.

This option does involve costs for councils. However, the difference between the no regulation option and this option will be less than the total costs of LICs because the no regulation option does not remove the requirement in the Act for a council to provide an LIC. It only removes the specification of an LICs contents. Arguably, councils may find ways to reduce costs in the absence of regulations, but such savings may be at the expense of land purchasers who may receive incomplete or less reliable information about the debts that they will incur when committing to purchase land.

The Department assumes that there will be no transitional costs for councils if flood information is removed from the regulatory requirement. Section 229(3) of the Act allows a council to include any additional information in an LIC, at its discretion, so each Council will be able to assess whether or when to remove flood level information from LICs in the normal course of updating their internal processes.

People and organisations responding to this RIS may wish to specifically consider the issue of flood information in LICs.

RAtes and Charges plus flood levels

This option reflects the provisions in the current regulations. They require an LIC to include information about any flood levels specified by the council in relation to the land in addition to rates and charges information.

The primary purpose of an LIC has been to ensure prospective purchasers of land are informed about the financial obligations to the municipal council that will transfer with the sale. The requirement to also include information about flood levels appears to have been added to an LIC in the early 1990s. It is unclear why this was done, but it may have been in response to a particular concern at that time about a lack of information regarding flood levels.

Flood level information is generally available to the public as inundation overlays to planning schemes and is available on the internet. The Building Regulations 2006 (R.326) also require a council to provide flood level information to any person on request. Recent amendments to the *Sale of Land Act 1962* (Sale of Land Act), which came into operation on 1 October 2014, clarify that a vendor’s statement under section 32 of that Act must include the name of any planning overlay affecting the land, which includes any inundation overlays. Given the general availability of this information, the inclusion of flood levels in an LIC appears to provide no additional benefit for purchasers.

As planning overlays are separately required in a section 32 certificate, the inclusion of flood levels in an LIC currently represents a duplication of information. The removal of flood levels from an LIC will not alter information provided at a land sale, so both options receive the same score for information provision.

On advice from councils surveyed during the preparation of this report, the requirement to include flood level information adds no significant additional costs over and above the provision of rating information. In most cases, land is not subject to flooding and, where it is, the information is usually recorded in councils’ electronic records that are readily accessed by staff preparing an LIC. For the purpose of analysis, the Department assumes that there is a small cost impact for councils of retaining flood information in LICs.

*New types of rates and charges – Note*

The proposed regulations specify two types of debts not referred to in the previous 2004 Regulations that are considered to be rates and charges that would transfer with the title to land. They are:

* an environmental upgrade charge, levied under the City of Melbourne Act 2001, that is owed by the owner of a commercial building that has into an agreement with the Melbourne City to pay the charge
* an electricity generation company or associated entity that has agreed to, or is required to, pay an amount to the relevant council in lieu of municipal rates.

Records of these additional charges (which apply to a small number of commercial assessments in the City of Melbourne and a handful of electricity providers across the State, respectively) are held by council rates offices and are able to be made readily available in LICs at negligible additional cost to the council.

It should be noted that the inclusion of these charges is implicit in the wording of the existing 2004 provisions (that is, they state an LIC must include details of all rates and charges owed). They are separately specified in the proposed provisions for the purpose of clarity.

*Application costs – note*

Any costs that might be incurred by a person making an application for an LIC are not included in the above analysis. This is because provisions relating to applications are made in the Act and are not affected by these regulations.

*Table 3.2 – Evaluation of land information certificate contents*

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Costs**(50%) | **Information needs**(50%) | **Weighted score** |
| No Regulation | 0 | 0 | **0.00** |
| Rates, charges and flood | -2.1 | +6.0 | **+1.95** |
| * Rates and charges only
 | -2.0 | +6.0 | **+2.00** |

3.2.4 Proposed 2015 Regulations – Land Information Certificate

It is recommended that the 2015 Regulations retain requirements for Land Information Certificates to include rates and charges information (including for the first time, information on environmental upgrade charges under the City of Melbourne Act 2001, and rates in lieu paid to the council by an electricity generation company under the Electricity Industry Act 2000), but that the previous requirements for flood level information should be discontinued because it is available in other ways.

3.3 Fee for an LIC

The Act provides that an application for an LIC must be accompanied by the prescribed fee. Whether or not a fee is prescribed, and the level at which it is set, does not alter the cost to the community of providing the service. It does however, determine who pays for the service.

The purpose of a land information certificate is to assist people involved in a property transaction. It is not intended to serve a significant public benefit. It is therefore appropriate that the full cost recovery principles should apply and that a person applying for a certificate should pay a fee that covers the council’s costs.

Cost recovery principles

The Cost Recovery Guidelines published by the Department of Treasury and Finance for the preparation of a RIS, states that “government policy is that regulatory and user charges should be set on a full cost recovery basis because it ensures that both efficiency and equity objectives are met.”

Full cost recovery is important for efficiency because it sends accurate market signals about the cost of a service and promotes an efficient allocation of resources. Full cost recovery promotes equity by ensuring that those who benefit from a service will pay for those services, rather than imposing the costs on the broader community of ratepayers who may derive no direct benefit from the service.

These principles should apply to the setting of fees for local government services in the same way as they apply to state government services.

The Cost Recovery Guidelines list some reasons why full cost recovery may be impractical or undesirable, including:

* practical implementation issues make cost recovery infeasible
* there are benefits to unrelated third parties
* social policy or vertical equity considerations outweigh efficiency objectives
* full cost‑recovery might adversely affect the achievement of other policy objectives.

None of these circumstances exist in relation to setting fees for an LIC. As the purpose of an LIC is to assist buyers and sellers of land, applicants should be required to pay a fee that reflects the costs of the services being performed

Other jurisdictions - NOTE

Comparisons with other jurisdictions is complicated because the way information is provided by councils to buyers and sellers varies from state to state.

* In South Australia, where similar information to an LIC is provided in a “Certificate of Liabilities” the prescribed fee is $30.50.
* In New South Wales, the prescribed fee for a section 603 Certificate, which includes information about rates and charges, the owner, and information about any council work carried out on the land, is $70.
* In Queensland, fees are set by each council individually and vary from zero to $290.

The South Australian fee was increased to $28 in 2012 following an analysis that compared it to a similar fee set under land tax legislation and it has been increased incrementally since then.

3.3.1 Options and Criteria

Options

There are several options that might be considered when deciding how and if to specify a fee for an LIC, including:

* retaining the existing fixed fee
* specifying a new fixed fee
* specifying a fee in fee units
* specifying multiple fees
* allowing councils to set their own fees.

Assessement Criteria

Three criteria are used in assessing the options:

**Equity** –the extent to which the people and organisations that apply for LICs pay for the processing costs. The application of this criterion includes consideration of the currency of fees and their relevance to the costs incurred by councils.

**User complexity** –the extent to which fees are difficult to understand and apply by applicants and their agents. This is particularly significant for conveyancing firms and solicitors which act as agents for people and companies engaged in property transactions.

**Administrative efficiency** – the extent to which the fee regime can be administered efficiently by councils and by the Government.

It should be noted that “market efficiency”, being the extent that the fees provide accurate signals to the market about the costs of their activities, is not a factor in this particular analysis because the fee level is far too small to have any impact on the sale of land and an application for an LIC. In addition, demand for LICs is relatively inelastic due to seller requirements to provide them under the Sale of land Act.

Weightings

For the purpose of this analysis, Equity is the most significant criterion, because it reflects the primary purpose of setting a fee. It therefore has a weighting of 50 per cent. The remaining criteria have weightings of 25 per cent each.

3.3.2 Analysis of options

No Fee

For the purpose of analysis, the option of not setting a fee is considered the base option. If a fee is not specified, a council will be required to provide an LIC to a person who applies for one without charging a fee.

***Equity*** – If no fee is charged the costs of preparing LICs will be paid out of general council revenues, rather than by people and organisations engaged in property transfers. While there will be some overlap between participants in land sales and general ratepayers, depending on the type of land and the number of transactions per ratepayer, this option would still result in a transfer of the costs of preparing LICs from users to general ratepayers.

***User complexity*** – This option is the simplest for users of the service, as it requires no fee payment.

***Administrative complexity*** – This option is administratively simple.

Existing Fixed Fee

One option is to retain the existing fee of $20, which has been unchanged since 1992.

***Equity*** – The process of preparing an LIC has changed significantly over past decades. A process that once involved manual checking of records and manually completing a certificate have been replaced with modern computerised processes resulting in reduced processing times for LICs. The option of retaining a fee that is not reflective of current processes and costs has a low equity value compared to other options. Based on the estimates of current costs, retaining the current fee would result in most councils under recovering their costs. It would be preferred over the no fee option however because it requires users to contribute to the costs of LICs.

***User complexity*** – This ‘no change’ option is the simplest for users of the service, other than the option of removing fees entirely.

***Administrative complexity*** – this option requires no changes to existing practices and is the least administratively complicated, other than the base option

New fixed Fee

Another option would be to specify a new fixed fee that reflects current processes and costs. This could be calculated to cover the average current costs of preparing an LIC across all councils.

***Equity*** – The new fixed fee option would ensure that applicants for LICs pay the current costs. This would be more equitable than retaining the existing fee, based on superseded processes. The main disadvantage of any fixed fee is that its real value will diminish over the 10 year duration of the regulations.

***User complexity*** – This option is only slightly more complex for users than the existing fixed fee, as it requires a one-off alteration to fee levels.

***Administrative complexity*** – this option only requires a one-off change to existing arrangements.

Specification in fee units

The option of specifying a fee in terms of fee units is the standard method for setting fees in regulations. It involves determining the value of the current fee, based on the current costs of preparing an LIC and specifying that amount as a number of fee units (Based on the current value of a fee unit, which is $13.60).

The value of a fee unit is prescribed by the Treasurer under the *Monetary Units Act 2004* and updated every financial year to reflect price movements. This annual update allows the value of a fee prescribed in fee units to keep pace with changes in average costs.

***Equity*** – This option provides a higher level of equity than either fixed fee option because applicants pay an amount that is calculated to reflect the increases in LIC preparation costs over the term of the regulations. It may provide less equity in regard to individual councils than other options that involve different fee levels for categories of councils or where councils set their own fees under a regulated system. (See “Separate fees for metropolitan and non-metropolitan council categories” Below)

***User complexity*** – This option is more complex for organisations that undertake conveyancing on behalf of market participants because it requires them to update their costs annually.

***Administrative complexity*** – This option is also more complex for councils because they need to update their fee levels annually, which may mean updating information on web sites and potentially having to notify applicants who inadvertently pay the previous year’s fee. It will also mean that the LANDATA system will need to update fees annually.

SEPARATE FEES FOR Metropolitan and non-metropolitan COUNCIL CATEGORIES

In some cases it can be desirable to impose different fees for different levels of service. This may allow a greater degree of equity as it can ensure that applicants for more complicated services pay the higher costs of those services.

In the case of LICs, there is little scope to distinguish between types of applications for what is a relatively simple process. However, during the preparation of this RIS, the Department noted that there are variations between the costs of preparing LICs between councils. These differences are reflected in the times taken to process an LIC and in the staffing costs between councils.

Factors affecting the time taken to process an LIC application include economies of scale as well as variations in internal systems and processes. Economies of scale are heavily influenced by the numbers of applications processed. A large metropolitan or regional council may have between 100 and 200 land sales per week while a small country council may have less than ten. Discussions with council staff at a number of councils showed that the time taken for an LIC varied between 15 and 45 minutes. While non-metropolitan councils often took longer to process LICs, this was not universal. The two councils with the shortest processing times were a small rural council and a medium sized urban fringe council.

Based on enterprise agreements, staffing costs average about ten per cent higher in metropolitan councils. The impact of this on LIC costs is influenced by the respective levels of the staff engaged in preparing and approving LICs, which varied between councils. There was no particular pattern in these variations. At most councils, the preparation of an LIC is done by band 4 officers, although one rural council used higher level officers. The sign-off for an LIC also varied between councils. The levels of the officers approving LICs varied from Band 4 at one council up to executive level at another.

What this means is that there is no simple pattern to separate councils into two or more categories for setting different fee levels. For example, an analysis of the councils in the survey suggests the following estimated cost ranges for an LIC in metropolitan and non-metropolitan councils:

* for metropolitan councils, estimated costs per LIC range from $15.07 to $23.82
* for non-metropolitan councils, estimated costs per LIC range from $16.90 to $35.21

It should be noted that the proposed fee level of $24.71 (below), based on average costs at four metropolitan and four non-metropolitan councils exceeds the estimated costs at all the metropolitan councils surveyed. It is therefore likely that most, if not all, metropolitan councils will recover an amount that exceeds their costs under the proposed fee. Most non-metropolitan councils will under recover their costs at the proposed fee level. However, given the wide range of processing times identified within each of those broad categories, setting separate fees for metropolitan and non-metropolitan councils would only partially reduce these anomalies.

Nevertheless, submitters may wish to consider and comment on this matter.

The following analysis against the criteria is included for completeness. It assumes that multiple fees are set using fee units.

***Equity*** – This option would provide a higher level of equity than the fee unit option if different fees could be determined for particular categories of councils. It should be noted that, given the lack of a clear delineation to inform the setting of different fees, it is difficult to realistically assess the extent of higher equity.

***User complexity*** – This option would be more complex for organisations that undertake conveyancing on behalf of market participants because they would need to take account of different fee levels for different categories of councils. Depending on the location and coverage of particular firms, they may need to take account of two or more different fees for LICs.

***Administrative complexity*** – For individual councils, this option is likely to be more complex than the single fee unit option, as the existence of different fees is likely to require staff to clarify the correct fee for applicants more often and contact applicants who inadvertently pay the incorrect fee. For the LANDATA system, which processes thousands of applications weekly, providing for two fee levels for a single application type will have significant transitional impacts because it would require costly system changes[[5]](#footnote-5). This will be additional to the impacts of updating the two fees annually and time required to update any public guidelines.

Council Fee setting

One option might be to allow each council to set its own fee. This approach is used in Queensland, with the result that fees vary significantly between municipalities. In 2014, fees in Queensland varied between zero and $290.

This type of approach may allow fees to be set in a way that takes account of the particular circumstances of each council. However, it may also allow councils to use LIC fees as a means of raising revenue, by charging a fee that exceeds their costs.

Considering these factors, there are two variants of this option.

* Variant 1 – An unregulated approach, where a council is allowed to set the fee at its own discretion
* Variant 2 – A regulated approach, where a council is required to undertake a public consultation to demonstrate the reasonableness of a proposed fee before it is set or varied.

*Variant 1 – Unregulated*

***Equity*** – The extent to which this option provides equity for applicants will be dependent on the approach taken by each council in setting their respective LIC fee. To the extent that some councils may set fees for revenue purposes, this variant will provide less reliable equity than prescribing a fee unit value in the regulations.

***User complexity*** – Options where each council sets a separate fee will create complexities for conveyancing processes and may impact on costs for the industry. This may be particularly complicated if fees vary markedly as a result of councils adopting different policy approaches to fee setting. (In Queensland, where councils levy fees of significantly varying values, conveyancers need to maintain a separate fee schedule for each council.)

***Administrative complexity*** – This variation would be more complex for council administrations, which would need to undergo a decision making process to set their fee. This would be in addition to the significant complications for the LANDATA system arising from the differences in fees between councils. As noted above, this would entail transitional costs for the LANDATA system in updating their systems to deal with different fee levels for different councils. It is also likely to result in unpredictable numbers of updates, depending on how often councils choose to change their fees. In any one year the number of councils updating their separate fees may vary from zero to 79 (or more in the event of revised budget under section 130 of the Act).

*Variant 2 – Regulated*

***Equity*** – If the fee setting process for councils was subject to a process that required councils to demonstrate to their communities that their fees were a fair reflection of their costs, it might result in more equitable fee arrangements.

***User complexity*** – Options where each council sets a separate fee will create complexities for conveyancing processes and may impact on costs for the industry. As this variant requires a council to undergo a process to justify fee increases to the community, changes are likely to be less frequent and variations between councils may be less excessive. The impact on users of changing fees is therefore predicted to be lower than for the unregulated variant.

***Administrative complexity*** – This variation would be the most complex in administrative terms. It would require each council to go through a separate public consultation process before setting or altering its LIC fee. In addition, there would be similar complications for the LANDATA system as under the unregulated variant.

The Department’s assessment in Table 3.3 considers that the preferred fee setting option for Land Information Certificates is a single fee in fee units. Nonetheless, it is important to note that this is based on judgements made by the Department and submitters may wish to comment on this matter.

Table 3.3 – Fee setting options for Land Information Certificates

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Equity**(50%) | **User *complexity***(25%) | **Administrative Complexity****(25%)** | **Weighted score** |
| No Fee | 0 | 0 | 0 | **+0.0** |
| Existing fixed fee | 2.0 | -2.0 | -1.0 | **+0.25** |
| New fixed fee | 2.2 | -2.2 | -1.1 | **+0.28** |
| Fee in Fee units | 3.2 | -2.5 | -1.5 | +0.60 |
| Separate fees for metropolitan and non-metropolitan council categories | 4.2 | -3.5 | -3 | +0.48 |
| Council set fee - unregulated | 3.4 | -7.0 | -6.0 | -1.55 |
| Council set fee - regulated | 4.8 | -5.0 | -8.0 | -0.85 |

*Question for submitters*

Is a single fee in fee units across all councils for Land Information Certificates the best approach to fee setting? Why or why not?

3.3.3 Fee calculation

Council processes

The process of preparing an LIC once a request has been received and registered by the council largely involves looking up the property records on the council’s computerised information system, filling in the details on the relevant form, which is generally electronic, and having the LIC signed off by the supervisor or manager.

A follow-up process occurs when the land is sold and a settlement date has been agreed. One or both parties seek clarification of the rates and charges from the council to determine the precise amounts of the rates and charges that should paid by the seller and by the purchaser as at the settlement date. Councils treat this as part of the service in providing an LIC and the time required to provide this information is included in the following estimates.

Calculation

The calculation of the LIC fee is done by separately calculating a fee for median metropolitan and non-metropolitan municipalities and weighting the resultant average costs by the relative numbers of LICs to obtain a single fee. It should be noted that these calculations are based on a sample survey of councils and that actual results vary widely between councils within the broad classifications of metropolitan and non-metropolitan.

Several councils were surveyed by telephone to ascertain the time taken to prepare an LIC[[6]](#footnote-6). Median times to prepare an LIC were:

* For metropolitan councils, 15 minutes for a band 4 officer to prepare the LIC and three minutes for a senior officer (at around band 7 level) to approve the LIC.
* For non-metropolitan councils, 25 minutes for a band 4 officer to prepare the LIC and four minutes for a senior officer (at around band 6 level) to approve the LIC.
* In addition, at all councils an average of five minutes is required to provide follow-up information to applicants prior to a property settlement.

As noted above, the average salary levels also very between metropolitan and non-metropolitan councils. These are weighted to include on-costs and overheads. The Department has used the standard on-cost and overhead factor published in the Victorian Guide to Regulation appendix, which is a multiplier of 1.75.

It should be noted that the task of record keeping and maintaining systems is not an additional cost for the provision of LICs and is not included in the calculation. Councils maintain their systems and records for other primary purposes, including the annual levying of rates and charges.

*Table 3.4: Calculating average process time and costs – Metropolitan and non-metropolitan*

|  |
| --- |
| **Metropolitan councils** |
| **Task** | **Level** | **Time** | **Rate (hour)** | **Total cost** |
| Obtain information and prepare LIC | Band 4 | 15minutes | $54.65 | $13.66 |
| Check LIC | Band 7 | 3 minutes | $84.02 | $4.20 |
| Follow-up information | Band 4 | 5 minutes | $54.65 | $4.55 |
| TOTAL |   | **23 minutes** |   | **$22.42** |
| **Non-metropolitan councils** |
| **Task** | **Level** | **Time** | **Rate (hour)** | **Total cost** |
| Obtain information and prepare LIC | Band 4 | 25 minutes | $50.54 | $21.06 |
| Check LIC | Band 6 | 4 minutes | $68.79 | $4.59 |
| Follow-up information | Band 4 | 5 minutes | $50.54 | $4.21 |
| TOTAL |   | **34 minutes** |   | **$29.86** |

These calculations are weighted according to the share of property sales[[7]](#footnote-7) in metropolitan and non-metropolitan municipalities respectively.

*Table 3.5: Cost of a RIS – weighting metropolitan and non-metropolitan processes*

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Total cost** | **Weighting** | **Total weighted cost** |
| Metropolitan | $22.42 | 0.692 | $15.51 |
| Non-metropolitan | $29.86 | 0.308 | $9.20 |
| **TOTAL** |   |   | **$24.71** |

Given the value of a fee unit from 1 July 2015 is $13.60, the calculated cost of an LIC represents a fee unit value of **1.82.**

Impact of fees

Precise figures for the number of LICs issued each year are not available. However, a reasonable estimate can be drawn from the number of land transfers per year. Records of land transfers for the ten years to June 2014 indicate an average rate of 187,402 transfers[[8]](#footnote-8) per year.

For the purpose of estimating the total number of LICs per year, it is assumed that there are two LICs per transfer – one for the seller and one for the purchaser. (In practice not all sales involve two LICs and some LICs are requested without a subsequent sale.)

The estimated total cost of preparing LICs, at 2015-16 values is therefore estimated as follows:

[Average LIC cost] x [Average annual transfers] x 2

=> $24.71 x 187,402 x 2

=> **$9.26 million**

For the ten year operation of the regulations, this represents a NPV value of **$75.12 million[[9]](#footnote-9).**

Cost differentials between Councils

As noted above, while the preferred option is for a single fee unit based fee for all councils, there are significant variations in processing times and labour costs between councils which will impact on the relative net revenue/cost for each council.

While the Department has not undertaken detailed costings for all or specific councils, it is worth noting that some of these variations may be substantial. Hypothetical examples to illustrate this are as follows (noting that most councils will be well within these extremes):

* A small rural council with 500 LICs per year and a high processing cost of $35.21 per LIC may incur total annual processing costs in excess of total fees in the order of $5,250 in 2015/16.
* A Metropolitan Council with 6,000 LICs per year and low processing costs of $15.07 per LIC may receive revenue from fees in excess of estimated annual cost in the order of $57,840 in 2015/16.

Impact on land sales

The imposition of fees for LICs will have no measurable effect on land sales. The Valuer-General reported that the total value of property sales in the year ending July 2013 was over $80 billion. The total annual value of all LIC fees at 2015 values would represent only about 0.012 per cent of the value of land sales in that year.

3.2.6 Proposed 2015 Regulations – LIC Fee

It is proposed that the fee for a land information certificate be specified to be 1.82 fee units. This equates to $24.71 in 2015/16.

4. Council functions

Councils are tasked by the Act and by their communities to perform many functions and provide many services. This section considers some regulations that are needed for councils to be able to do the things that they are established to do and to provide the services that their communities need. This includes:

* not being inappropriately constrained in obtaining goods and services, particularly legal advice and representation
* having adequate information about properties and property owners in the municipality.

4.1 Legal services

The Act requires a council to undertake an open competitive process for services valued at $150,000 or more (or goods to the value of $200,000 or more). This framework ensures that council resources are used efficiently and effectively and in accordance with Best Value principles. Further, a public tender process ensures that council contracts are awarded through open and fair competition.

The Act recognises that in some circumstances, the requirement to tender is not the optimum sourcing strategy for the council involved. It therefore allows certain contracts to be exempted by the Minister for Local Government, or a type of contract exempted under regulations. Such exemptions are not intended to be a means for councils to avoid open and effective competition, rather they are intended to operate in exceptional circumstances where the integrity of the procurement can be maintained or not unreasonably compromised.

Exemptions from the Minister are generally granted for individual contracts where the council demonstrates that the proposed arrangement represents best value for money. Types of contracts exempted by regulations on the other hand are limited to those where the very nature of the service being sought is not best served by a public tender process, for reasons including (but not limited to) the inherent uncertainty about its ultimate cost and the urgency required in the service’s acquisition.

The nature of council business sometimes requires a council to obtain legal services. These services may be required at short notice and lacking certainty about how high the costs will be.

4.1.1 Problem and objective

Nature of the Problem

Councils need to be able to obtain legal advice and representation from time to time to enable them to perform their functions effectively.

Very few council contracts for legal services exceed the $150,000 threshold mandated by the Act. When a contract does exceed this value, section 186 of the Act requires that it involve either a public invitation to tender or an invitation to lodge an expression of interest unless the type of service is exempted by the Minister or by regulations. The only way that a council can proceed with a contract that exceeds the threshold in the absence of an exemption is if the council formally resolves that the matter is urgent.

In some circumstances this can pose a serious problem for a council. If a council is engaged in court proceeding and the matter has become more complex than anticipated, the cost of legal services may increase to a level above $150,000 in a very short time. When this occurs, the council can only proceed with the legal service contract with a council resolution that the matter is urgent. If there is insufficient time to arrange a council meeting to pass such a resolution then the council’s legal representation may be put at risk.

While specific information about the number of times councils rely on this exemption is not available, the Department assumes that such situations will be rare because most legal service contracts are for small matters that are below the threshold. While specific numbers are not available, feedback from councils suggests that most councils would only rely on this provision for one or two matters in a decade and some council may never rely on it.

Objective

To ensure councils have access to the legal services they require when unanticipated cost increases arise.

4.1.2 Analysis

The existing regulations specify that legal services are exempt from the requirement to undertake a competitive process for contracts in excess of $150,000.

Criteria

The matters to be considered when assessing this matter, are:

* any impacts on the ability of councils to perform their functions, particularly where legal matters are involved
* whether providing an exemption from tendering entails risks to probity
* if there are any cost impacts for councils
* the potential impacts on competition in the provision of legal services for councils.

Assessement

Performance of functions

As noted above, councils need legal advice and representation from time to time. This may include such things as advice about how to comply with a provision of an Act, representation in an appeal in VCAT or advice about a public liability claim. While most legal service contracts do not exceed the threshold for compulsory competitive processes, some do. Of the contracts that do exceed $150,000, most will be after a competitive process, such as a competitive process to establish a panel of legal service providers.

The occasions when councils need to rely on the regulatory exemption to section 186 for legal services are rare. However, when the need does arise it is likely to be in relation to a matter of importance. The situation can arise when a council is a party to a significant legal dispute that has escalated quickly, leaving the council insufficient time to undertake additional processes to either test the market or seek an exemption from that process. A failure to retain effective legal representation can place a council at a significant disadvantage and result in a significant financial loss to a council, or in the council being unable to undertake actions it is otherwise entitled to undertake. It is in the public interest that councils have access to appropriate levels of legal services to avoid such outcomes.

Probity Risks

One of the benefits of competitive processes is reducing the risks of improper conduct. Conducting a public tender contributes to probity by providing increased transparency around the letting of a contract.

While probity is addressed in a number of ways within councils, including audit processes, staff training, conflict of interest processes and financial reporting, exempting legal services from tendering must still be considered to entail some risk. However, considering the range of probity measures and the infrequent incidence of legal services contracts exceeding the specified thresholds, the scope for probity risks associated with the exemption is assessed as low.

Costs

An exemption from competitive processes does not prevent councils from testing the market for their legal services. In fact, councils are very aware of the potential for high legal costs and establish processes to minimise these risks.

Based on advice from councils, councils manage their use of legal services in various ways, as follows, with the result that there is little or no potential for a regulatory exemption to affect costs.

* Larger councils that have a significant and ongoing need for legal services may employ in-house lawyers or staff whose qualifications include some legal component.
* Councils with a frequent need for legal services (generally large and/or metropolitan) frequently establish panels of law firms though a competitive process from which they source services when required.
* Smaller councils with fewer resources generally avoid seeking external legal advice as much as practicable and very rarely exceed the $150,000 threshold for any single matter.

competition

An important test for any proposed regulations is that the regulations should not have an adverse impact on competition. In this case, the option of exempting legal services from competitive tendering will not have an adverse effect on competition.

The proposed regulations can exempt a council from having to undertake a competitive process for legal services or having to call a meeting to resolve that a contract is urgent. The regulations will not prevent competition as they only remove a requirement that particular competitive processes must be undertaken. As described above, councils are particularly aware of the costs of legal services and institute arrangements to minimise them. This includes establishing legal services panels through competitive processes.

Many types of legal services required by councils cover a wide range of specialist areas, in a similar way to many other organisations. Specific specialist areas where councils have above average reliance include advice relating to the *Local Government Act 1989* and the *Planning and Environment Act 1987*. Considering the overall size of the legal services industry the local government share is extremely small. In addition, as discussed above, reliance on this regulation is rare.

The types of impacts that would give rise to concerns about an adverse effect on competition are described in the Victorian Guide to Regulation. They are:

* when the proposed regulation is likely to affect the market structure of the affected sector, such as reducing the number of participants in the market, or increasing the size of incumbent firms
* if it will be more difficult for new firms or individuals to enter the industry after the imposition of the proposed regulation
* if the costs or benefits associated with the proposed regulation affect some firms or individuals substantially more than others
* if the proposed regulation restricts the ability of businesses to choose the price, quality, range or location of their products
* when the proposed regulation will lead to higher ongoing costs for new entrants that existing firms do not have to meet
* if the ability or incentive to innovate or develop new products or services is likely to be affected by the proposed regulation.

None of these conditions will arise as a result of the proposed regulation.

other exemptions

Councils provide a very broad range of services to their communities and would enter into a large number of contracts for many of these services on a day to day basis. The Department considers it not feasible to analyse every kind of contract that could potentially require exemption from public tendering under the Regulations – any such exemption would be considered only in specific circumstances where it has been demonstrated by the sector that a particular type of service can only be appropriately procured under a general exemption.

In this context, the Department regularly liaises with councils on their obligations and compliance with the Act’s tendering framework including addressing issues and receiving information on their experiences with the legislation. During its general consultations, no council has raised, nor has the Department identified, any other type of contract that would warrant exemption under the Regulations. Submissions are nevertheless welcome from councils and others whether other contract types should be considered for inclusion in the general exemption.

*Question for submitters*

Are there are services other than legal services that should be considered for exemptions? Why or why not?

Conclusion

On balance, the Department concludes that the risks to councils’ ability to access legal services outweigh the risks to probity and the exemption for legal services should be remade. However, submitters may wish to comment specifically on this matter.

4.1.3 Proposed Regulation – legal services

Proposed Regulation 11 will allow a council to enter into a contract for legal services valued at $150,000 or more without a prior competitive tendering process.

4.2 Property sales information

In order to perform many of their functions councils need information about who owns properties in their municipalities. One of the main ways that councils get this information is when it receives notifications about the transfer of ownership of a property.

Sections 230 and 231 of the Local Government Act provide for “prescribed persons” to lodge notices of disposition or acquisition with the council when a property is sold or ownership is otherwise transferred. The 2004 Regulations describe the seller and buyer as the prescribed persons and specify the information to be included in notices.

4.2.1 Problem and objective

Nature of the Problem

Councils are responsible for:

* levying rates and charges
* enrolling property owners on the voters’ roll
* issuing statutory notices for planning and other matters
* contacting people about council services and activities.

These processes require councils to have relevant information about properties in their municipality and about the owners of the properties . As this type of information changes when property is transferred, it is also important that it is updated for council purposes. Without a mechanism to require relevant and the most up-to-date information, councils would be limited in their ability to implement their functions effectively.

2003 reforms

Prior to 2003 the person selling land was required to lodge a disposition notice with the council. A person buying land was not required to notify the council of their purchase. Councils expressed concern at that time that disposition notices from sellers did not provide sufficiently reliable information about the new owners for rating and voter enrolment purposes. The Act and the regulations were therefore amended to include provision for acquisition notices to be lodged by new owners.

At the time when changes were being made in 2003, it was announced that the requirement for both buyers and sellers to lodge notices would be an interim arrangement and that disposition notices from would be phased out. This has not yet occurred.

Other Public bodies

Information about property transfers is not just required by councils. Some other public bodies also need and obtain information about property transfers through notices lodged by owners and occupiers.

* Water authorities require information for the purpose of levying water rates. The Water Act 1989 and the Water (Notice of Disposition of Land) Regulation 2010 provide for the seller of land to provide a disposition notices to the relevant water authority.
* The State Revenue Office, through the Land Registry, requires information about property ownership in order to levy land taxes. The Land Tax Act 2005 and the Land Tax Regulations 2005 require a person purchasing land to lodge an acquisition notice with the Registrar of Titles.
* The Valuer-General’s office is shared information from acquisition notices received by the State Revenue Office, as permitted under section 103(3) of the Land Tax Act 2005. It uses this information to provide property and valuation data to assist valuers in making valuations as well as to other bodies for statistical analysis, under section 5 of the Valuation of Land Act 1960.

The provisions for each authority are related in different ways, and this has significance for the way that the local government regulations impact on buyers and sellers:

* The Water Regulations and the Local Government Regulations contain separate descriptions for the content of a notice of disposition. While most of the provisions are similar, the Water Regulations require additional information about the land that is not required by local government.
* The Land Tax Regulations do not separately describe the contents of a notice of acquisition. Rather, they specify that a notice must contain the information that is prescribed in the Local Government Regulations.

The net effect of these provisions is that any changes to these regulations will not affect the application of the Water Act but may affect the application of the Land Tax Act. If as proposed, the notice of disposition is discontinued in these Regulations, sellers will continue to be required to lodge disposition notices with the relevant water authority.

Objective

The objective is to ensure councils have access to reliable information about land sales and about the owners of land in their municipality.

4.2.2 Background

Survey

In order to inform this analysis, councils were invited to complete and return a survey that showed estimates of the proportions of sales that returned disposition and acquisition notices as well as estimates of the accuracy of the information included in those forms. Completed surveys were received from 53 councils.

Information needs

As part of the survey, councils were invited to explain the purposes of the information sought in the notices. Many also commented on the importance of particular information. It is clear from this feedback that the following information is particularly important:

* Property details are essential for identifying the precise property affected by the transfer.
* The name and address of the new owner is essential for a council’s capacity to levy rates and charges as well as for issuing notices of matters relating to the relevant property.
* The new owners’ names are also important for the preparation of voters’ rolls, because land owners have automatic entitlements to vote in council elections, and addresses are needed for verifying entitlements and for postal voting processes.
* The dates of birth of land owners are used by the council and the Victorian Electoral Commission when preparing voters’ rolls so they can distinguish between people with similar names and avoid duplications on the roll.
* Details of the property sale are important for council’s valuation processes, which are used for setting municipal rates as well as by the Tax Office for land tax purposes.

Of lesser but useful importance is the name and address of the previous owner. Sometimes there are unresolved matters affecting a previous owner that require the council to contact them, such as permits, outstanding debts or overpayments.

Reliability of information

Table 4.2 summarises the mean average responses of councils in response to a question about the proportion of notices that contain accurate information about each type of information. In most cases, this is based on the observations of relevant council staff rather than precise measurements.

*Table 4.1 – Accuracy of information in notices of disposition and acquisition*

|  |  |  |
| --- | --- | --- |
|  | **Disposition Notices** | **Acquisition Notices** |
| Property details | 91% | 91% |
| Transfer details | 92% | 93% |
| Seller’s name | 96% | 94% |
| Seller’s address | 88% | 78% |
| Purchaser’s name | 91% | 97% |
| Purchaser’s address | 72% | 89% |
| Purchaser’s date of birth | Not required | 86% |

While most notices provide fairly accurate information for councils in most categories, it is not surprising that notices of disposition more often have accurate information about the seller and notices of acquisition contain more reliable information about purchasers.

A number of councils commented about the necessity to follow up with buyers’ and sellers’ agents (conveyancers and lawyers) when important details were omitted from notices. Some observed that contact details for these agents were sometimes omitted from the notices, creating additional difficulties.

Lodgement of notices

Table 4.3 summarises the overall receipt of disposition and acquisition notices reported by councils. It shows the highest and lowest ratios of notices to sales (transfers) reported by individual councils as well as the mean average across the reporting councils. Some variability was reported from council to council, which may be a reflection of varying practices of the conveyancing firms and solicitors operating in each region.

The table also shows the value of the lowest quartile, being the value below which only one quarter of councils report lower ratios. This is a particularly useful measure, as it reflects the minimum proportion of notices received by the large majority of councils.

*Table 4.2 – Proportion of notices lodged per land transfer*

|  |  |  |
| --- | --- | --- |
|  | **Disposition Notices** | **Acquisition Notices** |
| Highest ratio | 100% | 100% |
| Lowest ratio | 59% | 81% |
| Average (Mean)  | 85% | 96% |
| Lower Quartile | 79% | 95% |

The results show a consistently higher lodgement rate for acquisition notices.

Some survey respondents noted that the types of transfers where notices were most likely to be neglected were those where the transfer was between related companies, between members of a family or in relation to deceased estates. In many of these cases, neither notice is lodged. This suggests that many of the missing notices (both disposition and acquisition) relate to the same property transfers.

4.2.3 Analysis of options

Options

Feasible options available, given the provisions of the Act, include:

* no regulatory provision for either notice
* provide for both notices of disposition and acquisition to continue
* provide for disposition notice only
* provide for acquisition notice only.

Assessment Criteria

Four assessment criteria are used for this analysis. Three relate to the types of information needed by councils and the fourth relates to the extent of the burden on the parties to a land transfer. The weightings of the information-based criteria reflect their relative importance.

The four criteria and their weightings are:

* the burden on parties to the land transfer – 30%
* availability of information about the property and the sale – 30%
* availability of information about the new owner –30%
* availability of information about the seller – 10%

The lower weighting of the availability of information about the seller reflects the view held by councils that details of a previous owner is of lesser importance.

Analysis

Considering the extent of the burden and the provision of information needed by councils to perform their functions, the best option is to provide regulations for acquisition notices only.

*Table 4.3 – Analysis of options for notices of disposition and/or acquisition*

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Burden on parties(30%) | Property information(30%) | Buyer details(30%) | Seller details(10%) | Weighted score |
| No regulation | 0 | 0 | 0 | 0 | **0.0** |
| Disposition notice only | -3 | 7 | 2 | 5 | **+2.3** |
| Acquisition notice only | -4 | 7 | 6 | 4 | **+3.1** |
| Both notices prescribed | -7 | 8 | 6 | 5 | **+2.6** |

Disposition notice only

The option of only regulating for disposition notices would return to the situation prior to the reforms in 2003. While the burden on buyers and sellers is the lowest of the three regulation options because of the lesser information required in disposition notices, it falls short on the quality of information provided.

Disposition notices fail to provide reliable and comprehensive information about the new owners of the land, which is essential for councils to properly perform their functions.

Acquisition notices only

The option of only requiring acquisition notices imposes a slightly higher burden on purchasers than the disposition notice do on sellers because of the additional information required. Regarding the information provided on an acquisition notice:

* it provides a similar level of information about the property and the sale to a disposition notice
* it provides the best source of information about the new owner of the land.
* it is less reliable for information about the seller (although this is less critical).

Both notices

Regulating for both notices can be expected to provide slightly more comprehensive information about the land sale and more reliable information about the previous owner. However it also imposes the highest burden on the parties to the transfer as both have to lodge forms with the council. On balance, the additional burden imposed by requiring both parties to a land sale to provide the same information to the council is not warranted as the potential for obtaining more reliable information through the duplicated process is slight.

During survey consultation, some council staff expressed a preference for retaining both notices. However, some others indicated that they did not rely on disposition notices and only updated the council records on receipt of the acquisition notice.

note regarding property codes

The existing provisions for acquisition notices include a section for purchasers to identify which property code, from a list provided, applies to the land being purchased. Little evidence has been provided from councils that they make use of these codes, which some have said are not always reliable and add little value to information on property use data already held by them. However, the Valuer-General’s office has advised that access to property code information is important to it in providing up to date data on land types used in property sales information it provides to valuers (including municipal valuers) and for statistical analysis on land sales at a whole of government level used by other areas of government.

Property codes are proposed be retained in the new regulations, using updated code numbers and types based on the current Australian Valuation Property Classification Codes which are standard across the valuation industry.

ADDITIONAL INFORMATION

Some councils have asked that two additional pieces of information be included in the notice of acquisition, which would help them in accurate record keeping and discharging their functions:

* Details of the purchaser’s place of residence if an absentee owner. This will assist council staff determining whether that person should be enrolled on the council voters’ roll
* Future contact details for the vendor, vendor’s agent or solicitor, in case the council has to follow up with them for outstanding matters, e.g. refunding overpayments of rates.

Note regarding other PUBLIC BODIES

Other authorities with an interest in property sales information consulted during the process of preparing this RIS included the following:

* State Revenue Office – The SRO also receives land acquisition notices from purchasers. It has produced a single form that purchasers complete and send to both it and councils. The SRO has advised that the additional information proposed in the new regulations will necessitate a re-design of the form. In order to accommodate this, it is proposed that the new provisions relating to notices of acquisition will not come into effect until 1 January 2016.
* Valuer-General – The Valuer-General’s office uses notice of acquisition information provided by the SRO to provide property sales data to valuers and other government agencies. It has asked that updated property codes be included in future notices of acquisition.
* The Water and Catchments Group from the Department of Environment, Land, Water and Planning – While not directly impacted by the proposed changes to be included in the new regulations, it has noted the proposed cessation of disposition notices.

Aside from the difficulty of analysing impacts of what may or may not happen in other public bodies, it is important that these local government regulations be considered on their own merits. After the proposed change sellers will still need to lodge disposition notices with water authorities. However they will only need to lodge with one body instead of two and any issues that may arise about the differences in the prescribed forms will be removed. The change also increases the possibility of a future where all three agencies receive a single acquisition notice.

4.2.4 Proposed Regulation – Notice of acquisition

The proposed Regulation 15 will require a person acquiring land to lodge an acquisition notice with the CEO of the relevant council. The existing requirement for sellers to lodge disposition notices will be discontinued. Acquisition notices will include up to date property codes and introduce requirements for information on the purchaser’s place of residence as well as details of the vendor’s legal practitioner or agent.

The new requirements for acquisition notices will commence on 1 January 2016.

5. Additional Matters

5.1 Implementation

The proposed 2015 Regulations impact on the conduct of operations by councils. Local Government Victoria (LGV) will therefore formally notify all councils of the new regulations when they are made. This notification will specifically include details of all regulations that include changes from the 2004 Regulations.

In addition, LGV will update information for councils and the general public that relates to the 2015 Regulations. This includes:

* The Department’s website, including the “Guide to Local Government” section that provides information for the public about council functions and responsibilities.
* Guidelines for council officers, including relevant governance practice notes on registers of interests and documents available for public inspection.

LGV will also notify particular stakeholder bodies in regard to changes that affect them. This includes the Law Institute, the Australian Institute of Conveyancers and the real Estate Institute of Victoria, in regard to changes to property notices and the timing of their implementation.

5.2 Evaluation

The Government will be undertaking a complete review of the *Local Government Act 1989* over the next two years. Every aspect of legislation under the Act will be thoroughly examined in that review, including matters currently addressed in regulations.

The review of the Act will include extensive consultation with councils, the public and other stakeholders during 2015 and 2016. It is reasonably expected that this process will result in significant changes. Provisions where significant changes are proposed, such as the revised public registers and the removal of disposition notices, will be specifically examined in the context of experience following the commencement of the 2015 Regulations.

Notwithstanding this forthcoming review, the Government will closely monitor the impact of the 2015 regulations on the local government sector and the wider community. Specifically, the Department will monitor and directly consult with affected bodies (councils, Land Victoria, the State Revenue Office, conveyancing peak bodies) on:

* the effect of the change to the fee for land information certificates
* the amended requirements for land acquisition notices
* the uptake of inclusion of public register information on council websites (instead of providing hard copies)

This consultation will occur within 18 months of the commencement of the new regulations. Any subsequent amendments required to the regulations as a result, would be considered in conjunction with the Act review, or alternatively separate amendment to the current regulations, depending on the relevant need.

5.3 Consultation

The following consultations were undertaken during the preparation of the draft regulations and the RIS:

* Local Government Victoria sought feedback from councils on the operation of the existing regulations via the LGV newsletter “Thinking Local”. Responses were received from several councils and from the Municipal Association of Victoria.
* Surveys of councils were conducted in regard to the existing provisions for public registers and the use of acquisition and disposition notices. Most councils responded to these surveys.
* The State Revenue Office, Valuer-General’s Office, Land Victoria and the Water and Catchments Group from the Department of Environment, Land, Water and Planning were consulted in regard to notices of acquisition and disposition.

NOTIFICATION OF THE REGULATORY IMPACT STATEMENT

In addition to publication of a notice of the preparation and availability of this Regulatory Impact Statement in *The Age* and *Herald Sun* newspapers and notification on the Department of Environment, Land, Water and Planning’s website ([www.delwp.vic.gov.au/local-government](http://www.delwp.vic.gov.au/local-government)), the following will be directly notified of its availability:

* All Victorian councils
* The Municipal Association of Victoria
* The Victorian Local Governance Association
* Local Government Professionals (LG Pro)
* The Law Institute of Victoria
* The Australian Institute of Conveyancers (Vic Division)
* The Real Estate Institute of Victoria

Appendix A - Calculating staff costs

While councils use a common set of levels for staff remuneration, the precise salary levels vary from council to council as a result of different industrial agreements.

To determine a standard set of staff remuneration rates, the Enterprise Bargaining Agreements (EBAs) of four metropolitan councils and five rural and regional councils were used to calculate average hourly rates applicable for 2015-16. As the EBAs showed that rates in metropolitan areas are higher that non-metropolitan councils, average hourly rates are calculated separately for metropolitan and non-metropolitan councils.

Each salary band includes three or four levels. For the purpose of this analysis, it is assumed that the average staff member has occupied their position for three years. Therefore, for all bands the third level (4C, 5C, 6C and 7C) is used for calculation.

Calculation of accurate on-cost rates, including corporate overheads is not possible because actual rates vary from council to council. An on-costs rate of 75 per cent has been used. This is based on the statistical analysis in the “Cost benefit Analysis Techniques” appendix to the Victorian Guide to Regulation.

The following tables summarises the calculation of hourly rates with and without on-costs.

|  |  |  |
| --- | --- | --- |
|  | Metropolitan | Non-Metropolitan |
| Base hourly rate | Hourly rate with on-costs | Base hourly rate | Hourly rate with on-costs |
| Band 4C | $31.23 | $54.65 | $28.88 | $50.54 |
| Band 5C | $36.33 | $63.58 | $33.14 | $57.99 |
| Band 6C | $43.30 | $75.77 | $39.31 | $68.79 |
| Band 7C | $48.01 | $84.02 | $43.42 | $75.98 |

The hourly rates of metropolitan and non-metropolitan councils are weighted according to the number of councils in each category. (There are 31 metropolitan councils and 48 non-metropolitan councils.)

The following table shows the weighted base rates and rates with on-costs.

|  |  |  |
| --- | --- | --- |
|  | Weighted base hourly rates | Weighted rates with on-costs |
| Band 4C | $29.80 | $52.15 |
| Band 5C | $34.39 | $60.18 |
| Band 6C | $40.87 | $71.53 |
| Band 7C | $45.22 | $79.13 |

(Note that a different weighting is used for land information certificates).

Appendix B – Public Register survey

Summary of responses to survey

Councils were invited to respond to a survey which asked questions about the number of requests from the public to view the public registers over the past year. Fifty-seven councils responded to the survey and the following table summarises the responses from 55 of those councils. (Two councils were unable to provide estimates because of their wider dissemination processes for registers.)

|  |  |  |  |
| --- | --- | --- | --- |
|  | Total requests to inspect the register | Number of councils receiving requests | Average requests per council per year |
| (a)     Councillor allowances | 19 | 14 | 0.34 |
| (b)     Senior officer remuneration | 25 | 18 | 0.45 |
| (c)     Overseas travel | 32 | 22 | 0.57 |
| (d)     Officers submitting interest returns | 3 | 2 | 0.05 |
| (e)     Councillors who submitted returns | 4 | 4 | 0.06 |
| (f)      Agendas & minutes of council  | 151 | 17 | 2.74 |
| (g)     Special committees established | 6 | 4 | 0.10 |
| (h)     Special committees abolished | 2 | 2 | 0.04 |
| (i)       Minutes of special committees | 20 | 5 | 0.36 |
| (j)       Register of delegations | 10 | 7 | 0.18 |
| (k)     Section 223 submissions | 18 | 10 | 0.33 |
| (l)       Regional library agreements | 2 | 2 | 0.04 |
| (m)   Details of council leases | 20 | 14 | 0.35 |
| (n)     Register of authorised officers | 9 | 5 | 0.16 |
| (o)     Council donations and grants | 11 | 6 | 0.20 |
| (p)     Council memberships of organisations | 8 | 6 | 0.15 |
| (q)     Contracts contrary to s.186. | 0 | 0 | 0.00 |

1. As required by section 79 of the Act. Comprehensive guides for conflict of interest matters are available on the Local Government Victoria website at www.dtpli.vic.gov.au/local-government/publications-and-research/council-governance. [↑](#footnote-ref-1)
2. Band 6 hourly rate is calculated as the average Band 6C rate in metropolitan councils and in non-metropolitan councils weighted according to the number of councils in each category. [↑](#footnote-ref-2)
3. The 1.75 multiple in the calculation of costs represents the costs of labour on costs, such as superannuation and WorkCover, plus corporate overheads such as accommodation, communications/computing equipment and office requisites. As the actual rates vary from council to council, the statistical average on-cost/overhead rate published on page 14 of the Victorian Guide to Regulation Appendices is used. [↑](#footnote-ref-3)
4. LANDATA is a Government business which provides property information including title, survey, valuation and property sales, property certificates and planning certificates through data information brokers, an online service and in person. Its customers include the legal community, conveyancers, surveyors, valuers, a range of property professionals and the general public.

Applicants may apply online to LANDATA for a Land Information Certificate. LANDATA sends the application and fee to the relevant council which compiles the certificate and passes it back to LANDATA for forwarding to the applicant. Most councils have automated this service. [↑](#footnote-ref-4)
5. Based on advice from Land Victoria. [↑](#footnote-ref-5)
6. Hourly rates used in all calculations are based on average award wages at four metropolitan and five non-metropolitan Councils, covering a range of council sizes and locations. Rates used are for bands 4C, 5C, 6C and 7C. [↑](#footnote-ref-6)
7. Estimated shares of metropolitan and non-metropolitan land sales are based on sales data for 2012 and 2013 the Victorian Valuer-General’s 2013 Market Overview (Based on records to June 2014). [↑](#footnote-ref-7)
8. Land transfer data is from Land Victoria records. [↑](#footnote-ref-8)
9. NPV is calculated at a discount rate of 4 per cent. [↑](#footnote-ref-9)