

good^g governance guide



THE PRINCIPLES OF GOOD GOVERNANCE WITHIN LOCAL GOVERNMENT

Produced by the Good Governance Advisory Group

ABRIDGED VERSION.

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Foreword

On behalf of the Good Governance Advisory Group, I am very pleased to present the *Good Governance Guide*.

Corporate governance in the private sector has been a controversial issue in recent times and has understandably received a great deal of attention in the media. With the collapse of high profile corporations both in Australia and internationally, the best means of achieving effective and accountable governance has been widely discussed and debated.

The challenges faced by local governments are no less significant. In fact, it can be argued that they are even greater than those confronted by business. Local governments are democratically elected. They are not only responsible for the management of complex organisations which provide many diverse services, but must also represent and advocate on behalf of the wide-ranging interests that make up modern communities today.

The individuals elected to local government come from within the community and have many different interests, priorities, skills and experience. Good governance is all about ensuring that each local government is able to manage its many complex responsibilities effectively, and in the best interests of its community.

The Good Governance Advisory Group consists of representatives of the Municipal Association of Victoria, Victorian Local Governance Association, the State Government, LGPro (Local Government Professionals) and various local governments. As such, it represents a successful partnership between different levels of government and associations in the interests of good governance.

Local governments have an enormously important role to play in contributing to the quality of life of Victorian communities and do so in the often challenging circumstances that accompany the development of good governance principles. The *Good Governance Guide* is based on great respect for Councils, councillors, officers and communities in undertaking their vital roles.

The guide seeks to identify the general principles which underpin good governance in local government. It is not a blueprint. Local governments and their communities need to discover the approaches which suit them best. Accordingly, the *Good Governance Guide* aims to lay the foundations on which local governments can build their own structures for good governance.

The Good Governance Advisory Group has consulted widely, both within and across the local government sector, and has benefited from the input of many contributors. Ultimately though, it is a tribute to Ron Exiner from Exintel Consulting who undertook the writing of this complex project. The Good Governance Advisory Group acknowledges the skills and the forbearance that Ron demonstrated in bringing the guide together.

We trust that this guide will assist local governments and their communities to further develop good governance principles and procedures. Good governance is not something which can be addressed once and then shelved, but needs to be revisited and re-evaluated in an ongoing dynamic process. The Good Governance Advisory Group remains committed to working with local governments in developing and evolving effective principles and procedures, and to ensuring that the good governance message stays vibrant and relevant.

I commend the *Good Governance Guide* to the local government sector.



John Warburton
Chair, Good Governance Advisory Group

Introduction

The Good Governance Advisory Group

This guide to good governance in the local government sector has been produced on behalf of the Good Governance Advisory Group. This group provides representation and support to Victorian local governments.

The membership includes representatives from:

The Municipal Association of Victoria

The Victorian Local Governance Association

LGPro (Local Government Professionals)

The Local Government and Regional Services Division of the Department for Victorian Communities
Councillors and officers from Victorian local governments.

The concept of governance

Governance is a very important concept in the first decade of the 21st century. A wide variety of nations, organisations, institutions and individuals are grappling with how best they can be governed.

For multi-national corporations, developing countries, governments or institutions, the practice of good governance is increasingly seen as critical for ensuring that the governance of organisations – both public and private – has a legal and ethical basis, that decisions are taken in the interests of stakeholders, and that the organisation behaves as a good corporate citizen.

In order to act on behalf of the whole community, provide leadership and pass legislation that affects the community which has elected them, democratic governments must meet specific governance demands.

Governance in local government

The focus of this document is on the good governance challenges for local government. Good governance in the public sector makes a significant contribution to improving people's lives. When local governments practise good governance, their communities are more connected and engaged, better services are provided, and more effective use is made of resources. In meeting the highest standards of public accountability, good governance produces better outcomes.

Background to the *Good Governance Guide*

The *Good Governance Guide* considers the issues of good governance at a time when democratic local government has been firmly re-established in Victoria. Following the restructure of local government in the mid 1990s, democratic local government has returned to all municipalities.

This return to democracy has been accompanied by a concern for high standards of governance. The efforts of local governments and their communities to re-establish the principles and realities of local democracy have been strengthened by the formation and activities of the Good Governance Advisory Group. Two publications have already been produced by this committee. *The Code of Good Governance*, published in 1997, was a strong statement of the principles of good governance. It also pioneered a dispute resolution process that gave local governments the opportunity to tackle governance issues at a local level. *Doing It Ourselves – Showing the Way* explored the complexities of good governance and the key issue of the relationship between elected members and administrations.

Now that democratic local government is once again firmly entrenched in the Victorian government system, it is appropriate to consider the issues of good governance in a more practical and detailed manner. Local governments are dealing with complex issues of community engagement, asset management, sustainability and service delivery in a context of high expectations and tight resources. Good governance will impact positively on outcomes for communities and strengthen the local government sector as a vital level of the Australian government system.

Outline of the guide

The statements and conclusions contained in this guide have been framed with reference to documents previously produced regarding the concept and practice of good governance. The most recent of these is the report entitled *Governance Practices in Local Government*. Produced by The Strategy Shop in 2002, this report documents the outcomes of a comprehensive survey carried out to elicit the views of councillors and officers about good governance.

This guide looks at the nature of good governance. It outlines the structure and roles of local governments and considers the issues of good governance. It puts forward the proposition that governance is practised in two main areas – within a local government, and between a local government and its community – and explores these two aspects of governance in detail. Finally, the issue of financial governance and legal and ethical implications are discussed, along with a consideration of how actual and potential governance breakdown can be addressed.

How to use the guide

Local governments need to develop, implement and practise good governance in a way which is appropriate to their own circumstances. This guide does not seek to suggest that there is a 'one size fits all' approach to good governance. However, it does assert that there are principles which apply to the sector as a whole. It is intended as a tool and contains approaches which local governments can consider and adapt to meet their own needs.

Glossary

Administration	The paid staff of the local government
Chief Executive Officer	The most senior position in the administration – a position directly accountable to Council
Community	The entire population of a municipality – made up of many different local and shared interest groups
Council	The group of elected members of the local government
Council committee	A formal committee of Council as established under S 86 of the LGA
Council meeting	The elected members meeting formally in accordance with the provisions of the <i>Local Government Act 1989</i>
Council plan	Formerly called the 'corporate plan' the Council plan must include four-year strategic objectives, strategies for achieving the objectives and indicators
Councillor	An individual elected member
Local government	1. Collective reference to the elected members and administration of a municipal council 2. A reference to local governments as a group or level of government
Local Government Act; the Act: LGA	The <i>Local Government Act 1989</i> and subsequent amendments
Municipality	The geographical area governed by a local government
Resources	Physical, human and financial inputs to programs and services
Strategic resource plan	The long-term (at least four year) financial plan of Council

what is good governance?

chapter summary

- * Governance refers to the processes, protocols, conduct and relationships involved in decision making and implementation.
- * What are the key characteristics of good governance?
- * Governance in local government is based on democratic governance. Issues of governance must be understood in the light of councillors being democratically elected community representatives.
- * What are local governments and what do they do?
- * What does good governance in local government look like?
- * What does community mean in local government?
- * Local government is one of the three levels of Australian government. Good governance in local government is also dependent on relations between these levels of government.

In this chapter, governance and good governance are defined. Areas of governance relevant to local government are identified. The concept of local government and its role is explored, along with a discussion of what good governance means for local governments.

What is governance?

While there are many definitions and types of governance, for the purposes of this guide governance is defined as the process of decision making, and the process by which decisions are implemented (or not implemented). This gets to the heart of how local governments operate as decision-making bodies and their relationship with the administration which advises Council and implements its decisions. It also includes the ways that local governments engage with their communities in this process.

Good governance has been defined in the *Community Consultation Resource Guide* as existing when a government governs for and on behalf of its community (p 5). This provides the democratic basis which is essential to an understanding of good governance in the local government sector, with a focus of good governance as it applies to democratically elected governments.

Good governance is:

- * Participatory
- * Consensus oriented
- * Accountable
- * Transparent
- * Responsive
- * Effective and efficient
- * Equitable and inclusive
- * Law abiding.

The principle and practice of democratic governance underpins governance in the local government sector. Democratic governance refers to the democratic nature of local government and the accountability of local governments to their communities.

In order to consider governance issues in this guide, we will look at governance issues as they apply to issues within local governments (often referred to as corporate governance) and between local governments and their communities.

What are local governments?

Australian citizens exercise their democratic rights through three levels of government, namely local, state and federal. Local government is the first level of government for Australian citizens, with responsibilities for matters close to communities.

Local governments are democratically elected with representatives being elected on a ward/riding or whole-of-municipality basis. They are established under the provisions of the *Local Government Act 1989* of the Victorian Parliament.

Local governments consist of the elected members (the councillors) and the administration (the local government officers).

Councillors are able to exercise authority as Council after they are formally sworn in and when they meet formally as Council. All lawful decisions are made at the Council meeting or through delegations that are formally made by the Council. Advice is usually provided to the Council by the administration, in order to assist Council decision making. This advice is normally provided by written reports to the Council for consideration at a formal Council meeting. However, there are a number of other means of providing advice that will be considered.

The Council meeting is a formal process, defined by relevant state and local legislation and chaired by the Mayor.

The administration is formally accountable to Council through the Chief Executive Officer (CEO). The CEO is directly accountable to Council and also has specific authority – including that of managing the organisation – under the *Local Government Act*.

The administration can be likened to the state and federal public service in that it is the administrative arm of local government. Good governance is highly dependent on how well the relationship between the elected member and the administration works.

However, local governments do not have the institutions that characterise the Westminster system, such as an executive (ministry), a formal governing party, formal opposition and so on. In addition, individual councillors do not have the staff and structures that ministers and backbenchers enjoy at the state and federal levels.

The lack of Westminster-type structures has considerable implications for the practice of good governance in local governments. Unique pressures are placed on councillors and officers and these issues will be addressed in this guide.

Roles of local governments

In order to consider the issues of good governance in local governments, it is also necessary to consider the role of local governments. That is, what do local governments do?

Local governments have a number of fundamental roles.

Planning and monitoring achievement

Local governments set overall directions for the municipality through long-term planning. Examples include Council plans, strategic resource plans, municipal strategic statements and other strategic plans. Setting the vision, and then ensuring that it is achieved through performance management, are some of the most important roles of local governments.

Lawmaking/enforcement

Local governments legislate and make decisions in areas over which they have legislative authority. Local laws cannot duplicate or contradict federal or state law. Called local laws, the laws made by local governments cover such issues as the activities permitted on public land, animal management, and use of infrastructure, etc.

Local governments are also responsible for enforcing local laws and other legislation over which they have authority.

Policy development

The activities of local governments are guided by policies. Developing and implementing policies are key functions of local governments.

Representation

Individual councillors, or Councils, represent their constituents on matters of concern to those constituents.

Advocacy

Local governments have a role advocating on behalf of their constituencies to other levels of government, statutory authorities and other relevant parties.

Service delivery

Councils must ensure the delivery of quality services for which they have responsibility.

Good governance in local governments

Good governance in local government combines the characteristics of good governance and the definitions and roles of local government.

The Code of Good Governance, in summary, states that good governance in local governments requires:

- * Councils being elected by, representative of, and accountable to their community
- * Policies and programs reflecting the mandate Councils have received from electors
- * Policy enactment arising from the Council plan with appropriate performance management to assess the Council's progress
- * Community participation in governance
- * Mayor and councillors providing leadership to the community and reflecting the community's collective aspirations
- * A management structure which implements the Council's goals in accordance with Council's priorities and approved budget
- * Provision of services which meet the community's needs (sometimes in partnership with other levels of government, business or community organisations)
- * Local government being well placed to facilitate coordination and integration at a local level
- * Cooperation between local governments.

This guide looks at how these characteristics of good governance can be achieved. Knowing them is one thing – putting them into practice in the complex arena of local government, is another.

Good governance in local government requires a Council to fulfil its roles effectively, with its governing being characterised by those elements of good governance outlined above.

What is meant by 'community'?

An appreciation of the term 'community' is integral to an understanding of what constitutes good governance at a local government level. When discussed in connection with good governance the term 'community' is often used as though it is an homogenous entity. This presupposes that there is a single community interest, community demand or community need.

In fact, the population of a municipality consists of a large number of communities, for example, the business community, the rural community and the resident community.

These can be further broken down into subsets, for instance, the retail community, the developer community, the farming community, the small town community, and the tenant community. Alternatively, local communities can be defined by geographical area.

Often such diverse communities do not share the same aspirations, goals and interests. One of the challenges for all levels of government – but particularly local government which defines itself as being closest to 'the community' – is how to govern so that different, and often competing, interests are recognised, addressed and managed.

When referred to within this guide, 'community' means the myriad groups, individuals and interests that make up a municipality.

Local government – one of the three levels of Australian government

In terms of defining good governance in local government, it should be remembered that local government does not operate in isolation, but occupies one level of a three-level governmental system in Australia. For good governance to occur, the Federal Government, and even more importantly, state governments, need to facilitate and enable local governments to undertake their complex roles. They can also support dispute resolution processes that emphasise self help and mediation.

good governance in practice

chapter summary

- * Relationships are key to good governance.
- * Sound advice – provided through Council reports and briefings etc – is crucial.
- * Good processes contribute to good decisions. Decisions also need to be accountable and transparent.
- * Strategic planning is vital.
- * Accountability of a local government to its community is central to democratic governance.
- * Performance management enables a local government to be accountable to its community.
- * Good governance means a community feels included in the governing process.
- * Good decisions are based on good information, and good consultation methods elicit some of the best possible information.
- * Community leadership is important – sometimes local governments need to lead or influence communities.
- * Balancing 'community-wide' and 'sectional' interests is central to democratic governance.
- * Communities expect good services and systems – they are fundamental to good governance.

It is crucial that individual local governments establish what good governance means to them, and monitor and evaluate their success in achieving it.

How to achieve good governance

Good governance in local government is predicated on democratic governance. Governance issues, whether focussed on relationships between a local government and its community, or within the local government itself, must be seen in the context of democratic governance.

In real life, it may not always be possible to distinguish between issues within the local government and those between a local government and its community. In order to study this closely, issues which occur within local governments will be considered separately to issues which occur between a local government and its community.

2.1 Internal issues

Internal governance issues are those which take place within a local government, that is, within the Council and/or between the Council and its administration.

Relationships

For a full discussion on roles and relationships, see Chapter 3.

Provision of advice

Provision of advice is a major element of the administration's role. Most items on a Council agenda paper are accompanied by a report and recommendations from the administration.

Council reports

The Council report is the formal means for providing advice to councillors, giving them relevant data, issues, options and advice that will enable them to consider the matter at hand and make a decision.

Advice needs to be well researched, accurate, and mindful of the political environment in which the local government is operating. It should not be biased or deliberately oriented to the political views or values of the officer/s writing the report, or the councillors reading it. Its content should provide factual information and cover the range of policy, financial and other implications, as well as stating the consultative processes which have occurred, or are intended to occur.

The Chief Executive Officer is accountable for all Council reports. However, other staff within the administration can author the reports. Complex issues often impact on the responsibilities of more than one department, and advice should always reflect this and take account of the whole organisation. Administrations should develop ways to ensure that all appropriate views are canvassed.

Features of Council reports

Report structures should be determined according to the needs of the individual local government but should include the following elements:

Author

The Chief Executive Officer is ultimately accountable for all reports. When another author is shown, a formal endorsement section can be incorporated into the report to demonstrate accountability.

Purpose

The purpose of the report should be stated, along with the reasons it is being put to Council.

Policy implications

The extent to which the issues covered – and the directions proposed – are in line with policy, as expressed through the Council plan and/or other relevant policies, should be outlined.

Background

The background or context in which this report is being put forward should be specified.

Issues

The relevant key facts and arguments should appear in this section of a Council report.

Financial and resources implications

Councillors need to be aware of the resource implications of a proposal – financial, physical and human. Therefore, the following questions need to be answered: Is the proposal incorporated in the budget? If not, is a means of financing it proposed? Are there human resources implications? If this proposal is introduced, are there activities or programs currently being undertaken which will cease?

Internal/external consultation

Decision making should be based on appropriate consultation. This section of a Council report should outline the consultation which has been undertaken – both outside and within a local government. In terms of consultation conducted within a council, it should be demonstrated that a whole-of-government view has been taken. That is, all relevant sections of a local government have had the opportunity to contribute to the report.

Options

Relevant options, and their implications, should be outlined in this section of a Council report.

Conclusion

The conclusion should be the logical outcome/s of the arguments which have been put forward. A clear link should be able to be drawn between the conclusion/s and the recommendations.

Recommendations

The recommendations should clearly and concisely state what Council is being asked to decide. They should stand alone – that is, be able to be understood without having to refer to the body of the report.

For example, “Council declines to adopt the proposed tree-clearing program as it is financially not viable and environmentally dangerous” rather than:

“Council declines to adopt the proposed tree-clearing program for the reasons outlined in Section 4 of this report.”

Recommendations should be expressed in a form that can be moved and become a clear and unambiguous resolution of Council. This is the key means by which the public is informed about decisions taken. High levels of accountability and transparency are achieved when minutes are clear and accessible. The 2003 Act amendments require local governments to include Council resolutions and the reports or summaries of the reports considered in the decision making processes, in the minutes. This is in order to improve the transparency of decision-making.

Council briefings

One of the unique features of local government is that all councillors, sitting as Council, have equal carriage of the issues to be considered. For example, when the budget is under consideration, there is no minister for finance or treasurer to assume executive authority or to guide the budget through the Council decision-making process. No 'whips' exist to tell councillors how to vote. All councillors have an equal accountability for the budget.

Accordingly, all councillors are required to satisfy themselves about the integrity, validity and accuracy of the particular issues before them. Councillors have many complex issues about which to make decisions and largely rely on the advice they receive from the administration.

Complex issues often require more extensive advice processes which culminate in the Council report. A key feature of these processes is Council briefings. These are closed-door sessions during which councillors are provided with detailed briefings – oral and written – and provide councillors with the opportunity to discuss the issues between themselves and with senior staff. They often involve robust discussion, and the frank airing of controversial or tentative views.

The content and form of these briefings mean that they are not held in the public arena.

The private nature of Council briefings provides councillors with the opportunity to be briefed and work through the issues in a way that would not be possible in an open council meeting. Councillors do not commit to formal decisions at these informal meetings.

Features of Council briefings

- * Council briefings should be used when complex and controversial issues are under consideration.
- * Council briefings should involve all councillors and relevant senior staff.
- * Written briefing material should be prepared and distributed prior to the meeting in order that the same information and opportunity to prepare is given to all councillors and officers.
- * Council briefings need to be chaired in such a way that open and honest communication takes place and all issues are able to be explored. Because time and availability are often limited, the Chair must ensure that discussions are kept on track and moving towards a conclusion.
- * For more complex strategic issues, multiple briefings are usually necessary.

It is important that issues of transparency and accountability are considered with regard to Council briefings. If councillors determine their position through the briefing process, and only go through a brief or perfunctory endorsement at the meeting of Council, this can impact adversely on the public's ability to follow the decision-making process. The opportunity to fully explore and address an issue in private must be balanced with the accountability and transparency requirements of good governance.

To ensure transparency and accountability, it is also important that the administration is made accountable for the formal advice it provides to the Council meeting which subsequently takes place. This advice may or may not be entirely consistent with the discussions which took place at the council briefing.

The process of briefing can be seen as enhancing the public process. Councillors who are well briefed are more likely to be able to debate the matter under discussion and ask relevant questions which will illuminate the issue more effectively.

Good governance requires transparency and accountability

Despite the fact that an issue may have been extensively explored at a Council briefing – even to the point where a consensus has been reached – a full discussion must take place at the Council meeting prior to a decision being made.

In this way, the good governance goals of transparency and accountability are enhanced, even if councillors and officers believe that there has been a certain amount of ‘doubling up’.

Other forms of advice

Advice can be provided in a number of other ways. These include meetings, discussions with individual councillors, written responses to information requests, and so on. Accountability is enhanced when advice is provided formally and duly signed by those authorised to do so. This can be done within Council reports, through Council briefings, and in memos to councillors.

In addition, councillors have other ways of obtaining information about a particular issue. Advice can come from community groups, interest groups, political organisations and individuals. Such alternative sources of information need to be considered by administrations when providing advice to Council.

Decision-making processes

One of the key means by which local governments operate is by making decisions.

The only decisions Council can make is when it sits formally as Council at the formally constituted Council meeting, or through formal delegations. It is important to remember that neither the Mayor nor councillors have any executive authority as individuals.

Council meetings

Council meetings are formal meetings of Council as defined under the *Local Government Act*. They are required to be open to the public. However, under certain conditions, Council meetings can be closed under Clause 89 (2) of the Act. In order to promote transparency and accountability required for good governance, these provisions should be used as infrequently as possible.

Good decision making at a Council meeting is enhanced when the meeting is well run. This requires a clear and informative agenda paper, good chairing and facilitation, sensible adherence to meeting procedures and adherence to statutory requirements. There should also be a strong commitment to the principle of Council meetings being open to the public so that they are fully informed and, where appropriate, involved in the government of their community.

Processes

This discussion is not seeking to determine whether decision making is right or wrong by some objective criteria. However, it is possible to assert that good decision making is more likely to occur when decisions are based on good information, when councillors have the opportunity to put forward their point of view, and when there has been community input. In other words, when good governance practices have been followed.

Good meeting procedures won't in themselves lead to good decisions, but they certainly contribute towards good governance.

Transparency

Transparency in decision making means that observers can follow and understand the decision-making process and reasons why a particular decision has been made.

This in turn supports accountability and helps keep legislators and administrators honest. Because they can stand up to scrutiny, transparent processes are usually good processes.

This does not mean that all decisions have to be made in public. Some decisions need to be made ‘in camera’ – that is, closed to the public – for legal or commercial-in-confidence reasons, or because a personnel or privacy matter is being considered. Federal and state governments can also make decisions in closed sessions.

Do accountability and transparency mean that the administration's advice should always be followed?

The requirements for accountability and transparency do not mean that councillors should always follow the advice they are given.

What it does mean, though, is that if they don't, the reasons should be provided so they can be understood and followed.

See 'Strategy Shop Survey' *Government Practices in Victorian Local Government 2002*.

Access to data by individual councillors

Because of its very nature and structure, the issue of access to data by individual councillors is unique to local government. This is due to the fact that, unlike federal or state parliamentarians, councillors do not have personal staff, and therefore requests for information or reports can place significant strain on the resources available to the administration.

At the same time, councillors obviously require information in order to do their jobs. Some, but not all, of the information they require will be provided by Council reports.

As a starting point, information requests by councillors should generally be seen as legitimate. As a bottom line, if something would be available through Freedom of Information (Fol) provisions, it should be available to councillors.

Firstly, this needs to be qualified by privacy requirements. This means that file trawling and 'fishing expeditions' are not appropriate and generally, not legal. Meeting legitimate information requests does not mean handing over files to councillors. Even if councillors use Fol legislation to access files, the requirements of privacy legislation still have to be met.

In any case, trusting relationships are not likely to be enhanced if councillors feel obliged to utilise Fol to obtain information from the local government of which they are part.

Administrations should also be wary of providing fuel for internecine political brawls between councillors. If a councillor is requesting information about another councillor's activities which may be available through Fol, the administration should seek ways of addressing the situation without exacerbating it.

Example

If Cr X is seeking information about the size of Cr Y's council-funded mobile phone bill, the Mayor and/or administration may strongly suggest that if there is an issue concerning mobile phone use, this should be tackled by development or review of existing protocols and policies and/or publication of all councillors' expenses.

Similarly, councillors should ensure that their information requests are legitimate and related to their roles. Requests for information that are made to fuel political brawls put undue pressure on administrations.

If one starts from the position that requests are generally legitimate, a possible guideline is to view requests as resourcing issues rather than straight information issues. In this way, if a request can be met easily, without much extra resourcing, it should be. On the other hand, if the request is resource intensive, it should become the subject of a Council report in the same way that issues requiring extra resources, but which have not been budgeted for, are treated.

A governance problem can arise when a 'minority' councillor makes continual requests for information which they consider necessary to fulfil their role. This is often seen as 'troublemaking' and overruled by the majority. Good governance can be impacted by the feelings which arise as a result. In such cases, the role of the Mayor in liaising with the councillor, and good communication and relationships between the Council and the administration, will be necessary to address the situation.

Protocols can be developed as to the circumstances under which information will or will not be provided for individual councillors. Some local governments use self regulation, for instance a register that contains all information requests by individual councillors.

When individual councillors are seeking information and advice:

A good general principle is that advice to one should be available to all. Sometimes – particularly when the provision of advice requires significant resources – a Council decision should be sought.

Protocols can help clarify the circumstances under which advice will be provided, and can reduce misunderstandings and bad feelings. Self regulation, for instance through registers, can assist understanding and equity.

It is generally legitimate for councillors to seek information and ways should be found to manage these requests and where possible, address them.

2.2 Governance and the community

In terms of the relationship between a local government and its community, good governance is often referred to as the trust and confidence a community has in its local government, and the extent to which the community is engaged in its governance.

While trust, confidence and engagement are laudable goals, in reality, they are outcomes that can only occur when good governance is being practised. There are a number of good governance characteristics that will further the development of this trust and confidence. Good governance will in turn assist in maintaining public confidence in this important aspect of government.

Strategic planning and performance management

Strategic Planning

Council has key responsibilities in setting overall directions and goals for the municipality and in monitoring whether these directions are followed, and stated goals achieved. The tools for setting these directions and goals are the major strategic plans for which Council has responsibility.

The two most important considerations for good governance are the Council plan and the strategic resource plan. Other important strategic plans include the municipal strategic statement and the municipal public health plan. These are outside the scope of this document.

The Council plan and the strategic resource plan are four-year (or more) plans which set the vision and goals. These longer-term plans are then converted into annual ‘action statements’. These are the annual business plan and the annual budget which outline the actions to be taken to achieve the Council plan, and detail how they are going to be financed.

For good governance to occur, a Council needs to state where it is going, what is happening to get it there, and how it is being paid for.

Not only do strategic plans form the basis for action by the administration, they also demonstrate to the population where a council is going and what its priorities are.

Good governance requires Council to ‘own’ these strategic plans. That is, Council must be involved in the development of plans – from start to finish – and be committed to achieving the associated outcomes. Merely rubber-stamping a draft put in front of it by an administration will not result in ownership. A Council plan that is not owned will not be effective in either setting priorities or managing community demands. The result of non-ownership can mean a frustrated community and an administration uncertain of its direction.

Council planning is a particular challenge for democratic local government. A Council is an amalgamation of individual councillors who have been elected on the basis of individual platforms. That is, they each made promises about what they would (and wouldn’t) do if elected. They are then accountable for implementing the policies they ran on, and for which they believe they have a mandate.

Developing a means for addressing a number of individual mandates and being open to input from the community – all the while providing continuity and stability – is a particular challenge for successful strategic planning. There is no magic formula for success.

Primarily what is required is a commitment to the democratic nature of local government. That is, opportunities should be provided for consideration of the promises made by elected councillors.

Planning processes need to be carefully developed to allow for:

- * Councillors to understand what is ongoing and where flexibility exists
- * Councillors to raise issues of importance and have them discussed
- * Appropriate exchanges between elected members and the administration in order to increase knowledge and understanding
- * Community input – particularly early in the process – so that it can be considered by the decision makers
- * Understanding of the financial context – that is, what is possible.

Open and inclusive processes are most likely to engender ownership by elected members, administrations and the community.

Council and annual plans

- * Should have Council and community ownership
- * Must have clear and identifiable outcomes
- * Must contain performance indicators which are simple and easily understood and which clearly specify what is required to achieve stated goals
- * Should be monitored regularly through Council review of performance reports generated by the administration.

Performance management also provides a basis for regular review of the Council plans.

Performance management

Council is accountable for monitoring performance in the achievement of strategic directions, goals and financial outcomes.

In order to do this, reporting systems must be in place that provide Council with the necessary information to enable it to assess performance. Reporting against the annual plan should be a systemic and regular process that allows Council to take action to rectify issues if they arise.

The Chief Executive Officer is the only officer directly accountable to Council. It is also the only position appointed by elected representatives. As such, Council is accountable for setting the CEO's performance plan and subsequently monitoring performance. This is normally carried out as part of the CEO's annual performance assessment.

Problems can arise when expectations are not clearly enunciated at the beginning of a CEO's term. This can lead to councillors feeling that a CEO has not delivered what they expected, leading in turn to problems in trust and relationships.

The time put into setting goals and expectations of the CEO should be similar to that put into the annual review of performance. If expectations are communicated and agreed upon, they are more likely to be met. This will also be assisted by ongoing communication and feedback between the CEO and the Council.

Accountability

A Council must not only be accountable to its community, but must be seen to be accountable. That is, Council must be conscious that its function and legitimacy derives from its community and must govern accordingly.

Good governance and accountability

Governing with accountability requires Councils and councillors to undertake their roles in a way which demonstrates that they understand they are governing on behalf of their community. Decisions should be taken with community interest in mind, and active and constant steps taken to ensure that elected representatives remain aware of what the community believes its interests to be.

Accountability can be expressed in a number of ways. For instance, most – if not all – significant decisions should be consistent with the directions set by the Council plan. All elements of the Council plan should already have gone through consultation processes and once adopted by Council, represent the vision of the community. Therefore, by making decisions that are consistent with the Council plan, Councils are demonstrating their accountability to the community.

Councillors often argue that the ultimate test of accountability is the municipal/general election which will occur every four years. However, real accountability must reflect a constant and active process to develop councillors' sense of their accountability to the community, and in turn, the community's sense that elected representatives are working in the interests of the community.

Accountability should be reflected through:

- * Open and transparent government so that people can follow decision-making processes and outcomes.
- * Consultation so that communities feel that they are being heard.
- * Good information and communication processes so that communities are kept informed.

Engagement

A community is more likely to feel trust and confidence in its local government if the community is engaged in and involved with its governance. That is, the community participates, is consulted, is informed, and generally feels part of the governance process.

Local governments have an important role in building strong communities. Engaging the community should be highly valued and a goal which influences all activities of local government.

Engagement arises out of many processes and interactions that occur between a local government and its community. Consultation can contribute greatly to engagement, as can a range of community activities which involves interactions between a local government and its community.

Community leadership

A local government should consult and engage its community and, in so doing, reflect the aspirations of that community. However, there are also occasions when a local government needs to demonstrate community leadership.

Therefore, at certain times, and in certain circumstances, a local government may decide to lead the community, rather than reflect its aspirations and conceptions. This may arise because of information that has been available to the local government, or stem from a Council's perception of its role as a government elected to govern.

Council leadership should be characterised by processes of providing information and explanation, consultation, and checking of its position through appropriate means. It should not be autocratic, but mindful of its accountability to its community, while still being ahead of community opinion when this is deemed necessary at a particular time, or over a particular issue.

Consultation

Good decision making requires the best available information to assist in making that decision. Responsive and accountable governance is predicated on the belief that those impacted by an issue have important information and contributions to make. Good consultation requires that processes are in place which give these groups the opportunity to express their opinions and provide information to the decision makers, prior to the decision being taken.

Consultation does not mean that local governments are bound to follow the majority position on an issue. Local government is not government by referendum. Rather, good consultation means that the Council knows and understands the range of community opinions about a particular issue, and can use this information to inform its decision.

There are costs – both in time and resources – to consultation. These costs should be identified and taken into account in decision making, policy development and project planning processes. Less obvious – but equally important – are the costs which can arise out of *not* consulting. That is, the time and resources required to undo a decision that proves impossible to implement because consultation has not been carried out, or has been inadequately carried out, prior to a decision being taken.

Detailed information on consultation principles, methods and case studies can be found in the VLGA and (formally) Office of Local Government Division's *Community Consultation Resource Guide* (2001) and the consultation website (see Resources section).

Balancing sectional interests and those of the entire community

The important issue of balancing sectional interests against those of the entire community incorporates both the legitimate role of the councillor in representing the interests of the people who elected them, and the need for a local government to operate as a corporate body.

While this conflict did emerge as a significant issue with councillors when surveyed for the *Government Practices in Victorian Local Government* survey, the authors of the survey believe there is combined evidence from a number of sources that "...pressures on councillors to represent the voter and to be seen to be doing so are among the major forces that can undermine the practice of good governance". (p 22)

The concept of an entire community, or a monolithic community interest, is not always an accurate reflection of the many interests and communities which make up a municipality. A 'sectional interest' can also be seen as the legitimate aspiration of one or more segments of the community and may also have been part of a councillor's election manifesto. These interests need to be treated as legitimate pressures and managed accordingly.

The capacity of individual councillors to get their local issues onto the table, and at least considered seriously, can be a measure of how effective that councillor is, and can affect the way they are perceived by their constituents. The support of the Mayor and fellow councillors can be critical in this regard.

Even if councillors are successful in getting their issues onto the table, it does not always follow that they will get Council support. In these situations, a councillor may have to explain to their constituency that while he or she supported a particular issue, the Council, as the decision-making body, supported another.

The strategic planning process is intended to meld various interests and pressures into a coherent plan for the whole municipality. The stronger the Council plan, and the more it is 'owned' by Council and the community, the more useful it is as a tool for setting priorities. Sometimes it will be necessary to test the legitimacy of issues through community surveys or similar approaches.

Good planning and governance allows for the heterogeneity of the municipality, and good governance provides opportunities for councillors to represent the interests of their electors. The challenge of good governance is to allow for the balancing of these two legitimate roles of councillors.

Balancing sectional and municipal-wide interests

- * The Council plan should be a critical tool for managing pressures and demands.
- * Councillors should be able to get a 'hearing' on their ward issues.
- * When a councillor has advocated ward/constituent issues but has not been successful, the reasons should be explained frankly.
- * Equity and transparency are guiding principles for lessening conflicts between community-wide and sectional interests.

- * Priority setting and skilful use of strategic plans for resource distribution, including timeframes that stagger projects, can provide orderly processes for resolving conflicting demands.
- * Councillors are less likely to be vulnerable to constant sectional pressures when Council is working cohesively.
- * The culture and planning of Council should reflect the attitudes and aspirations of the community as a whole entity (sometimes an over-simplification).

Good services and systems

Good governance requires good services and systems that meet community needs. It also requires corporate governance processes to be put in place.

The roles and relationships between the elected body and its administration will be discussed in the next chapter. In this discussion the conventional differentiation between the role of Council in focussing on the vision and the overall planning, and the administration in implementing and managing, will be fully explored.

However, it is important at this stage to point out that good governance requires a sophisticated understanding by both parties of the roles, responsibilities and issues of each.

In addition, the elected body will be far more prepared to focus on visions and strategies if it is confident that there are systems and services in place which ensure that the needs of constituents are met. Councillors will be more comfortable in focussing on, say, the overall waste management strategy, if they are confident that a system exists which enables a constituent to replace a stolen wheelie bin. Similarly, an administration will be far less inclined to try and create policy if the elected body is producing the policies that the administration needs to operate effectively and efficiently.

2.3 Evaluating good governance

Good governance in local government involves many issues. While some of the underlying principles have been covered in this chapter, it is the ultimate responsibility of individual local governments to determine what good governance means, and obviously, good governance will mean different things to different local governments.

It should therefore be a goal of local governments to identify what good governance means for them, and then make regular assessments of their success in achieving it. The issues which have been identified in this chapter can be used as a starting point.

Once elements of good governance have been identified, local governments should develop the means by which they evaluate their performance in achieving good governance. A number of local governments in Victoria have already developed self-assessment tools.

2.4 Good governance and elections

Issues concerning good governance have particular relevance around the time of elections. Electing all councillors in the municipality at the one time is a relatively recent innovation, and issues of appropriate governance in the period following the commencement of the election process are now coming to the forefront.

For many years governments at both the state or territory and federal levels have accepted that special arrangements apply with regard to the operation of government in the 'caretaker' period immediately before and after an election. The 2003 amendments to the *Local Government Act* now require local governments to develop specific caretaker provisions to apply during Council elections as part of their mandatory Code of Conduct.

By convention, governments ensure that decisions are not taken during the caretaker period that would bind an incoming government contractually, or in other ways limit its freedom of action. This practice recognises that, with the dissolution of the House, the Executive cannot be held accountable for its decisions in the normal manner, and that every general election carries the possibility of a change of government.

This said, during the caretaker period, the business of government continues, and ordinary matters of administration still need to be addressed. However, successive governments have followed a series of practices, referred to by the term 'caretaker conventions'. In summary, the conventions specify that governments avoid:

- * Making major policy decisions that are likely to commit an incoming government
- * Making significant appointments
- * Entering into major contracts or undertakings.

There are also established practices associated with caretaker conventions that are directed at protecting the apolitical nature of the public service and avoiding the use of government resources which advantage a particular party.

Due to its democratic nature and the new Act requirements, local governments must address these issues. Each outgoing Council is an outgoing government, and each new Council is in effect a new government. The issues of outgoing governments not committing new governments, the appropriate use of resources, access to information, etc, are part of accountable and transparent governance. They are possibly also more relevant in local government as it is the government level closest to the community. As such, all activities around a local government election take place in a very public manner, with a large proportion of the community being aware of them.

Each local government should develop its own approach within the framework of accepted conventions. The City of Manningham's report and the MAV election guide provide good starting points.

roles & relationships

chapter summary

- * Relationships are critical to good governance.
- * Good relationships are based on understanding of roles. Failure to understand these roles can lead to relationship problems and expectations not being met.
- * The roles of Mayor, Council, CEO and administration, particularly as they impact on governance, are outlined.
- * Relationships between the Mayor, councillors, CEO and administration will largely determine the quality of the municipality's governance.
- * The Council is at the apex of the local government structure, and roles and relationships need to reflect this.
- * While the roles of the elected members and the administration are separate, each have an interest in the others' roles. There is also an expectation that any vacuums which exist will be filled.

Roles and relationships are a key aspect of internal governance, with good governance relying on successful working relationships and a sophisticated understanding of role differences. Councillors have a number of different roles. These include that of a local representative, advocate, legislator, visionary, and a role not dissimilar to that of a cabinet minister when key matters such as the budget are under consideration. The role councillors play, or believe they are playing, can impact on their relationships, particularly with the administration. Councillors also expect officers to play a number of different roles, for example, that of public servant, advisor and electorate officer. These expectations can also impact on the relationship between councillors and administration.

Because local government draws its elected representatives and its staff from the entire spectrum of the population, any consideration of relationships must keep this diversity in mind. Issues such as gender, age, culture and language can all impact on relationships and local government participants need to be aware of and sensitive to this. Legislation exists to promote equal opportunity and proscribe these forms of discrimination.

However, given the complexity of local government and the importance of relationships, participants should do all in their power to ensure that barriers are not created to the relationships that underpin good governance.

3.1 Roles

Mayor

Each local government needs to develop its own approach to the role of Mayor. The Victorian Local Governance Association (VLGA) has developed a checklist to assist local governments to determine their mayoral role. This checklist, which is incorporated as an appendix, begins with the statement that “the Mayor is elected by Council to represent the views and directions of Council in performing various roles and duties”. It then divides these roles and duties into six broad areas:

- * Governance
- * Chair of Council
- * External relations
- * Media management
- * Supporting the community
- * Ceremonial.

The first two – Governance and Chair of Council – are critical to good governance. Governance covers leadership of the Council and community, ensuring good relationships, community cohesion, inclusiveness, and modelling and promoting high standards of behaviour and practice. The ‘Chair of Council’ role specifies that formal decision-making processes are well run, inclusive, and exhibit high standards of governance.

The Mayor is in a position to facilitate good relationships with councillors, between councillors and the administration, and between the Mayor and the Chief Executive Officer. The Mayor can facilitate good decision making through skilful chairing of the Council meeting.

By ensuring that they are heard and able to get their viewpoint across, the Mayor can contribute to councillors feeling part of the process even if their proposals are defeated.

The Mayor's leadership role is different from that of a premier or prime minister. There is no formal government or opposition within the council. Accordingly, the Mayor is not the formal leader of a majority party within the government. Even though they have been elected by a majority vote, mayors become leaders of all the councillors – whether an individual personally supported them or not.

The Mayor must take a role similar to the facilitator of a group and as such, consider what is necessary to make the group run successfully. Concepts such as participation, communication, involvement, consensus, mutual respect and listening are important. The Mayor's skills in facilitation will play a key role in ensuring the Council operates successfully.

The Mayor can also support good governance by modelling good behaviour and ethics in fulfilling the Council and community leadership roles.

Council and councillors

Council and councillors have a number of roles to undertake and they must do this with the supports that are available.

The formal Council meeting is the primary means by which local government decisions are made. As such, all the roles of Council as previously outlined, are reflected through the formal Council meeting.

Individual councillors are usually elected having promised to achieve – or oppose – goals and issues. Their major challenge, therefore, is to have their issues adopted by the Council as part of the Council's plan, policies or programs. They must do this by convincing sufficient numbers of their colleagues to support their ideas or platforms.

This is a complex and fluid process in an arena where there are generally no party platforms and mandates. It can result in shifting coalitions, alliances of convenience, and deals. In this way, it is a very pure form of politics.

One of the challenges for good governance in local government is to provide councillors with the opportunities to get their issues on the table – that is, for their issues to get a hearing. The Mayor, the CEO and the administration all have important roles to play in these processes.

Good working relationships and mutual respect will also be of assistance. While partisanship will always exist in political arenas, it is easier to manage when there are two major groupings – that is when there is a 'government' and an 'opposition'. This is because the situation is clear cut and everyone understands what is required of them.

In contrast, local government often involves bringing together up to as many view points, platforms and opinions as there are councillors. While mayors, CEOs and administrations can assist in bringing them together, councillors must also be prepared to work cooperatively and support one another.

Chief Executive Officer

The CEO has the statutory responsibility to manage the organisation in the implementation of the goals and strategies endorsed by Council. Clearly, the delivery of good services and programs contributes to good governance.

However, the focus here is on the CEO's role in promoting good democratic governance. That is, how the CEO assists Council and councillors to govern effectively.

Possibly the most important role CEOs play in promoting good governance is through the culture they are able to create in the organisation. If the CEO embeds in the organisational culture the concept that councillors are at the apex of the local government structure, and that the administration's operations exist to support good governance, the organisation is more likely to embrace democratic governance principles and practice.

Also, CEOs who believe and promote the concept that councillors are not an adjunct or impediment to some objective concept of efficiency, but rather reflect the will and aspirations of the community, which everyone in the council should be committed to serve, good governance is more likely to be achieved.

A culture of democratic governance can be supported by:

- * Ensuring that advice takes the political context into account
- * Providing necessary opportunities for councillors to participate in opinion formation and be briefed on key issues
- * Developing processes for the major strategic exercises which provide councillors with maximum opportunities for input
- * Providing necessary information to councillors
- * Training staff to understand and appreciate governance
- * Supporting councillors in their representation and advocacy roles
- * Ensuring that councillors understand the administration's roles.

Administration

The role of the administration is to implement Council's goals, strategies and services and to advise and support Council. However, in the day-to-day activities of a local government, elected members may explicitly or implicitly place expectations on officers to play different roles. These can include helping a councillor with a problem in their ward or riding (electoral officer), giving advice or information about an issue (advisor), or a more formal administrative role. It is important for councillors to be clear about their different and specific expectations to avoid impacting negatively on their relationship with officers.

Good governance will be enhanced if the administration fulfils its roles in a way that recognises and supports the governance role of Council. That is, the administration takes the different roles of the councillors into account for advice, implementation and service delivery, and that the fact that councillors are accountable to their community and electors is acknowledged. The administration should also recognise that community pressures are a normal part of the life of a local government.

Councillors need support to manage pressures in such a way that their constituents feel that their issues or concerns are being heard, but appreciate that their demands can't always be met. Advice and support on consultation and engagement, good systems that refer complaints and queries to the relevant area for addressing, and responsive services and processes will all assist in furthering good governance.

3.2 Relationships

Mayor/Council

The relationship between a mayor and councillors is critical to good governance. The Mayor is the leader of Council and this leadership role includes a significant element of facilitation.

The Mayor can play an influential role – both within and outside the council chamber – by facilitating and encouraging all points of views to be expressed and respected. If councillors, at the very least, believe that their points of view are being heard and acknowledged, they will be more inclined to accept decisions that go against their points of view, and remain active and involved participants in the group.

Through this facilitation role, the Mayor can manage conflict and differing opinions in a way that is constructive, rather than destructive. The complexity and diversity of opinion in the community – and therefore of councillors – can be made to work in the broader interest of the municipality as a whole, rather than be a source of division and rancour.

The Mayor is also a first point of contact for councillors who wish to achieve a particular goal. This is especially true for new councillors. Amongst other things, local government planning involves the need to bring many diverse and sometimes conflicting goals together. By advising, supporting and facilitating negotiations, the Mayor can assist this process considerably, and in so doing, assist councillors to meet their accountabilities to their communities.

This is an extremely important role and function of Mayor and is possibly the single most important contribution to good governance a mayor can make. It requires great skills and experience. As such, the Mayor's position should go to the councillor best suited to the role, and should not be a reward for long service or factional manoeuvring.

Facilitating good decision making is a key aspect of the Mayor's leadership role.

Mayor/Chief Executive Officer

This relationship is crucial if good relationships between elected members and the administration are to be maintained.

If the Mayor and CEO have a good working relationship, this is likely to promote good understanding, communication and relationships, and in turn will promote good governance.

Good relationships can also result in good planning, anticipation, identification and resolution of issues, and a positive organisational culture.

A key element of the Mayor/CEO relationship is trust. However, trust is an outcome which needs to be built over time.

Trust can be built through the following elements of the Mayor/CEO relationship:

Communication

- * Both parties are in a position to brief and inform the other about information each is privy to, and which would assist the other in doing their job. Deciding on what information is important and what should be passed on to each other must be negotiated and understood.
- * Regular meetings – over and above those scheduled to discuss specific issues or problems – are necessary to enhance planning and communication.
- * The 'no surprises' principle should apply. The Mayor and CEO should brief one another so that neither are caught off guard within other forums.

Role clarity

- ✿ Mayors and CEOs need to understand and respect one another's role. Because the Mayor needs to spend considerable time at the municipal offices, a clear understanding of their different roles is absolutely crucial and should be a subject of ongoing discussion.
- ✿ There is a power differential which should be acknowledged. While the Mayor has status and leadership capacity, the position has no direct authority in its own right. On the other hand, the CEO has direct authorities through the Act. It can be frustrating for the Mayor and councillors that they can't just 'fix' problems that come to their attention, while the CEO has this capacity.

A good Mayor/CEO relationship will recognise that the Mayor's position is one of first among equals and that following their term, the Mayor once again becomes 'an equal'. While building the relationship with the new Mayor, the CEO is in a position to assist the former Mayor to make the transition back to the role of councillor.

The Mayor/CEO relationship should help ensure that there are 'no surprises' for the elected members or the administration.

Mayor/Chief Executive Officer

As previously discussed, all councillors have individual agendas and issues of particular concern and interest to them. Given the open nature of the local government system and the absence of the structures which exist at the state and federal levels of government, councillors need to work together to achieve satisfactory outcomes.

Given this interdependency, councillor relationships should be characterised by mutual respect and an acknowledgement that, while they may not agree on fundamental issues, they are all doing important, and often difficult, work.

When thinking of a parliament, people often envisage an adversarial environment in which political groupings try to best their opponents through debate and often abuse. In contrast, the 'small group' nature of a Council ideally features an environment where good relationships, respect and an appreciation of constructive diversity lead to good decision making and an opportunity for each councillor to deliver on their individual platforms.

Of course, at times, the very nature of local government will lead to conflict. How this conflict is addressed has implications for good governance. The role of the Mayor has been discussed, and this role, together with an appreciation of the particular dynamics at play, will assist in facilitating good governance.

The 2003 amendments to the *Local Government Act* make it mandatory for local governments to develop codes of conduct which will address such issues as rules of conduct, procedures to be followed for conflicts of interest and processes to resolve disputes between councillors.

Having a code of conduct should assist councillors and local governments to come to grips with the issues which can cause conflict and how these can be managed constructively in the interests of good governance. Equally important is having good processes for the development, adoption and review of the code of conduct. If councillors are involved in identifying the issues and how they wish to tackle them, they are far more likely to 'own' the outcome and use it as a guide for behaviour and relationships. Similarly, including community consultation as part of the process will improve the quality of the outcome and provide a model for good governance practices.

With regard to behaviour in the Council chamber, councillors should model good constructive relationships and show personal respect for one another.

Councillors need to work together in order for their individual agendas and issues to be addressed.

CEO/Councillors

The CEO has a formal accountability to the elected members sitting as Council, in other words, the councillors. Quite apart from this formal requirement, it is important that councillors and the CEO to have good working relationships.

The CEO and councillors are likely to be in regular contact about issues, problems and information. As with the Mayor/CEO relationship, a level of trust needs to be developed which, in turn, is based on good communication and understanding of each other's roles and functions.

An important aspect of the CEO's role is to assist councillors in addressing particular issues that arise in their wards, and more generally, in the various roles they undertake by providing appropriate assistance and support.

All relationships, and particularly those between the CEO and councillors, can come under pressure when a new Council is elected and has to work with a CEO appointed by a previous council. Three-year terms and five-year CEO contracts don't usually align. In these circumstances, it is important that there is good communication about the roles, expectations and performance expected. The CEO's performance appraisal is also relevant in regard to the relationship between them and councillors. If expectations and goals are outlined clearly, and agreed to at the start of each year, the difficulties that sometimes arise during this process can be avoided.

Council/Administration

While one of the most complex issues in local government, the relationship between Council and its administration is critical to achieving good governance.

The Governance Practices in Victorian Government survey found that councillors and senior managers both believed that elected representatives and managers did not always share the same understanding of their respective roles (p 22).

A number of factors contribute to a good relationship between councillors and the administration. These include goodwill, a clear understanding of each other's roles, good communication, agreed structures and protocols, an appreciation of legislative requirements, and clear delegations.

Goodwill

Becoming a high-achieving municipality is only possible with a 'good' Council and a 'good' administration. Councillors and the administration need to share a belief in this, and be willing to work together to achieve this goal. The relationship between Council and the administration will only work if both want it to work. It is a complex, fragile system and one which needs commitment from both parties. Both parties must be willing to work through all issues that arise, regardless of the essential difficulty, complexity, or sometimes trivial nature of the issue in question.

Understanding of roles

A clear and sophisticated understanding of the different roles of the elected body and the administration is important. Also, it needs to be accepted that local government is not a partnership of equals, but a hierarchy. The administration, through the CEO, is accountable to Council. The functions can and should be complementary, and there should be mutual respect and cooperation. This does not mean that it should not work like a team at times, for instance at councillor/officer planning sessions.

Good governance is based on the different roles of the elected body and the administration. The Council's role is to develop the vision, the strategies and the policies to achieve it. The administration's role is to advise Council, implement Council decisions, deliver the services, and implement and manage the systems. For all these functions, the administration is accountable to Council through the CEO.

As already stated, both parties need to understand and support each other's roles. Administration needs to respect the complex political environments in which elected members operate, and be cognisant of the fact that the entire system is based on democratic governance. Elected members, who as Council are ultimately responsible – through the CEO – for administration, need to understand the complexity for the administration in providing quality advice on a very wide range of first-order issues. They must also appreciate the need for administration to be as flexible as possible in dealing with the constant pressures faced.

Both the elected body and the administration will move to fill gaps they perceive the other to have left. If, for example, elected members do not believe the administration has a good system for recording and addressing residents' complaints about, say, potholes, they will continue to raise the issue at Council meetings (even if repeatedly exhorted to stick to the strategic issues).

If, on the other hand, the administration does not believe an adequate policy framework exists, it will create one by the way it delivers services and addresses issues.

While the elected body and the administration have different roles, this is not to say that each doesn't have a legitimate interest in the other's roles. The elected body will be interested in the organisational structure and its impact on the implementation of Council's decisions. And while the Act clearly states that the organisational structure is the CEO's responsibility, if the CEO does not properly consult the elected body before implementing or changing a structure, the Council is likely to find some way of expressing its opinions. This is unlikely to promote good governance.

Similarly, if the administration is not properly involved in policy or strategy development, for example, if proposed new policies are tabled without notice by Council at Council meetings, the administration will look for ways to have an impact. For example, it may slow the implementation, or effect inadequate implementation of the policy. This, too, will lead to frustration and governance problems.

In order to avoid such problems occurring, it is crucial that appropriate channels for information, discussion and consultation be developed to allow for the legitimate interest the elected body has in the role of the administration, and the legitimate interest of the administration in the role of councillors.

Communication

It is important that there is ongoing dialogue between elected members and the administration – particularly senior management – on 'how local government works'. Roles, communication, how to get things done, policy development and implementation are all complex and dynamic issues. A shared and developing understanding about these concepts and practices will enhance good governance.

Protocols

Some local governments have adopted systems which involve giving particular councillors specific responsibilities with regard to projects, issues or departments. While such arrangements have no statutory basis and don't impact on the accountabilities of all councillors, they are designed to facilitate communication, relationships and understanding between the elected members and the administration.

This approach can result in better understanding between councillors, and particularly between councillors and senior management. While this approach can benefit planning and advisory processes, it cannot replace the formal advice processes described in the previous chapter. Nor can it in any way impact on the decision-making authority of Council. Because there is no executive authority in local government for individual councillors, it is not possible for Council to delegate decision-making powers to individual councillors.

If they are to be developed, such arrangements should be based on discussion and consultation between the elected members and the administration, and should be documented in the form of protocols and/or 'position descriptions'.

Appreciation of legislative requirements (authority issues)

Tensions can arise when Council is deemed the 'responsible authority' under the *Planning and Environment Act*. Under these circumstances, officers may expect Council to make particular decisions or implement certain policies because of its function as the responsible authority. However, Council may prefer to act in accordance with its role as representative of the local community and make decisions, or support policy, which reflects a strong community view about the issue under review. Any conflict between Council's role as Responsible Authority and its role as community representative will likely cause tension.

A similar issue can arise when certain officers have particular statutory obligations under state acts. For example, environmental health officers or local law officers may make decisions based on their interpretation of their statutory responsibilities with which Council or councillors disagree. This can lead to councillors seeking to influence the officers on the basis that they should be primarily accountable to Council. In such cases, processes and protocols need to be in place to tackle the problems that arise.

Local government does not always seem to incorporate the 'separation of powers' doctrine that exists in other levels of government. While local government has clear legislative and governing roles, at certain times it can have a judicial role – for instance in determining planning permits. This issue is unlikely to be addressed directly in the near future.

However, good governance suggests that councillors should be aware of this issue and attempt to make it very clear which role they are playing at any point in time. For example, councillors should overtly inform all those involved when to overstate the case when they are moving from a governing role (consulting over a planning issue) to a quasi-judicial one (making a determination as the planning authority).

Contacts between individual councillors and staff

Many local governments grapple with the issue of direct contact between individual councillors and staff, versus all contact being made through the CEO, or the CEO and directors. Some issues to consider are:

- * Councillors need to understand that accountable advice needs to go through an organisational process. This usually necessitates the advice being approved by a director or the CEO. Seeking advice from lower level staff, particularly those who may have particular interests in the outcome, may result in councillors not getting the full picture.
- * Staff need to understand that they are accountable, through the management structure, to the whole Council. They are not accountable to individual councillors and are not required to take direction from them.
- * Some local governments are successful in channelling all communications between Council and the administration through the CEO or directors. However, this can be impractical or can lead to resentment and misunderstandings. Councillors often don't like to be told that they can't talk with staff.

- * Alternatively, issues can be discussed and protocols developed which help both 'sides' understand the nature of interactions and communication – how they can help, and how they can cause problems – in order to guide behaviour. The focus here is to train and support staff in dealing with direct communication with councillors, rather than telling councillors who they can and can't talk to.

3.3 Dispute resolution

When relationships become strained, attempts should always be made to resolve them in-house. As already outlined, the roles of Mayor and CEO are crucial when dealing with disputes. Procedures for addressing internal disputes between councillors will be covered by the codes of conduct which local governments are now required to develop (Section 76c). If problems can't be resolved through internal channels, local governments can:

- * Seek external assistance from the local government associations
- * Appoint an independent mediator to assist
- * Establish a good governance panel and follow the resolution process as outlined in *The Code of Good Governance*
- * Request advice and possibly, mediation, from the Local Government Division of the Department for Victorian Communities.

financial governance

chapter summary

- * The Council has ultimate accountability for the municipality's finances. Poor financial governance can imperil the Council's existence.
- * What questions should the Council be asking and what information does it need?
- * The Council is accountable for the strategic resource plan, the annual budget, monitoring progress against the budget, and preparing the annual report.
- * What roles do the councillors have in the preparation of the long-term financial plan and the annual budget?
- * The strategic resource plan demonstrates how the Council plan can be achieved financially. It encompasses a number of other important policies and strategies.
- * The annual budget demonstrates how the annual business plan will be delivered.
- * Financial reporting is the prime means by which Council receives the information it needs to meet its accountability requirements. What is the nature and form of the information it needs?

Financial governance is crucial. Failure in this area can be devastating for a Council because no matter how good the rest of its governance may be, financial failure can bring a Council undone.

The elected body is ultimately accountable for the financial management of the local government. While the elected body should not have a hands-on role in financial management, it needs to ensure that it has the information to be satisfied that the finances are in order and that budgetary and financial planning goals are being met.

The role differentiation between the elected body and the administration is important in this area. The elected body should not be micro-managing the finances, but must demand financial reporting which provides the information it requires to meet its financial accountability responsibilities.

While this guide generally focuses on elected members and the administration, this section looks mainly at financial management from the perspective of the elected body. It is not intended to be a financial management manual. Rather, it highlights how the elected body can meet its accountability requirements.

Roles and responsibilities

A key accountability of the CEO and the Chief Financial Officer is financial management. While Council has an overall accountability, the administration and its key players have critical responsibilities for managing the organisation soundly and reporting to Council.

Elected members, sitting as Council, have an overall accountability for the Council's finances. Council must prepare a strategic resource plan and prepare and adopt an annual budget.

A Council should also receive, as a minimum, quarterly financial reports comparing actual and budget revenues and expenses. Six months into the financial year, Council should ensure that a rigorous review of the current financial position be undertaken. This review should include a reforecast of the budget based on the known performance over the first six months of the financial year. The report should cover both general operations and capital expenditure on major works and projects.

Many local governments have now appointed audit committees. These committees can be very useful in ensuring that an appropriate governance regime is nurtured and maintained.

Typical duties undertaken by an audit committee will assist Council to:

- * Properly discharge its responsibilities with respect to its financial management and reporting
- * Develop and maintain adequate risk assessment procedures and management of those risks
- * Comply with applicable laws and regulations
- * Manage the various audit processes, both internal and external
- * Provide general advice on specific matters which may be referred to them by Council.

In general, audit committees can assist with the financial governance of a local government, both through its activities and its existence as a source of review and comment.

Most audit committees have external members as well as councillors. In appropriate circumstances, these external members can be used as a sounding board for sensitive issues.

At the end of the financial year the Auditor-General (or his contracted agent) undertakes an external audit in accordance with governing legislation and accounting standards. On the advice of its audit committee, the Council must identify two councillors to sign the financial statements and performance statement. These statements will form part of the annual report. An appropriate Council resolution is required for this action to take effect.

Following receipt of the Auditor-General's opinion on the financial statements and performance statement, Council should receive a further briefing on the financial and performance outcomes for the year just ended. Significant issues should be considered by Council prior to final certification by the designated councillors.

The CEO needs to satisfy Council that certain fundamentals are in place, for example:

- * A modern and robust financial system with an appropriate information technology platform
- * Suitably qualified and experienced staff to manage the finances
- * A suitably qualified and appropriately independent internal auditor and/or audit committee.

4.1 The strategic resource plan

This is a key part of good financial management. The strategic resource plan ensures that the Council plan is properly resourced and that the local government's financial viability is maintained. In other words, through the planning process, Council determines its vision and sets its goals for the next number of years.

While the goals of the Council plan and the strategic resource plan are reflected in each document, the strategic resource plan should follow the Council plan in the planning process, not the other way round. This ensures that the goals outlined in the Council plan are financially possible.

The strategic resource plan is set for a minimum period of four years. Its elements should normally include:

- * A description of the financial and non-financial resources required to achieve the strategic objectives
- * An analysis of local government's current financial position
- * Consideration of various assumptions and strategies that underpin an overall financial plan. *These include assumptions about population growth, CPI trends and economic development. Relevant strategies include those underpinning income (for example, rating and grants), and expenditure (for example, labour, capital works, asset management, borrowings and debt management, service levels etc).*
- * Sensitivity analyses on these assumptions and strategies
- * Development of options
- * Determination and assessment of preferred model
- * Supporting documentation.

Roles of elected members

Elected members, sitting as Council, will determine the strategic resource plan. Good financial governance suggests that councillors should also:

- * Ensure that a good process is in place for developing the strategic resource plan. *In order to ensure that their visions and views are taken into account, this process should involve councillors at an early stage. Councillors are unlikely to feel that they 'own' a draft plan if it has been fully developed by the administration.*
- * Understand and be comfortable with the assumptions and strategies underpinning the strategic resource plan. *In particular, it is important that Council understands the key factors which contribute to costs and income. These need to be reviewed regularly.*
- * Determine the extent of, oversee, and be involved with community input into the strategic resource plan. *The development of key strategic and policy positions should incorporate a community consultation plan.*
- * Ensure that the strategic resource plan is reviewed annually.

Key questions for councillors

Councillors should focus on the key strategic and policy issues encompassed by the strategic resource plan. Questions that could be asked include:

- * Are we (the Council) financially viable into the future?
- * Are our rating levels and rating mix acceptable and appropriate for our municipality? Do they reflect how our community is developing?
- * Is our community satisfied with current service levels?
- * Do we have appropriate user charges?
- * Are we recovering costs appropriately?
- * Are we complying with government policy?
- * Have we exhausted all avenues of grant funding?
- * Should we borrow for capital works or fund them from revenue? What are the implications of our decision for the level of capital works and infrastructure maintenance?
- * Can the current level of debt management be sustained?
- * Do we meet legislative and financial reporting requirements?

4.2 The annual budget

A prime responsibility of Council is to set the annual budget. The budget can be viewed as the annual articulation of the strategic resource plan. As such, many of the issues which apply to the strategic resource plan, are also relevant to the annual budget.

The budget reflects the Council plan in that it is the expression of how one year's part of the Council plan is going to be resourced.

Roles for councillors

- * Councillors need to endorse a budget preparation process and be involved early so that they have the appropriate high level input into the development of the budget. The budget preparation process should meet statutory and strategic timelines. Good management suggests that the following year's budget should be adopted by the end of the current financial year.
- * The annual budget should link with the Council plan and the strategic resource plan. Councillors should know when significant differences exist and understand the implications for the Council plan and strategic resource plan.
- * Council should develop an appropriate consultation strategy which allows community input early in the process.
- * The elected body should focus on the strategic and policy elements of the budget. Clearly, councillors will be interested in specific projects and issues. The budget is an area in which there can be strong tensions between high level and specific issues. These tensions need to be recognised and addressed in appropriate forums.

Key questions for councillors

- * Do we have a budget preparation timetable and process which meets statutory requirements and gives us enough time to resolve major issues?
- * Does the strategic resource plan provide broad guidance for this budget? If not, what are the consequences for the strategic resource plan? Will the strategic resource plan be reworked to incorporate the long-term impact of current decisions?
- * How will information be presented to enable us to make the appropriate informed decisions?
- * What opportunities will be open to us for working through the key issues?
- * What opportunities will be provided to the community for input into the budget?
- * Is the rates outcome, which was envisaged in the strategic resource plan, still acceptable?
- * Does the budget deliver outcomes that were envisaged?

4.3 Financial reporting

Financial reports to Council are required by the *Local Government Act 1989*, and are a critical aspect of good management. They are the prime means by which Council receives the information it requires to meet its accountability requirements.

A properly functioning and suitably independent internal audit process provides validity, assurance and certainty to the financial monitoring process.

Councillors need to be confident that the information is robust and accurate. It should be presented to them in a way that is simple and easy to understand. It should also be supported by appropriate independent advice and evidence.

Roles for councillors

- * Councillors are collectively responsible for the overall financial viability of the local government. They exercise this accountability through the periodic review of variances between budgeted and actual expenditure and revenue.
- * Councillors must ensure that they have all appropriate financial information regarding financial performance. It is not enough merely to rely on assurances by the administration that all is well. If the financial situation is not as it should be, councillors will still be held accountable, even if they maintain that they received assurances from the administration. Councillors should ask questions, until they are satisfied that they know and understand the financial situation. Other potential sources of information and assurance are the internal auditor and the audit committee.
- * Councillors may nominate another elected member, or establish a committee to provide leadership on financial issues. While this can improve the management of financial matters, it does not reduce the individual and collective accountability of elected members.

Key issues for councillors

Monitoring performance against budget

- * The *Local Government Act 1989* requires that financial reporting occurs on at least a quarterly basis. With that as a baseline, each local government must determine what frequency of reporting will meet its financial accountability requirements and needs. It also determines what is feasible, taking into account available resources.
- * The key measures are cash resources, operating results, balance sheet and financial key performance indicators.
- * Reporting should have a whole-of-government 'big picture' focus. Favourable and unfavourable variances need to be highlighted in a way which aids understanding and facilitates remedial action.
- * A financial report is just that – a financial report. It needs to be seen in the context of other key performance indicators which relate to the achievement of Council's goals. Meeting budget is not enough if there are significant shortcomings in the achievement of goals.
- * Councillors need to ensure that the budget has been properly adjusted to take monthly patterns in expenditure and income into account. If Council is consistently told that every variance is a timing issue, it raises questions about the veracity of the financial information provided.
- * Councillors need to ensure that the actual figures are reconciled and accrual based. While these are accounting concepts, councillors need to satisfy themselves that the information they are given reflects the real situation. A handy prompt is cash in the bank. If this is fluctuating wildly, or reducing over time without proper explanation, councillors are entitled to be concerned and need to ask questions.
- * Analysis of key variances should include insightful comment and interpretation of the impact of variances on the figures for the full year.

Annual financial performance report

The annual financial statement is a key reflection of Council's stewardship of financial resources over the past year. It is one of a series of key components of the annual report that measures Council's performance. Councillors should not have to be accountants to understand the reports. Councillors need to ask themselves:

- * Does the report help us understand what is happening?
- * Is it based on reliable data? Are there many end-of-year adjustments? Are the explanations for these acceptable?
- * Are appropriate strategies being put forward to address significant end-of-year variances when future budgets are prepared?
- * Do councillors have confidence in the audit process?
- * Are the auditors raising many important issues?
- * Is a consistent reporting framework being utilised?

legal & ethical considerations

relevant acts

Local Government Act 1989 – As its name implies, this Act is the principal piece of legislation covering councils, councillors and members of local government staff.

Planning and Environment Act 1987 – This is the main piece of legislation governing land use planning in Victoria. It describes what local governments must and can do as planning authorities (in relation to planning schemes) and as responsible authorities (in relation to planning permit applications).

Information Privacy Act 2000 – This Act restricts what a local government can do in collecting and disseminating 'personal information'. Councillors need to appreciate that it imposes restrictions on the type of information members of local government staff can provide (such as information about age, personal circumstances and even names and addresses).

Whistleblowers Protection Act 2001 – Under this Act, anybody can make allegations (or a 'disclosure') about a councillor or member of local government staff. Depending on the nature of the allegation, either the Ombudsman or the local government itself must embark on a process of investigation.

Equal Opportunity Act 1995 – Councillors are subject to this Act. This means that they can also be the subject of complaints about discrimination, harassment or the like.

5.1 The legislative framework

Councillors are not expected to have an intimate knowledge of the detailed provisions of legislation. However they are expected to have a good working knowledge of some key pieces of legislation, including: the *Local Government Act 1989*, the *Planning and Environment Act 1987*, the *Information Privacy Act 2000*, the *Whistleblowers Protection Act 2001* and the *Equal Opportunity Act 1995*.

Conflict of interest

Councillors (and members of special committees) are subject to a conflict of interest regime. Previously, the *Local Government Act 1989* did not address all conflicts of interest. Rather, it dealt only with conflicts of interest which are monetary – or ‘pecuniary’ – in nature. It is still very important that the concept of pecuniary interest is well understood.

Councillors are regarded as having a pecuniary interest if there is a (not too remote) prospect of gaining or losing money as a result of an issue before the Council. The pecuniary interest can be indirect, through the interests of a spouse, company or other business vehicle in which the spouse has an interest.

If a councillor has a pecuniary interest in an item and is present at the Council meeting, the councillor must declare the existence and nature of the pecuniary interest. The councillor is prohibited from moving or seconding the relevant motion and must leave the council chamber before the vote is taken (and not return until after the vote has been completed).

If a councillor has a pecuniary interest in an item and does not intend to be present at the Council meeting, disclosure obligations still exist. The councillor must advise the CEO before the meeting of the existence and nature of the pecuniary interest. Councillors are required to make their own decisions about the existence of a pecuniary interest. They can seek advice, but ultimately it is their decision.

Example

A councillor owns a newsagency business. She is a member of a Council which is due to consider a planning permit application to redevelop premises from which another newsagency business will operate. The councillor has a pecuniary interest because she stands to make or lose money as a result of the Council's decision on the planning permit.

The 2003 amendments to the *Local Government Act 1989* broaden the pecuniary interest provisions to cover general conflict of interest situations. They require councillors and committee members to declare any interests they have in matters being considered at a special committee or Council meeting. Where such interests are pecuniary or where the person considers that their interests may conflict with their public duties, they must declare an interest and refrain from voting.

Example

A councillor is a committee member of a local scout group. Improvements to the hall in which the group meets is one of a number of possible capital works projects about which Council must decide as part of its budget process. Given the interest the councillor has in the growth of the scout group, which may well be enhanced by having a better hall, the councillor should declare the interest and abstain from voting on that particular part of the budget.

Confidentiality

Members of the public have a right to be present at any meeting of Council (or a special committee). For its part, a local government has the right to close meetings to members of the public if specified circumstances exist. The meeting then becomes a ‘closed’ Council meeting. Information discussed at a closed meeting is confidential. Councillors must not talk about anything discussed at the meeting with people who were not present. This is not the case if the information is already available in the public domain.

Section 77(2) of the *Local Government Act 1989* clearly states that a councillor must not divulge to any third person information that he or she knows, or ought to know, is confidential, and which the Council intends to keep confidential. A breach of this provision exposes the councillor to a maximum fine of \$2000, and an inability to hold office for seven years.

Although section 77(2) clearly applies to closed meetings, it has broader implications. For example, it could be argued that this provision also applies to confidential briefings or documents marked 'confidential' which contain confidential subject matter.

Example

Councillors are briefed on a proposed development which contains commercially confidential information. One councillor is anxious to consult residents who might be adversely affected if the development proceeds. He decides to inform residents of the proposal. Almost certainly, the councillor has breached section 77(2) and is liable to be prosecuted.

Delegations

No decision binds Council unless it:

- ✿ Is contained in a resolution made at a duly convened Council meeting
- ✿ Is the decision of a delegate.

A delegate is a member of a special committee or member of local government staff. In fact, most decisions of a Council are made by members of local government staff as delegates. The reason for this is obvious. If decisions had to wait for a Council or special committee meeting, there would be considerable delays. All Victorian local governments therefore delegate extensively to their staff. By delegating, councillors can still retain control over decision making. Delegates are obliged to observe the strategies, policies and guidelines adopted by the Council. If delegates stray from the general framework already decided upon by Council, delegations can be rendered ineffective. In this way, then, councillors themselves retain a fair measure of control.

Personal liability of councillors

Members of the federal and state parliaments have absolute privilege. This means that they cannot be sued for defamation for anything they say inside their respective parliaments. Councillors have what is known as 'qualified privilege'. This means that they cannot be sued for defamation for what they say inside their respective Council chambers (or special committee rooms) provided they are not motivated by 'malice'. Malice is evident (and will lead to the councillor being vulnerable to a defamation action) if said statement is:

- ✿ Irrelevant to the issue being debated or discussed
- ✿ Said in the knowledge that it is untrue
- ✿ In circumstances where there has been recklessness as to whether it is true.

Outside the Council chambers (or special committee room), qualified privilege may still provide basic protection so long as the councillor is discussing something that is political or governmental in nature. Qualified privilege may also protect councillors when making comments to the media or to public gatherings. However, this protection will be lost if malice exists.

There is, however, little prospect of councillors being personally liable for simply participating in Council decisions. Take the case of a councillor who supports a motion that in turn becomes a Council resolution. Assume that the resolution is implemented negligently, and that someone suffers injury, loss or damage as a result of the negligent implementation. It is highly unlikely that the councillor who supported the motion is able to be sued by the person who has suffered injury, loss or damage. This is because the councillor owes no duty of care to that person. Even if a duty of care was owed, section 76 of the *Local Government Act 1989* would oblige the Council to indemnify the councillor against any personal liability. This assumes of course that the councillor acted in good faith at all times.

Example

A council is debating whether a new pre-school centre should be built at a certain location. A councillor uses the debate to comment adversely on a resident opposing the new pre-school centre being built there, labelling that resident a 'bigot and thief'. Because the allegation of theft was irrelevant to the issue under consideration, the councillor will almost certainly be accused of malice and the defence of qualified privilege will be lost. Unless the councillor can establish that the statement was true (so that another defence – justification or truth – applies), then they are liable to be successfully sued.

5.2 The ethical framework

Relevant legislation is important in recognising and understanding the legal framework within which local government operates. However it is only one part of the guiding principles and issues that support good governance.

Good governance must also have an ethical base. Democracy depends on generating and maintaining a strong foundation of trust between the community and those who govern. The need for transparency in governing processes underlies this trust, as does the honesty and integrity of the elected representatives and the administration.

A key contributor to discussions of ethics in business and government suggests that the basic definition of ethics boils down to the question asked by Socrates in the 5th century BC “What ought one to do?”. This question implies that everyone has choices in how they act and therefore should be able to account for their actions accordingly.

The answer to this question depends on an individual’s moral position – what is right and what is wrong. People are constantly presented with ethical dilemmas arising out of the different principles each person brings to an issue. While principles often seem to stand alone, when they combine with others, irreconcilable tensions can often result. Sometimes only conscience can be the guide. A useful test is whether one can justify one’s decision and would be prepared to do so if it appeared on the front page of the newspapers.

The implications for good governance are obvious. While good governance principles, and the legal framework, can provide guidelines, participants are often faced with situations where they have to make choices. The ethical position is that individuals should ask themselves “What ought one to do?” and then be able to account for the answer.

This leads to consideration of many of the principles of good governance which have been already covered in this guide. These include transparency, good communication, respect and so on.

Some local governments have already developed codes of conduct to assist them in dealing with such issues. The 2003 amendments to the *Local Government Act 1989* require local governments to do this. In so doing, councils should consider that:

- * There is a difference between a code of ethics and a code of conduct. A code of ethics expresses fundamental principles that provide guidance in cases where no specific rule is in place or where matters are genuinely unclear. A code of ethics may include provisions such as “...[a local government]...should have an active concern for the wellbeing of the community and the environment” or “[a local government] should provide a challenging and safe workplace in which people can flourish”. A code of conduct will cover a number of specific areas in which guidelines are required. For example, how to deal with the issue of gifts and benefits to councillors and staff.
- * A code of ethics therefore, while less specific, expresses an organisation’s values and requires people to make judgements.
- * A code of ethics can provide a framework for the development of codes of conduct where they are required for specific issues.
- * Neither type of code in themselves will guarantee good behaviour. They must be lived by all, particularly the leaders of the local government who must model the standards required.
- * Those who are expected to follow the codes should participate in their development. They must be ‘owned’ by people in the organisation, and ownership is greatly helped when people are consulted and can make meaningful input.

**the key
points**
what's it all about?

6

Local government is a unique sector within the Australian electoral system. Its democratic base and its lack of structures and systems that could simplify governance means that good governance requires considerable thought and commitment by the participants.

While it can be dangerous to oversimplify, it is suggested that given the context, good governance in local government can be boiled down to four key concepts. These are:

Goodwill

Participants have to have the will to make good governance work. Local governments have to develop their own approaches to good governance and their own structures to make governance work. These have to be achieved by agreement and followed voluntarily because they are protocols and conventions, rather than rules. They depend on cooperation, communication and respect.

Roles and relationships

An understanding of roles and good relationships is critical to achieving good governance. Role differentiation is important, but must be seen in a sophisticated and flexible manner. The legitimate interest of one participant group in the responsibilities of another should be respected and given legitimate outlets.

Good relationships are about how groups work together, communicate, respect each other and understand the issues and pressures which exist. Good relationships mean good communication and a willingness to address and solve issues and problems. There are very few problems which cannot be resolved if good relationships and goodwill exist.

Protocols

Each local government needs to develop its own approach to good governance. This should be an active and focussed process, and the outcomes should be recorded and endorsed. Protocols can cover such areas as decision making, councillor/staff liaison, access to information, roles of the Mayor and councillors and so on. Writing these down is an important part of embedding them in the organisation and also serves as a reminder and prompt for participants. Written protocols can also serve to strengthen accountability and transparency of local government by acting as public statements about how a particular local government goes about its governance.

Evaluation

Governance concepts are dynamic. They should not be static and should be revisited regularly to ensure their ongoing relevance and applicability. Local governments should have systems and processes in place for evaluating their governance, and this should be a regular part of the governance cycle.

trouble

shooting

7

In this chapter we outline a number of scenarios of potential governance breakdowns and suggest some steps that can be taken to address them. It does not cover all possible scenarios or all solutions but seeks to stimulate further ideas on tackling such situations. And while readers may identify with some of the situations outlined, the scenarios are not based on actual situations.

Scenario 1 'Handballing' tough decisions to a 'higher' responsible authority

Description – Council regularly abrogates its decision-making responsibilities by directly or indirectly referring tough decisions to higher authorities. For example, when Council is faced with difficult land use planning decisions, it either makes decisions which are certain to be reversed at the Victorian Civil and Administrative Tribunal (VCAT), or delays making a decision to ensure that one party or the other takes it to VCAT. In so doing, Council seeks to have VCAT, rather than itself, take responsibility for decisions which are likely to be unpopular. It can also result in additional cost for all parties.

Relevant good governance issues – Leadership, community consultation, decision making, policy development, advice, sectional versus municipal-wide interests.

Ways of tackling the situation

- * Ensure that the policy framework is adequate for making difficult decisions. It needs to provide strong guidance for actual situations. It should also have been subject to extensive consultation so that there is 'ownership' in the community.
- * The advice must guide the Council on the different interests of various sections of the community, and point out the negative consequences of abrogating decision making and leadership roles.
- * Community consultation must make people feel that they are being listened to even if they ultimately don't agree with the final decisions.
- * The decision-making process needs to be open and transparent. Interested parties should be able to have their say. They should also be able to follow the decision-making process and understand the rationale, even if they don't agree with it.
- * Council should articulate the basis of its decision.
- * The roles of councillors and officers should be as clear and unambiguous as possible. For example, it can be confusing if councillors chair mediation meetings between an applicant and objectors on one day, and then be a decision maker on the next. Mediation processes involving external people or agencies will help keep roles clear and processes credible.

Scenario 2 Reacting to the loudest voices in the community when making decisions

Description – Council regularly placates the most active and noisiest elements of the community when making decisions. This means the interests of all elements of the community are not necessarily being taken into account.

Relevant good governance issues – Sectional versus municipal-wide interests, leadership, strategic planning, decision making, advice.

Ways of tackling the situation

- * The Council needs to recognise that this is occurring. Council also needs to take into account feedback from constituents, community groups and the media.
- * The Council plan should provide a framework for municipal-wide decision making. It may be worth looking at the plan again, and revising where necessary.

- * The Mayor needs to play a leadership role.
- * Attention should be paid to consultation processes. All parties affected by important decisions should be listened to, not just those who shout the loudest. Council must take this into account and respond to all views.
- * Decision-making processes should be reviewed for their openness and transparency.
- * Advice should reflect all the issues, consequences and options.
- * Councillors need to understand and, if necessary, be reminded, that precedents are set when decisions are made based on 'who shouts loudest, wins'. Once established these precedents can be difficult to break.

Scenario 3 Problems with councillor/administration relationships

Description – Relationships are characterised by public criticism of each other, lack of respect, and misunderstanding of roles and processes.

Relevant good governance issues – Relationships, leadership, understanding of roles, organisational culture.

Ways of tackling the situation

- * The Mayor and CEO must work together and provide leadership. Leadership and cooperation need to be seen, as well as experienced.
- * Roles and expectations should be clarified. Bad feelings tend to arise when expectations and needs are not being met. Councillors and senior management should meet to discuss the issues and determine how they can be addressed. Outcomes should be documented in Council protocols.
- * The definition and understanding of roles should be reviewed, and everyone concerned needs to be given the opportunity to contribute their ideas on matters of legitimate interest, even if it is not strictly part of their role.
- * Protocols on how criticism is handled should be developed and documented. Criticism should always be handled privately, and public outbursts should not be tolerated.
- * Both sides in a problematic relationship need to show that they are responsive to comments and criticism.
- * The CEO should ensure that the organisation's role in supporting democratic governance is understood and implemented by all staff. This involves leadership from senior management and training for staff.
- * Respect for elected members and the democratic system needs to be modelled by senior management.
- * The Mayor needs to ensure that councillors understand the role of the administration, and emphasise that expectations are reasonable and appropriate.
- * Councillors should not try to direct staff. Staff should report to their supervisor any contact that seems to be outside the Council's protocols.
- * Councillors also need to understand that advice sought from individual staff members, particularly from those below management level, cannot be considered as official advice from the organisation as a whole. This prevents councillors from simply seeking advice which supports their particular viewpoints and has the potential to politicise staff members.
- * Protocols can clarify appropriate relationships and contact between individual councillors and staff.
- * Delegations should be clear about the exercise of specific responsibilities.
- * The quality of advice, and the systems and processes in place, particularly on the 'hot' issues, should be reviewed.
- * If a serious breakdown occurs, assistance can be sought from local government associations.

Scenario 4 Inappropriate use of information

Description – Examples include leaking confidential information, to using briefing material to ‘plant’ questions from the gallery.

Relevant good governance issues – Adherence to legislative framework, ethics, councillors’ access to information, transparency, decision making.

Ways of tackling the situation

- * The legal situation needs to be clarified. Publicising information which the Council has deemed as confidential is an offence under the *Local Government Act*. The 2003 Act amendments further define confidential information in the particular contexts of the work of Councils or their special committees. Inappropriate use of confidential material should not be tolerated legally or ethically.
- * Procedures and criteria for classifying information as confidential should be reviewed. Decision making should be as transparent as possible. If the Council is overly zealous in classifying and maintaining information as confidential, there will be pressure to make it public. If people feel they have had some input into determining the process and setting the criteria, they are less likely to breach confidentiality or misuse information.
- * There needs to be a good understanding of how information should be handled. Councillors need to understand the nature of briefing material. That is, briefing material is not intended for public airing. Developing protocols can be helpful.
- * If the level of information available to the public is generally good, leaking is less likely to occur. Good quality Council reports, and creating a culture where consultation and easy access to information are the norm, will help ensure that the community is informed and involved.

Scenario 5 Regular tied or close votes on key decisions

Description – This is reflected in a pattern of tied or close votes on key issues with the same councillors being on the ‘winning’ and ‘losing’ sides. Decisions are made on the Mayor’s casting vote or on a 5/4 or 4/3 basis.

Relevant good governance issues – Role of Mayor, decision making, meeting procedures, strategic planning.

Ways of tackling the situation

- * The regular ‘losing’ councillors may become alienated and feel powerless. Ways need to be found to bring them back into the governance loop.
- * The Mayor who will probably, though not necessarily, be on the ‘winning’ side has an important role in engaging with the minority group. This should occur both within and outside the Council chamber.
- * Debate and decision making needs to be open. The Mayor has an important role in this.
- * The CEO needs to ensure that information provision, and liaison in general, is focused on all councillors – not just on the perceived group which has the numbers.
- * Attention may need to be paid to the Council plan and other key strategic documents. It is important to determine if there is a basis for the majority and minority views. Ideally the Council plan should reflect the diversity of community views.
- * Protocols can be developed on the use of the casting vote to ensure that significant change is based on more than a tied vote.

Scenario 6 Inappropriate use of the media

Description – Local media is being used by individual councillors and officers to pursue political goals over and above what is regarded as legitimate. The media is used to pre-empt decisions, attack colleagues, and undermine the Council.

Relevant good governance issues – Role of councillors and administration, ethics, councillors' access to information.

Ways of tackling the situation

- * The media is an important vehicle which allows local governments to communicate with their communities and also ensures communities become informed about local issues. While the actual and desired outcomes of both these processes are legitimate, they are not always consistent.
- * Councils need to develop protocols for working with the media. A good process in developing these will result in shared understandings and agreement.
- * The legitimacy of ward councillors getting publicity on local issues needs to be recognised and supported. The need to balance this with Council's wish to have its 'corporate' viewpoint expressed in the media means that a sophisticated approach needs to be taken to media policy.
- * The role of the Mayor in representing Council's position needs to be clarified and supported.
- * The difference between the Council's view and the views of individual councillors needs to be understood by both councillors and the community. Councillors who liaise with the media need to reinforce this.
- * Formal contact between the local government and media proprietors and journalists can improve understanding of the pressures on each party.

Scenario 7 Council lacking confidence in the CEO

Description – The Council does not believe the CEO is committed to assisting it to achieve its goals. This can sometimes arise when a new Council is elected and has to work with a CEO appointed by a previous Council.

Relevant good governance issues – Role of Mayor, Council and CEO, relationships, performance management, strategic planning.

Ways of tackling the situation

- * The current system does not make it easy or appropriate for each new Council to appoint their own CEO. There needs to be an acceptance of this fact by the Council, and a willingness on behalf of the CEO and Council to work cooperatively with each other.
- * The CEO needs to accept that the Council is at the apex of the local government hierarchy. The Council sets the strategic goals and the administration needs to be committed to assisting it achieve these goals.
- * Councillors need to understand the imperatives of the administration. The Mayor/CEO relationship is important in achieving this.
- * Energy needs to be put into the Council planning process so that goals are understood and owned by all.
- * The performance management process should be carefully monitored. The Council and the CEO need to agree on what the CEO is expected to deliver. This should provide a fair platform for the CEO's performance appraisal. If assistance with this process is needed, then a human resources professional should be consulted.

Scenario 8 Dealing with 'rogue' councillors

Description – A single or a small minority of councillors continually undermine – privately or publicly – the local government as a whole. This can manifest itself through public criticism of other councillors and the administration, leaking information, failing to distinguish between the views of the Council and individual viewpoints, etc.

Relevant good governance issues – Sectional vs municipality-wide issues, role of the Mayor and the CEO, decision-making processes, strategic planning.

Ways of tackling the situation

- * A judgement needs to be formed about whether councillor activities are a legitimate expression of their role as a representative and advocate, or whether the motives are more destructive. While the outcomes can be the same, the judgement on motivation can affect how the situation is to be tackled.
- * These activities can arise out of an individual councillor's perception that they are 'out of the loop'. Feeling this way, they then look for alternative means of having an impact. The Mayor, as the leader of all councillors, has a responsibility to ensure that all councillors feel part of processes and that they are heard.
- * Both the Mayor and the CEO should talk to the councillor/s in question to see what they are seeking to achieve and why they are behaving in this particular way. Hopefully, other more productive approaches can be suggested.
- * In the case of leaking of confidential information, the councillor must be made aware of the provisions and penalties contained in the Act, and that they will be enforced.
- * The local government associations may be able to assist by mediating, or providing information which may be seen by the councillor/s as more independent.

Useful references

Good governance

Conventions and Guidelines during Election Period, City of Manningham, December 2002

'Developing Codes', Dr Simon Longstaff published in Preston, N, *Ethics for the public sector*, Sydney, The Federation Press, (1994)

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Governance Practices in Victorian Local Government, a survey undertaken for the Good Governance Advisory Group by The Strategy Shop in 2002

Managing the Relationship Between a Local Authority's Elected Members and its Chief Executive Officer, July 2002 which can be accessed from Office of the Controller and Auditor General (NZ) website, www.oag.govt.nz

MAV Election Guide, published by the Municipal Association of Victoria, January 2003

The Code of Good Governance, published by the Municipal Association of Victoria and the Victorian Local Governance Association, December 1997

The ethical view on corporate governance, Dr Simon Longstaff, (St James Centre) 1998

The Role of the Mayor: Prepared by the Victorian Local Governance Association (VLGA) 2002

Consultation

Community Consultation Resource Guide (2001): Prepared by the Victorian Local Government Association (VLGA) and the Office of Local Government

<http://www.vlgaconsultation.org.au/> – This website was prepared as a follow up to the *Community Consultation Resource Guide* produced by the VLGA and Department of Victorian Communities

Websites

Department for Victorian Communities [www.dvc.gov.au/local government](http://www.dvc.gov.au/local-government)

LGPro www.lgpro.com.au

Municipal Association of Victoria www.mav.asn.au

Nonprofit Governance & Management Centre www.governance.com.au

St James Ethics Centre www.ethics.org.au

The National Institute for Governance www.governance.canberra.edu.au

Victorian Local Governance Association www.vlga.org.au

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