

VLGA

Victorian
Local Governance
Association

SUBMISSION
**Local Government
Culture Review**

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The VLGA welcomes the Local Government Culture Review ('the Review') and thanks you for the opportunity to make a submission to this Review.

To frame our comments, the VLGA submits that organisational culture is vitally important to organisational outcomes and sustainability, but extraordinarily difficult to compartmentalize or to define. By its nature, culture is a combination of the norms of behaviour evident in an organisation. It therefore needs to be looked at in the light of context and those patterns of behaviour.

Culture is not necessarily 'one' problem or opportunity to address. It is often the combination of a range of smaller issues that have led to observed patterns and norms of behaviour, albeit, the context or system in which an organisation operates may also influence behavioural pattern which is evidenced by common themes across the sector.

To a large extent, the VLGA has approached our submission on the assumption that any initiatives that may arise would need to be set within the current policy framework that recognises local government as a democratic institution and respects the role of councillors as representatives of their constituents – unless of course there is an appetite to explore reconstituting this level of government. However, the VLGA has also made recommendations within our submission that do touch on potential systemic change should such an appetite exist.

Context

Prior to responding to the set Questions, the VLGA wishes to comment on some aspects of the context within which councils operate. The Review, including the set Questions asked of submitters, appears to be based on the premise that the observed failings in local government leadership, accountability and respectful relationships can be addressed through 'intra-organisational' remedies. These could include more rigorous codes of conduct, improved governance protocols and independent monitoring of behaviour and standards.

There is always a need to improve organisational performance on these matters. This said, structural forces provide a particularly relevant context and, the VLGA submits, could be addressed to positively impact local government culture.

LEGISLATED AUTHORITY

There are widely differing perspectives on the nature of local government. Constitutionally and legislatively Victorian local government is to provide local democracy. Section 1 of Victoria's 2020 LG Act is highly valued by the sector:

The purpose of this Act is to give effect to section 74A (1) of the Constitution Act 1975 which provides that local government is a distinct and essential tier of government consisting of democratically elected councils having the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district.

Moreover, section 4(b) goes on to say:

Councils are constituted as representative bodies that are accountable, transparent, collaborative, efficient and engaged with their communities.

These are laudable statements and seem to imply that local government, as a “distinct and essential tier of government”, will be afforded the respect of an ‘adult to adult’ relationship with state government.

Sadly that dynamic is not always evident and there are numerous recent examples of local government receiving last minute advice of major government announcements without the courtesy of meaningful prior consultation and inconsistent with the principles outlined in the Victorian State Local Government Agreement.

Excessive state government regulation and control diminishes the standing of councils. The VLGA submits that the related sense of powerlessness is one of the underlying drivers of deteriorating culture in local government.

As knock-on effects, local government is treated less seriously by the community than it should be; not only is this a disincentive to the attraction and retention of some high caliber councillors, but there also emerges a mismatch between citizen expectations and capacity to deliver, resulting in a decline in community trust and engagement in citizenry.

FITNESS FOR PURPOSE

It is worthwhile to question whether local government in Victoria is institutionally equipped to meaningfully engage its citizens across issues ranging from highly localised service and infrastructure issues which involve limited financial consequences, through to highly strategic and impactful elements of the Strategic Planning and Reporting Framework.

Most councils, to the extent that they are able to influence capacity are, the VLGA believes, internally resourced as well as they are able. However, the effectiveness of citizen engagement will be compromised to a greater or lesser extent when the issues at hand rise to the district or municipal scale and where alternative futures may be contemplated with a spectrum of fiscal trade-offs.

When citizens are engaged by a government institution (i.e., a council) on any matter of public policy, they might reasonably expect that:

1. The council has an appropriate democratic mandate; that is, the authority of the officers or agency undertaking the engagement flows from a duly elected council or Mayor
2. The institution has the legislated competency to act on the outcomes from the engagement; that is, it has the appropriate decision-making powers over the relevant regulations, programs and infrastructures in question, and
3. The institution has sufficient fiscal autonomy to act on the outcomes of the engagement.

Whilst one might presume that:

1. above is typically met (except for councils in administration)
2. is substantially met, save to the extent that community members might consider themselves 'unheard' following a consultation; and
3. is under increasing pressure due to rate capping and other financial limitations, noting that erosion of (3) will also adversely affect (2).

Where these expectations are not met, the consequence is that citizens interact with local government in a less conscientious way.

The VLGA submits that the mismatch is getting worse and that these circumstances are likely to make it difficult for councils to live up to the community engagement principles set out in the Local Government Act 2020.

If culture in local government is to be improved, the sector must first be trusted and empowered (including financially) to fulfil its essential mandate.

THE POLITICAL ADVOCACY / GOOD GOVERNANCE TENSION

Councillors are typically elected by, and seek to represent, an identifiable constituency. This could be a geographic area and/or one or more special interest groups across the municipal district. Councillors are elected under a universal adult franchise as prescribed in the Local Government Act 2020 and by compulsory voting.

Those factors contribute to the way councillors see themselves, their role, their priorities, and their prerogatives – as elected politicians (representatives) just like state and federal MPs, which some councillors aspire to become.

However, there is an inherent tension between that political persona as framed above and the ‘Board-type’ role referred to in the Terms of Reference. Councils are bodies of elected representatives, often with widely differing constituencies and world views, and sometimes with party-political groupings, that meet in public and are required to make the great majority of their decisions in open session. That could not be further from what is commonly understood as a board of directors.

But nor are councils ‘parliaments’, because they have:

- relatively few members;
- an absence of party discipline,
- no ‘professional’ speaker with summary powers to enforce order,
- no formalised government and opposition, and
- no executive ministry to guide proceedings and advance decisions made after careful consideration in private cabinet meetings.

A further complication arises where there is a real or implied tension for councillors elected on the basis of a stated advocacy position to ‘switch’ following election and govern for the whole municipality.

The above combine to raise an important question regarding the way forward.

- Is it reasonable or possible (without completely overhauling the current system and framework of local government – i.e., allow for it to become purely a service delivery arm of the state and federal governments) for councillors to put aside the political element of the councillor role and act purely as a member of a Council / Board?

OR

- Should the political element be acknowledged, and steps taken, wherever possible, to introduce remedies that will support to councillors to meet local and state standards of conduct as well as good governance standards?

The VLGA would subscribe to the latter view.

Discussion Paper Questions & Response

LEADERSHIP EXPERIENCE AND CAPABILITY

Supporting leadership competencies and capabilities

Question 1: The Local Government Act 2020 defines leadership roles and responsibilities. Does this require further role clarity? If so, which aspects require clarification and how may this be achieved (including legislative and non-legislative mechanisms)?

The VLGA notes the efforts to define roles and responsibilities in the Local Government Act 2020 ('the Act') and in particular, to define the role of local government leaders (i.e., mayors, councillors, CEOs). The VLGA believes that this language is appropriate and there is little to be gained through further amendment.

Leaving aside the contextual matters described above, the VLGA submits that targeted skills development and efforts to manage disagreements without the need for recourse to external arbitration may be a better support for Mayors, councillors and CEOs to meet the objectives of these roles.

In regard to the Roles and Expectations of a Councillor, as noted earlier in this Submission, many councillors experience extraordinary (if not insurmountable) difficulty associated with the transition from 'advocate and campaigner' to an elected councillor with responsibilities under the Local Government Act 2020.

The VLGA submits that regardless of the clarity (or not) of roles and responsibilities as outlined in the Act, the inconsistent understanding of these roles and responsibilities amongst the citizens (voters) in a municipality, exacerbates the tensions commented upon earlier. The VLGA contends that there is a role for the state government to actively work with the local government sector and the Victorian Electoral Commission to educate citizens about the roles and responsibilities of the local government sector and its elected representatives. In addition, that state government must work to disavow citizens that the work of the local government sector is limited to 'roads, rates and rubbish' when in fact the local government sector delivers over 140 services on behalf of the state and federal government and if they did not, the health and wellbeing of a municipality would be significantly compromised.

Question 2: Given the diversity and experience of candidates' backgrounds, how can the local government sector improve leadership capability and better cultivate an environment of transparency, honesty, integrity and trust?

Many councillors, when first elected report that the role does not match their prior expectations. In particular they report a sense of disempowerment – including:

- by being unable to respond with authority to citizen requests;
- discovering that the powers of the elected council in many matters are fettered, in particular in relation to the operational primacy of the CEO; the requirement to focus to a large extent on 'strategy', 'engagement' and 'policy' in the broader public interest rather than forceful representation of their constituency or personal issues; and
- through the inconvenience of having to convince a majority of their colleagues as to the merits of various positions.

Whilst some of the above can be addressed through enhanced and mandatory candidate and induction training, the mismatch between community expectation and the actuality of the councillor role remains a significant barrier.

This can be source of considerable frustration with adverse consequences for the 'ecosystem' of relationships within the council. In turn that powerlessness can lead to inappropriate behaviour, especially if a councillor feels isolated.

The VLGA submits that the responses should be oriented toward highlighting good practices and supporting those who want to do the right thing to do just that.

This could be addressed by:

- additional communications to candidates and communities on the LGV website and associated support materials, together with a longer-term information campaign about the role of the councillor (as set out in the LGA), particularly that the role does not include management of requests around 'rubbish, rates and roads';
- a review of the mandatory pre-election training to provide greater emphasis on:
 - the Public Trust Doctrine – (requires a public officer to move beyond local advocacy to a 'whole of council' approach to advance the public/municipal interest as opposed to personal, party (political), voter constituency (vs municipality) interests;
 - working collaboratively and constructive conflict resolution techniques; and

(cont.)

- lesser emphasis on details of the arbitration processes, except to know that they exist.
- consideration of higher order qualification similar to (but not the same as) the AICD Company Director course;
- mandatory leadership training - noting that this is not 'one size fits all'. But could potentially include managing (or healthy) conflict, team dynamics, strategic thinking;
- an emphasis that respect for the council includes respect for decisions, even if the final outcome is not agreed with. This also implies a range of supporting behaviours including that councillors will read papers, not pre-empt council decisions, deal with issues on merit, etc so all stakeholders are confident that, once considered, the issue will not need to be re-visited;
- building an awareness for all councillors around the role of mayor, including that element of the mayoralty that may lead to differences in style between mayors; and an understanding of what it means in the standards of conduct to respect the role of mayor;
- support to councillors, based on best practice (using the Councillor Staff Interaction Protocol and other policies as required) around responding to ratepayer requests in a manner that provides equity and fairness to citizens and does not intrude onto operational space. This might include a formal councillor request system where:
 - officers take the request;
 - support is provided to the councillor to respond to the community (or adopt a system whereby the council responds to the community - i.e., remove the councillor from the process unless that councillor is the official spokesperson of council for the particular matter - this will further serve to educate the community that it is not the responsibility for individual councillors to 'manage' requests);
 - ensure any requests received via councillors are managed consistently with those lodged centrally;
 - responses to requests are timely and to standard (or change the standard!); and
 - reliable follow up with councillors as required; and
- reconsider Local Laws that allow for public council meetings where the sole purpose is for members of the community to raise single issues as opposed to higher level consultations on municipal planning/community health and wellbeing matters etc.

Councillor Allowances

In making its submission to the recent Determination of Allowances for Mayors, Deputy Mayors and Councillors – Councillor Allowances - the VLGA highlighted the important and complex role that councillors are required to perform under the Act and the impact that these allowances play in attracting and retaining skilled members from communities as elected representatives (councillors).

In addition to the Local Government Act 2020, a raft of legislation (for example the Gender Equality Act 2020 and the Climate Change Act 2017) are emblematic of increased complexity in the environment within which the Council operates and point to significant new responsibilities for local government (including for elected representatives).

The complexities of the modern world (incl. social, climate, and technology) have raised the level of conceptual and strategic thinking required in the councillor role. However, there has not been a diminution in the critical thinking that attaches to the traditional oversight and review functions in role of councillor. Indeed, such absence of prescription requires that councillors (individually and collectively) be more alert to the range of risks confronting the organisation.

There are a range of such tensions between the roles of advocacy and governance oversight, and the VLGA believes these deserve attention in the fixing of allowances. The VLGA submits that councillor roles will almost inevitably be stretched between the functions of strategy and oversight. Whilst the electoral structure will certainly play a role (more comments on this will follow), other factors, including culture and the articulation of roles and responsibilities, will certainly affect the roles played by councillors.

However that may play out locally, we consider that the driving factor in fixing allowances ought be the role and accountabilities as set out in the Act. These are the accountabilities against which roles ought be defined and performance and conduct held to account.

The 'voluntary' nature of local government elected representative roles is a double-edged sword. It is intended to attract candidates that are 'community-minded'. However, it also precludes a large cross-section of the community whose experiences are just as (if not more, by way of their underrepresentation) valuable as those who can afford to be councillors – and of course, the current system does not necessarily attract candidates who are skilled in the governance and oversight requirements of the role.

Question 3: How successful have any existing initiatives been to promote strong leadership and build trust? Please provide case studies or examples of good practice that have worked well and could be considered for broader implementation.

The VLGA submits that across local government there does exist a strong culture of compliance. Councils routinely transact their business (both operationally and within the meetings of councils) lawfully and respond to reporting obligations. Indeed, whilst centralised support was offered by Local Government Victoria, the transition to the Local Government Act 2020 was undertaken without the transitional financial support that might be seen in other sectors.

In short, there is a willingness to 'do the right thing' across local government in an environment where many property owners want to keep local taxes (rates) to an absolute minimum. Hence a continuing tendency to 'think small' – limited functions and sources of revenue, few councillors, detailed state oversight and regular intervention.

As a result, councillor behaviour (as opposed to those more serious actions that may constitute a civil or criminal offence) has been seen as something other than simply a matter for municipalities themselves – and local electorates – to deal with. We in Victoria legislate, regulate and appoint multiple integrity agencies to oversight.

As a consequence, there are numerous examples of initiatives that have supported strong leadership. But there is no 'silver bullet', and it is difficult to point to many that have gained wide traction as so many processes ultimately land outside the systems and processes of, and controlled by, councils.

The VLGA believes that wherever possible, councils be given the structural responsibility and agency to manage internal cultural and behavioural issues. That said, the VLGA has often assumed the role, in its capacity as the peak body supporting governance in the sector, as a trusted source of counsel – that is, councillors and council officers seek guidance from the VLGA on a range of matters relevant to the scope of this Review.

On that basis, the VLGA identifies the opportunity for an independent body (such as the VLGA) to be officially endorsed or further legitimised as the body where a council may go for confidential advice and to seek conciliation and mediation assistance to resolve disputes. The VLGA believes that providing councils with access to such a service may reduce the frequency of disputes playing out in the council chamber, distracting the council from the business at hand and potentially creating a culture within the councillor group that is fractious.

Question 4: Mention is made through consultation of local government being a ‘parliament of opposition as opposed to a diverse board of the community’. What needs to change to better align Councillors and Mayors to effectively achieve community-based objectives and better operate as a diverse board of the community?

The VLGA submit that the politicised nature of the pathway of councillors to attain and retain elected office cannot co-exist comfortably with the straight ‘Board’ model as suggested. That is not to say however that we give up on good governance. Councils should strive for the highest standards of governance, including the type of strategic oversight that one might expect of a Board.

However, the politicised nature of the role needs to be more than the elephant in the room. Indeed, supporting councillors to recognise and acknowledge where their views and actions have a political frame will support the maturity of relations with fellow councillors and allay many of the tensions that exist with CEOs and executive staff. These tensions can often emerge where politicised actions are portrayed (mistakenly or deliberately) as being in the public interest.

Electoral structures

The mandating of single ward structures in the Victorian Local Government Act 2020 for a number of municipalities goes further to reinforce to candidates standing for election in these municipalities that their role, once elected, is limited to the representation of that single ward – this in itself is contrary to not only a ‘Board model’ but the role of the councillor group to govern, as a whole, on behalf of the municipality.

Unsubdivided structures, on the other hand, would potentially remedy this issue. However, the VLGA would not recommend proceeding with such a structure without first scrutinising the impact – for example, would an unsubdivided structure make it more difficult for candidates from diverse backgrounds, women, or individuals without the financial backing required to support a wide-reaching campaign.

Term of Mayor

Similarly, although the powers of the Mayor have been extended in the Act and the role of the Mayor clearly articulated, the limited term of Mayor is not aligned with a pure ‘Board’ model. The Chair of a Board is often appointed for a minimum term beyond one year and often up to a term on average of three to four years – clearly highlighting that the role of that Chair is to lead the Board as one in its deliberations and decision making.

COUNCILLOR JOURNEY

Training and professional development

Question 5: How could the candidate and induction training support be improved to ensure genuine engagement and sustained understanding of the role and responsibilities of Councillors?

The VLGA understands that substantial feedback has been provided on the issue of candidate training. We offer no strenuous view on this matter as we consider that there exists widespread misunderstanding by not only candidates, but also community, around the councillor role.

This is unlikely to be resolved through review alone of the excellent initiative that is the candidate awareness training module.

The module deserves review, but a change in context through broader awareness raising around roles and processes is essential.

The VLGA designed and facilitated an extensive face to face (or via Zoom) candidate training program leading into the 2020 local government elections. This 'voluntary' program was taken up by around 40 councils, but more could be done to ensure that a mandatory program above and beyond the current state government desk-top training is implemented. Such a program may well be accredited.

Question 6: How can the local government sector work to formalise a structured professional development pathway for Councillors and Mayors?

Professional development opportunities are in place at other levels of government, for Board members and also for the community and private sectors.

For the reasons set out in this paper, the development requirements of councillors are extraordinarily complex - a fine blend of professional and personal skills.

Development of a successful program will require extensive consultation and research, a rigorous pedagogy, be relevant, engaging, accessible; and (so far as is possible) 'just in time' to a diverse cohort of potential participants.

It is also vital that such a development pathway be publicly validated, reported and celebrated.

The VLGA and its academic partners stand ready to take a lead role in such a process for the local government sector.

SOCIAL MEDIA

Question 7: How can awareness be raised on the best ways to harness social media to ensure a consistent management approach – covering monitoring, appropriate usage, and the consequences of negative usage?

The misuse of and bullying & trolling associated with social media is a global issue. To the extent that the above behaviours are exhibited:

- by councillors and/or council personnel, we submit that codes of conduct should be applied.
- by candidates or others in the context of an election campaign, there is a need to modernise relevant legislation to create offences, noting the impediments to enforcement; and
- most importantly, as a ‘whole of government campaign’, promote the advantages and position positive use of social media as a societal norm. It is important that any political advantage associated with such behaviour is, so far as is possible, negated.

Question 8: Do you think that any amendments to the Local Government Act 2020 are required to deal with the usage of social media? How should social media harassment be defined and what mechanisms could be introduced into the Act?

Almost inevitably amendments to the Local Government Act 2020 will be necessary. However, we consider the legislated regime for social media use in local government elections should not be markedly different from that applying to federal and state jurisdictions.

In addition, relating to the anticipated content on harassment and intimidation, we do consider that particular attention ought be given to anonymous and unauthorised accounts.

The VLGA did provide a submission to the recent Inquiry into the Impact of Social Media on Elections and Electoral Administration - [Inquiry into Social Media](#).

EARLY INTERVENTION AND EFFECTIVE DISPUTE RESOLUTION

Early intervention

Question 9: In the context of leadership, what needs to change to empower elected representatives, CEOs, and Council staff, to call out poor Councillor behaviour and misconduct without fear of retribution?

We would have preferred that this question be framed around:

- calling out poor behaviour generally, without particular reference to councillors; and
- raising capacity to respond in a positive manner when such behaviour is called out.

That is because we do receive feedback that at times that councillors, in particular, feel disempowered regarding an inability to call out council officers due to the absence of a defined process and / or a misunderstanding of the dynamics from a HR / IR perspective of responding to a complaint relating to an employee.

Going to the question, we submit;

- Just as councillors and officers are entitled to expect a workplace that is 'psychologically safe', so to is it vital that elected representatives, CEOs, and council staff feel psychologically safe to report poor behaviour and misconduct.
- A psychology safe workplace for councillors, officers and community is central to development of a respectful high, performing culture.

CEO Employment Relationship

The process for investigation should take place 'without pre-judgement'. However, the current CEO Employment arrangements create a tension – further commentary in regard to this comes later in this submission.

The VLGA also refers back to the final paragraph in our response to Question 3.

Question 10: What can be done to better support dispute resolution at Councils?

We submit that the following are essential:

- Reinforce wherever possible in the Local Government Act, and supporting materials, the personal accountability for councillors to play their role in being part of an effective team.
- Training in effective teamwork, including where disagreements are regular.
- Training in effective conflict resolution techniques, also reflected in the Codes of Conduct.
- Identification and publication of possible responses to common rationalisations for poor behaviour (i.e., ‘they did it to me’, ‘they always vote as a block’, ‘I’m speaking for my community, etc.’).
- Emphasis and support on the pre-mediation phase, to facilitate the best possible hope for effective resolution.

DISPUTE RESOLUTION

Question 11: What types of early intervention mechanisms can be formulated and when? What do you think is an acceptable duration or timeframe for this intervention to fairly resolve a matter?

Many codes of conduct have covered this. Interventions include:

- facilitated briefings to agree behaviours;
- one on one coaching; and
- informal discussion mediation.

Time is of the essence. A number of mayors and CEOs work on the premise that ‘a councillor should never leave a council meeting angry’. That points to the importance of early intervention. This further expanded in response to Question 12.

Question 12: How can the process for misconduct and/or poor behaviour claims be improved, or more adequate penalties for misconduct and poor behaviour be incorporated in a more effective way?

There appears to be a default position for Councillors who are grappling with disharmony and dysfunction, to believe that bringing a complaint under their Code of Conduct, registering their complaints with the Councillor Conduct Registrar (even if they are not formalised), having a monitor appointed, or bringing a worker’s compensation claim, are the only tools available, or alternatively, are effective tools for solving the problem.

These are blunt, costly and have been evidenced to be ineffective tools.

Conflict resolution & early intervention strategies

More needs to be invested in building the capacity of councillors to resolve conflict without resorting to formal mechanisms under the Local Government Act. Although it is necessary to have formal procedures for more serious councillor misconduct, it is an inherently adversarial process that entrenches rather than resolves conflict. It is the experience of the VLGA and experts who work in this field that many instances of councillor misconduct are a result of lack of self-awareness, due to interpersonal disputes or an inability to have respectful conversations or when necessary, respectful difficult conversations.

When conflict does emerge, restorative practices that focus on building/repairing relationships and building capacity/awareness are more effective in addressing these issues, than traditional complaint handling under Codes of Conduct. There should be a focus on building effective and resilient working relationships in advance of the conflict arising and agreement about how to deal with inevitable disagreements down the track.

When Councils are required to adopt their Code of Conduct early in the term, there is an opportunity to have an open discussion on standards of behaviour, aligned values and rules of engagement. Councils should be encouraged to tailor certain sections of the Code of Conduct to ensure there is buy in and ownership of the document.

Current training often does not go much further than compliance training regarding bullying, sexual harassment, discrimination etc. With respect to bullying, this can be unhelpful as it focuses on legal definitions of this behaviour rather than acknowledging that what one individual perceives as bullying, another councillor may perceive as robust debate. Practical training that considers these nuances is recommended, which then leads into open discussions about what is considered acceptable behaviour for a particular group of councillors.

The success of early intervention strategies relies on councillors having relationships of trust. There should be a greater focus on building these relationships early in the Council term, as well as building an awareness of why strong relationships are important.

Councils should consider engaging independent advisors and consultants early to assist in the resolution of conflict. Many Council Codes of Conduct continue to expect Mayors and Deputy Mayors to act as facilitators when disputes arise, however there is varying degrees of skill and experience in carrying out this important role and intervention.

They may also lack (or be seen to lack) independence. Councils should also consider engaging experts at 'complaint intake' stage, to provide guidance to the Councillor regarding their options for dealing with the issue, how the Act and Code may apply, and what they can expect if they proceed with a formal complaint. Our experience suggests that many Councillors have unrealistic expectations of what a formal dispute resolution process can achieve.

Induction training should include modules on respectful workplace conduct, conflict resolution and their Workplace Health & Safety (WHS) obligations to each other and council staff. Focus should be on practical training rather than a compliance/overly legalistic approach.

Ongoing professional development is necessary, as councillors are inundated at the beginning of the council term. Councillor sessions on conflict resolution and conflict management, as well as relationship building practices, should be undertaken regularly.

Participation in this training and other related professional development activity should be encouraged and rewarded by creating a recognised or certification program for councillors that can be incorporated into the nomination form for candidacy in future elections – that is, it would demonstrate to voters that the candidate has undertaken a degree of professional development and has the necessary skills to serve as a councillor.

Conflict Management Tools

Although more resources need to be invested in building the capacity of councillors to resolve conflict, councillors also need tools in managing conflict more generally. For example, all councillors should be trained in effectively engaging in difficult conversations, as well as effectively giving and receiving feedback.

Councils should consider what further supports should be offered to councillors in the form of coaches, mentors and counselling.

Monitoring and Insurance

Councils may wish to monitor the amount of time they are spending on managing dysfunction and conflict in their council, which could involve tracking management time, costs of external consultants, legal claims, workers' compensation premium increases. Regular reports could be provided to council in order to determine what further training and support is required. Local Government Victoria (LGV) might also wish to have oversight of this to better inform what resources may need to be invested.

Councils will also want to educate their councillors about what happens when complaints are brought which impact on the council's insurance policies and allow for one party to be legally represented under a policy because they are being sued, and one party not to be covered.

Councils may wish to declare the number and type of Code of Conduct breaches being brought under their policies from year to year, so that governing bodies can understand if the council is high-functioning or affected by dysfunction.

Additional thoughts

The following ideas may prove worthy of further exploration. They are put forward on the basis of minimising further legislative change whilst enabling and supporting local and sector-wide 'ownership' of the need for action.

Any initiative would need to be set within the current policy framework that recognises local government as a democratic institution and respects the role of councillors as representatives of their constituents – unless of course there is an appetite to explore reconstituting this level of government.

- Limit formal involvement of state actors to actual or potential offences under the Act;
- Consider thresholds for stand-down of councillors formally accused of an offence;
- Define 'Inappropriate Behaviour' separately from Misconduct and as a matter for local action;
- Empower and require mayors and the governing body to deal with Inappropriate Behaviour. (This would probably require mayors to be guaranteed two-year terms, and the added responsibility may help to discourage the practice of 'taking turns' as mayor.)
- Support the VLGA to appoint an Integrity Adviser and Governance Panel to assist councils with establishing local processes to address Inappropriate Behaviour;
- Establish a Governance Coordinating Group of relevant state agencies (LGV, Inspectorate, Ombudsman, IBAC, VAGO) to provide advice and keep the effectiveness of state-level mechanisms under ongoing review;
- Support councils to add a good governance function and specialist advice to the role and composition of their Audit and Risk Committee;
- Create a framework to reduce the number of council meetings and support councils to consider complex issues in private workshops before they are debated and determined in a public meeting;
- Expand the scope of councillor induction training; require new councillors to complete the first session before they take their seat; and require all induction training to be completed within two months of the first meeting of a newly elected council;
- Provide guidance to CEOs on what is expected of them under section 46(1)(a) of the Act: supporting the Mayor and the Councillors in the performance of their roles. (Experience suggests that at a minimum such support should involve administrative assistance, prompt provision of information when requested, and individual professional advice on complex issues);
- For large municipalities, enable and encourage elected 'community boards' along the lines of the New Zealand model, with a view to strengthening local democracy and providing a practical training ground for future councillors;

Based on the foregoing contextual material, key variables influencing councillor behaviour may be seen to include:

| Not controlled | Able to be influenced |
|---|---|
| <ul style="list-style-type: none"> • The socio-economic environment of the municipality. • The past willingness of the state to establish more and more processes and mechanisms. | <ul style="list-style-type: none"> • Personal skills, attitudes, capacity and state of mind. • Working knowledge of local government and the broader context of the issues to be addressed. • The likelihood of being able to achieve the outcomes sought by themselves and their supporters, and hence the probability of frustration setting in at an early stage. • Their reaction to what they may well (often reasonably) see as excessive constraints on their role as elected representatives and freedom to 'get things done'. • The availability or lack of dedicated staff support and guidance on 'getting things done'. • The way the CEO and mayor handle the relationship between management and governing body. • The inevitable theatrics of decision-making in open public meetings, accentuated by frequent and lengthy meetings, complex agendas, opportunities to lodge rescission motions etc. • The ability (or otherwise) of the mayor to guide and control meetings. • The small number of councillors, enabling just one or two to cause disproportionate disruption. • The opportunities to prolong disruption resulting from complex, legalistic complaints processes and a lack of mechanisms for 'summary justice' (cf parliaments). • The opportunities that complaints processes offer to pursue personal and/or political differences through councillor vs councillor complaints. |

Supplementary Comments

CEO Employment Arrangements

The relationship between elected members (whose political horizon in Victoria is 4 years); and the CEO and other officers (who are the long-term stewards of the organisation, across election cycles) contains inherent tensions.

Not the least is the requirement that the CEO and officers furnish the councillor group with 'frank and fearless advice' to inform the decisions of the council. Needless to say that from time to time this advice may well be contrary to the perceived political interests of one or more councillors. In the absence of all of the formal structures of a Westminster parliamentary system there is therefore a greater exposure at local government level of a dysfunctional response to such unwanted advice.

The VLGA's observation is that, as the head of the operational aspect of the organisation, it is not uncommon that the CEO unfairly bears the adverse consequences of such events. As the CEO also is judged in relation to other factors including management of requests and complaints, delivery of capital works, strategic planning projects and from time to time, even the effective functioning (or otherwise) of the councillor group.

The resultant politicisation of the role of the CEO was the subject of a report Managing the employment cycle of a council CEO by the Local Government Inspectorate in February 2019.

The turnover of CEOs (at the time of writing, there have been 26 CEOs turnover since October 2020) points in many cases to arrangements that are less than ideal for management of CEO employment.

In that light the following recommendations from the Inspectorate report are significant:

Issue: Inconsistency with recruitment, contracting, performance management and separation arrangements for CEOs leading to adverse outcomes for the community.

Recommendation 4: Development of best practice guidelines by the local government sector, coordinated by Local Government Victoria, and supported by appropriate training.

Issue: CEOs have the difficult position of being the employee of a councillor group but also responsible for their health and wellbeing as the person in charge of the council as an organisation.

Recommendation 6: Increase awareness of CEO workplace safety responsibilities in respect to councillors through consultation with Local Government Victoria, WorkSafe, VEOHRC, peak bodies and councils.

In relation to Recommendation 4, it has been heartening to see the implementation of employment provisions in the Local Government Act 2020 used as a vehicle for the sector to collaborate toward more consistency in policies and practices. However, we submit that there remain inconsistencies in the application of such practices across CEO Employment Committees established by councils.

This may be due to a range of factors including policy inconsistency; variety in skills and attributes of the external consultants; skills, attributes and motivations of councillor members; and the historic degree of politicisation of the CEO role within each local community.

Whatever the cause, we submit that an uplift in the culture of councils across the state cannot occur without a like shift in the function of CEO employment committees and business-like management of CEO contracts.

As a final comment in this section, we note that in Recommendation 6 above, the Inspectorate has pointed to a need to ‘Increase awareness of CEO workplace safety responsibilities in respect to councillors.’

It is extraordinarily fraught for many CEOs to manage Workplace OHS issues where it is evident that a councillor, or councillors may be at the heart of the workplace hazard. The CEO is effectively then in the invidious position of being required to investigate their employer. Particularly where the political nature of elected councils requires deep thinking as to what constitutes intimidation or harassment, compared with ‘robust discussion’.

As referred to elsewhere in this submission, provision of a psychologically safe workplace is central to the culture of organisations, from nurturing innovation to prevention or mitigation of bullying, harassment or fraud. If CEOs (and indeed councillors) are not supported to take up OHS issues involving organisational leadership, then these systemic cultural concerns relating to an unsafe environment can only be perpetuated.

Regional Statutory Bodies

The VLGA submits that it is possible to imagine a different way of managing relationships and accountabilities within our council organisations.

Historically local government in Victoria has hybridised a Westminster model and assumed a separation between the elected and the administration. The model also contains a hierarchy, in that the council adopts strategy and policy, which is then for the CEO and officers to implement. So the 'loop' for the council, which starts with purpose and strategy, closes with compliance and checking.

Maintaining trust between the CEO and council is essential to nurture a culture that allows sufficient uncertainty and bravery to collaborate on strategic thinking; whilst providing an environment where accountability is tested and supported.[1]

We submit that the council pendulum has swung in many cases too far from purpose, with an unhealthy proportional emphasis on compliance and review. The consequence is that the dynamics of a healthy organisation are lost.

That is not to say that councils should give up on accountability, to the contrary.

However, there is merit in considering a reorientation to;

- a. give councils more attention to purpose and strategy;
- b. provide greater independent rigour in management of these elements of the council role; and
- c. retain the inherent oversight function of the elected council.

[1] The Role of Trust, Goldspink, Dr C, and Kay, Dr R, Australian Institute of Company Directors Research Series (2016)

By way of context, at state government level it has been commonplace to establish corporations and appoint Boards to manage venues and events (e.g., major sporting facilities, Grand Prix) or to oversight processes (e.g., professional registrations). Such structures provide an opportunity to recruit skills and attributes required for the task at hand.

In the same vein, councils have a range of options by which to engage skilled external expertise to inform core business processes, building on the model currently used in relation to Risk and Audit and also CEO Employment Matters.

Delegated and advisory committees can be established by resolution of the council. The Local Government Act 2020 in section 64 also provides for joint delegated committees (which must contain a councillor from each member municipality). Indeed, if the vision is bold enough, mechanisms exist or could be created to create corporate entities across a region or the state to also fulfil specified functions.

Some possible avenues for such initiatives include:

1. Management of council assets or services;
2. Conduct of service reviews; or
3. Review of Quarterly Budget or Service reports prior to report to council (removing any possible conflict were this function to be performed by the Audit and Risk Committee).

The entities might be recommendatory or have delegated powers such as the overseeing the recruitment and ultimate appointment process of the CEOs to each of the councils in the region and being responsible for appointing the independent member of the CEO Employment Matters committee – i.e., the CEO performance review process.

Hybrid Council Model

Alternatively, and more ambitious perhaps, and one that would require systemic and legislative change, is to consider a hybrid council model where appointed skills-based council members (i.e., ‘Board’ members) sit alongside elected representatives to ‘govern’ the council.

Conclusion

Experience has shown that misconduct issues not dealt with effectively at a local level may, with approval of the Principal Councillor Conduct Registrar, be escalated to arbitration.

We refer elsewhere in the is paper to the importance of preparatory conflict resolution training as well as initiatives such as mediation to restore relationships prior to embarking on dysfunctional arbitrations.

One option that is particularly of interest to VLGA would be an entity with legal HR/IR, conflict resolution and other skills as required responsible for support and management of councillor conflict, including by:

- a. providing arms length review of incidents;
- b. offering guidance to councillors who are unable to source advice from the council organisation and are unable to source their own legal or confidential governance advice; and
- c. oversight of internal conflict resolution processes.

Indeed, a state-wide Victorian Local Government Conduct Agency may well be able to perform these functions on behalf of the local government sector.

In summary, whilst this Project is focusing on councillor behaviour and what happens in individual councils, it should also be concerned with the broader systemic context. Councils operate and councillors behave within a framework of imposed rules and policies that in many cases they cannot vary, and the tendency over recent decades has been for the rules to become more and more a 'straitjacket'. Incomprehension and frustration are a key factor (see below).

Therefore, enabling councils and the sector as a whole to self-manage these issues to a greater extent is so important. But if followed through, that line of thinking also represents a significant challenge to the primacy of state-imposed rules and processes.

The 'problem' statement therefore needs to be matched by a project goal or vision that provides an indication of how much 'room to manoeuvre' is being contemplated – a realistic assessment of the need and appetite for change. If local government is being asked to accept greater 'ownership' of a 'problem' without an assurance that it will truly be enabled to do so, or a clear project goal has been articulated by the state government that provides clarity as to the parameters (reach and limitations) of this project, then the opportunities of this Review may not be fully realised.

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