



Targeted Review of the Local Government Act 1993

Submission by Local Government Professionals Australia Tas

June 2016

Introduction

Local Government Professionals Australia Tas (LG Professionals Tas) represents managers and aspiring managers working in the Local Government sector in Tasmania. With over 200 Members, LG Professionals Tas aims to ensure the development and improvement of Local Government management, maintenance of the highest professional and ethical standards and Members who are at the forefront of innovation and change.

To support our submission on this important review of *the Local Government Act 1993*, LG Professionals Tas undertook a survey of our members and the results form the basis of this submission.

LG Professionals Tas notes the establishment of the General Manager's Technical Reference Group, with members of that group nominating and being endorsed by the Board. The General Manager's Technical Reference Group is seen as critical in providing robust feedback on possible changes to the legislation, particularly in relation to the workability of proposed legislation and the role of the General Manager.

Any questions should be directed to

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Executive Summary:

Respondents: 34 individuals participated in the survey however it should be noted that many focussed on specific areas of interest rather than commenting on all the proposed areas of review. Of those who responded, 23.5% were General Managers, 35.3% were Executive Managers and the remainder comprised managers who were not in the executive team.

Key Themes:

- Training is needed for Mayors, Deputy Mayor and Councillors on areas such as governance, risk, leadership and performance management.
- Induction processes are required for Mayors, Deputy Mayors and Councillors.
- Strong clarification is required on the roles and in particular the responsibilities and authorities of the Mayor, Council and General Manager.
- Operational decisions are the responsibility of the General Manager and do not require councillor involvement.
- Communication channels need to be defined along with reporting requirements.
- The Director of Local Government should have greater authority including powers to dismiss, and sanction, individual councillors if required.

Comments:

The responses suggest there is strong support for training for Mayors in basic induction and effective management /best practice. It was also strongly suggested that mayors have limited or no executive powers in relation to operations but rather take an oversight role of the council. It was further suggested that Mayors take a greater oversight and responsibilities for councillors with the ability to seek information and make inquiries into the activities of councillors as required. The councillor's role was mentioned in significant length with respondents strongly indicating that significant clarification is required in this area in relation to the role, including responsibilities and authorities for councillors. General consensus was that it is not the responsibility of the General Manager to oversee councillors but rather this should be the responsibility of Mayor and/or Director of Local Government

Overall, the common theme is clarity in relation to roles and responsibilities, as well as clearly defining authorities between the Mayor, Councillors and the General Manager. Finally it was strongly asserted that it must be explicit that operational decisions are the General Manager's responsibility and not that of the councillors.

Contents

Role of the Mayor	4
Role of the Deputy Mayor	5
Role of individual Councillor	5
Appointment of the General Manager	6
Role of General Manager	6
Local Government Board / Board of Inquiry	7
Role of the Director of Local Government	7
Financial Performance of Councils	8
General Manager’s roll	8
Election Expenditure and Disclosure	8
Regional bodies	8
Reducing Red Tape	8

Role of the Mayor

Survey respondents were asked to consider the following in relation to the Role of the Mayor:

1. What is non-negotiable?
2. What suggestions for improvement?
3. What aspects of the legislation require improved clarity?

The following items emerged as desired changes:

- Introduce a requirement for Mayors to undertake induction and annual training including leadership, governance, meeting management, team building and effective communication.
- The Mayor should have an oversight role only.

Ideas for improvement included:

- Allowing a casting vote for mayors when decisions are tied (*however there was no consensus on this*);
- Mayors to be elected from around the table and their role defined more as 'chair';
- Mayors should oversee performance of the General Manager in consultation with elected members; and
- The Mayor should have authority to seek information from councillors.

Areas identified as needing improved clarity included:

- The role of the Mayor in building a united and strategic approach;
- Reinforcing the importance of good relationship building and professional development; and
- The role of the Mayor as a person conducting a business or undertaking (PCBU) under Work Health and Safety (WHS) legislation regarding elected members. Currently this responsibility sits with the General Manager but can put them in an untenable position.

Summarising the responses, the Mayor must be required to undertake professional development training as well as be inducted into the position and take an oversight role of council. Training should include leadership, meeting management, governance and risk. The responsibilities of this position should not include operational decisions which must be left to the General Manager. There was a lack of consensus in relation to the authority of the Mayor with some leaning towards a Chair/Spokesperson role only but others suggesting the Mayor should have stronger powers to manager councillors, including in relation to WHS issues. The suggestion to remove dual candidacy was raised however there were limited other comments to support this notion and no consensus could be reached. In suggesting this notion, questions were raised as to the possibility of loss of good people if the candidate was unsuccessful for Mayor.

Role of the Deputy Mayor

The majority of respondents agreed that there is a need for the Deputy Mayoral role (64%) however most believed that the Deputy Mayor should be elected by Council rather than the popularly elected (67%).

- As with the Mayoral role, respondents were asked to consider what was non-negotiable, ideas for improvement and where clarity was required. Those items considered essential included: a requirement for training on the role of Deputy Mayor, similar requirements to the Mayor particularly with regard to the ability to express their own opinion (that is, they should be unbiased and represent council's decisions over their own opinions) and that they must act as the Mayor when the Mayor is not available.

No improvement suggestions were made but a number of issues requiring clarity were noted:

- Defining the occasions under which the Deputy Mayor takes the role of Chair;
- Better defining 'absent' in relation the Mayor, possibly replacing with 'unavailable' to allow for a more realistic set of circumstances;
- Making it clear that they must act as Mayor when Mayor not available; and
- Ensuring the system allows for a 'leadership team'

In summary, the Deputy Mayor should have the same authorities and responsibilities as the Mayor and be held to the same standard in relation to being unbiased and expressions of own opinion. Further clarification is required as to when the Deputy Mayor is required to step into the position. The Deputy Mayor must also be required to undertake the same training as the Mayor in relation to governance, meeting management and risk.

Role of individual Councillor

Significant concerns in relation to the clarity of the role of the councillor were raised. Respondents were strongly supportive of clear definition of councillor's responsibilities and authorities and a trending theme was that it must be explicit that councillors have no authority or responsibility for operational and staffing matters and this should be the function of the GM.

Further respondents indicated support for mandatory training on their roles. Further respondents identified other important training including governance and risk management.

It was strongly suggested that the General Manager should not have responsibility for the behaviour of individual councillors, that this should be the responsibility of the Mayor or leadership team of the Mayor and Deputy Mayor. It is therefore no surprise that a key improvement suggestion was that councillors should be made to be accountable to the Mayor.

It was also suggested that there was a need for improved clarity on communications and a requirement for protocols to be developed.

Appointment of the General Manager

The majority of respondents to this question (90 per cent) agreed that the Act should include principles for the selection, reappointment and performance appraisals of General Managers and that clarification of the Mayor's role in this appointment and performance appraisal process is needed.

Respondents also raised the following points:

- There should be use of a professional 3rd party to assist in the recruitment process;
- That the Local Government Division should develop guidelines to support appropriate and high quality recruitment and performance review processes; and that
- Not all councillors should be directly involved, particularly on an interview panel.

Role of General Manager

In relation to the role of the General Manager, respondents identified the following as must haves/non negotiables:

- Decisions relating to organisational structure must be the role of the General Manager, not the council. This is deemed as operational. Council sets the budget and goals to be achieved and the General Manger determines how best to get the required outcomes.
- Council should establish the information requirements they require the General Manager to report on but as with above, operational decisions remain the responsibility of the General Manager.

When asked what information the General Manager should provide to Council the following items were identified by the majority of respondents:

- Progress on development and implementation of policies and programs
- Information relating to community consultation.

Respondents did not support the provision of information on internal grievances and disputes to Council and only a slight majority (55%) agreed that Council should always receive information on restructures or major organisational changes. Despite this, there was suggestion that issues which change service levels or which depart from approved strategic plans should be taken to Council.

It was also suggested that organisational changes and restructures which don't impact on services levels, budget or strategic plan outcomes should only be communicated to Council, not taken to them for approval or decision-making purposes.

When asked specifically whether there was enough clarity in the Act regarding the defining of strategic vs. operational, the majority of respondents said there was not (71%). Again, when specifically asked, 80% of respondents identified organisation structure as operational rather than strategic.

It was suggested that there could be a clearer understanding provided with regard to providing information between councils. Further there was support for clearly defining the responsibilities and authorities of the General Manager and development of a set of best practice reporting guidelines.

Local Government Board / Board of Inquiry

No clear picture emerged in relation to how many entities are required for investigation into Councils with responses evenly distributed across 'Local Government Board Only', 'Board of Inquiry Only' or 'Both'.

What was agreed was that regardless of the entity there MUST be a clearly defined process, procedures and policies as well as clear authorities and responsibilities. It was also strongly suggested that the Board, in whatever form, should have the ability to dismiss individual councillors or whole councils; as well as to make sanctions, apply penalties or make recommendations to the Director of Local Government for disciplinary actions.

Finally it was felt that the process, as ultimately determined, must be clearly communicated to councils, including the rights each party will have during that process.

One suggestion was that there is one Board, which acts as the initial triage point for inquiries and issues, but which may direct the matter to a more specific Board for action.

Role of the Director of Local Government

There was very strong agreement that the Director of Local Government must have the power to manage (including dismiss) individual councillors and councils and to throw out/dismiss vexatious complaints.

Further, it was considered vital that the Director of Local Government have experience in working in Local Government; or clearly demonstrate understanding of Council operations prior to appointment by the Minister. Further it was felt that there should be a requirement to consult with the General Manager (if appropriate) before investigating a complaint.

A key area for improvement identified was being able to stop complaints around the same issue being raised through a number of avenues and reviews. There should be able to be an end point.

Respondents asked 'what measurement and monitoring is done to identify issues and resolve them before they escalate?'

Financial Performance of Councils

There was little feedback on this aspect of the review with the predominant response suggesting that no changes are required. Two suggestions were made:

- That all reporting be consistent (for appropriate comparisons) but not overly time consuming; and
- That minimum requirements be detailed and supported by resources on best practice.

General Manager's roll

A small majority supported retaining the General Manager's Roll (55%) and respondents had a view that the review of criteria, although needed, should be undertaken by the Tasmanian Electoral Commission.

Election Expenditure and Disclosure

There was agreement from respondents that election expenditure and disclosure needs regulating and there was support for full disclosure and for a raised maximum expenditure amount.

Regional bodies

A small majority of respondents were not in favour of prescription in relation to the regional bodies (55%) but over 60% agreed there should be a common purpose for the regional bodies. Support for prescribed governance was evenly divided (50% for, 50% against).

It was suggested that the functions need to be well defined and focus on economic development; that State Government should contribute to the funding of these bodies and that governance should include independent and skills based Board Members in addition to representatives from councils.

Reducing Red Tape

No significant concerns were raised in relation to red tape.