

30 January 2018

LGA Review
Department of Local Government, Sport and Cultural Industries
PO Box 8349
Perth Business Centre
Western Australia 6849

Submission on the Review of the Local Government Act

Please accept this submission on matters identified in the Consultation paper pertaining to the above.

This submission presents my own personal opinions and is not representative of those of the City of Nedlands Council.

Summary

Training

Contemporary governance is complex requiring appropriately skilled Councillors to balance competing demands to solve problems. To be effective, Councillors therefore need training just like Board Directors. And unlike some Board Directors, Councillors are remunerated, they are not volunteers.

Culture

Council culture impacts all decision-making. Hence, good leadership is required from the Mayor/President and Deputies to manage conflict. Specific training and mentoring may assist.

CEO

CEO Recruitment and performance management is critical to the successful delivery of a Council's strategy. Standardising requirements and providing independent oversight could lift overall standards if linked to benchmarking across the sector.

Transparency and accountability

A trial of a 'Ratepayer only' accessible portal could assist in meeting ratepayer demand for increased transparency and accountability, as well as the movement of more services on-line increasing efficiency.

Committee governance

There is much greater scope to improve the efficiency of Ordinary Council meetings through improved Committee governance.

Capacity for Regional subsidiaries to borrow

This is supported to assist in planning and implementing infrastructure strategies, larger scale 'visionary' projects (which could attract Federal government CityDeals funding) and management plans for environmental assets that know no artificial boundaries.

Issue 1: Relationships between Council and Administration

Council's role

Councils should operate similarly to a Board of Directors given their governance role, collective decision-making responsibilities and oversight of what is effectively a business. Hence, the governance environment for local councils (as adapted from the corporate governance environment) could be considered as per Figure 1. Importantly ratepayers are separate to the community. The latter increasingly organised into 'stakeholder groups.'

Council's functions as per Tricker's framework for Board functions¹ may be considered as per Figure 2. This model reflects the need for Council to work with and through the CEO who executes decisions made. Sitting across the roles is the need to control 'risk.' As Council's core aim is to make collective decisions as servant leaders of the ratepayers they must have expertise in decision-making and be comfortable in handling risk (Figure 3).

Figure 1. Local government governance environment



¹ Robert I. Tricker, *International Corporate Governance: Text Readings and Cases*, New York: Prentice Hall, 1994, p.149

Figure 2. Tricker’s framework for Board functions

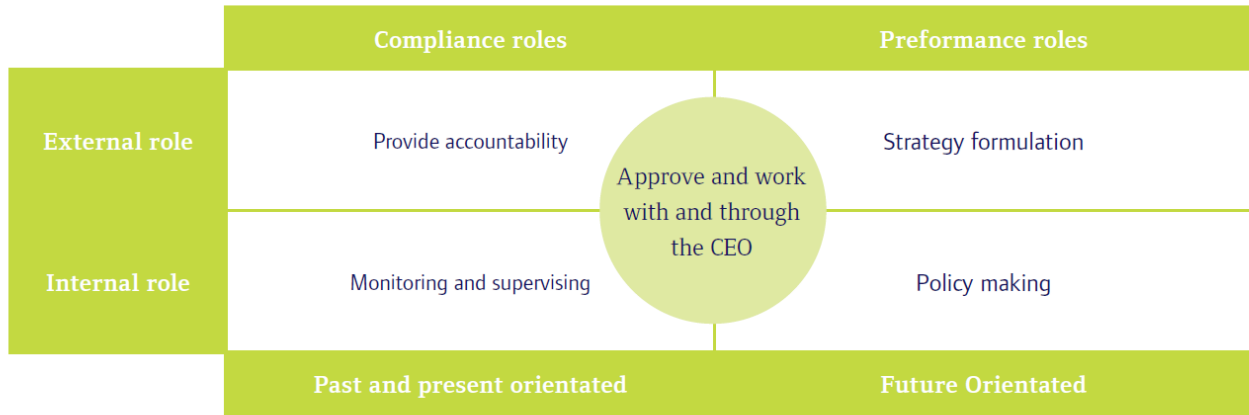
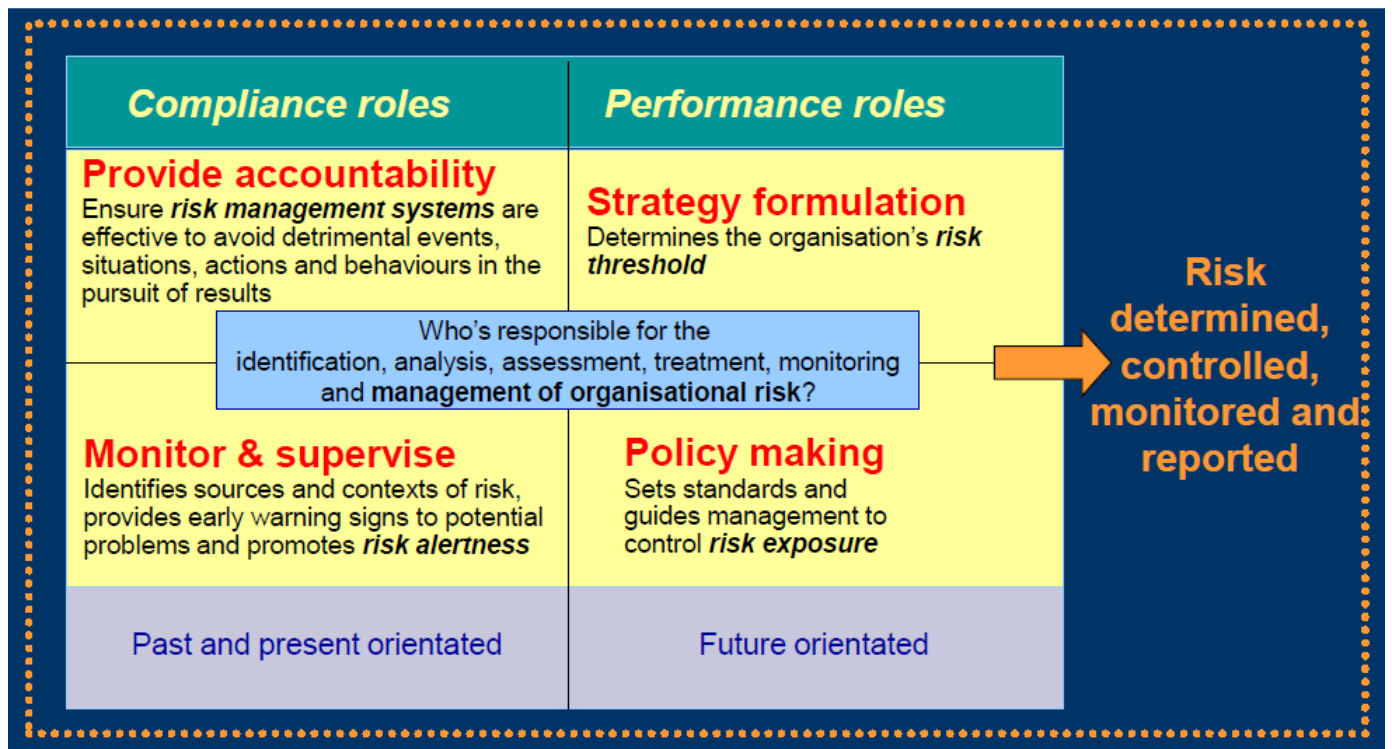


Figure 3. Using the Tricker framework to address risk²



² Ibid

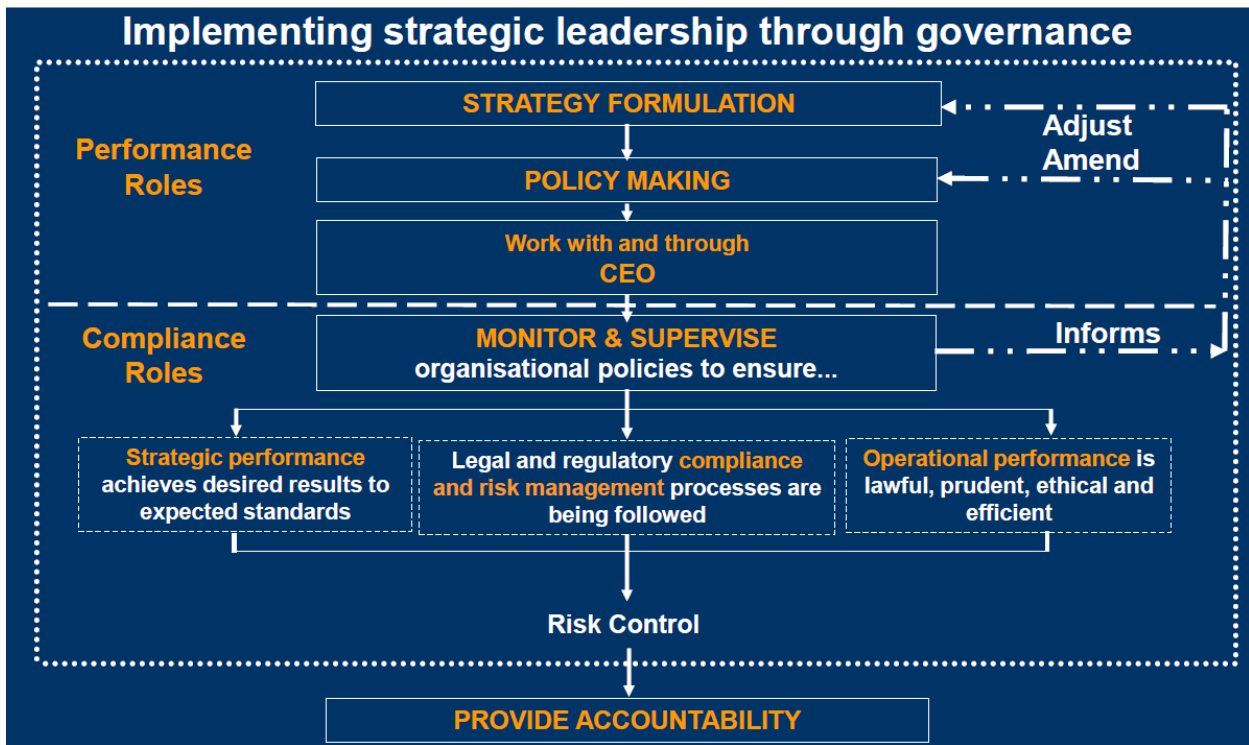
Councillor functions

This could include:

- Set strategic direction
- Strategic policy making
- Monitor performance
- Make resources available
- Enforce compliance
- Set risk appetite and identify key risks
- Be accountable to ratepayers

In my experience three areas Councils appear to struggle with are ‘risk’, ‘strategic policy making’ and ‘setting strategic direction.’ This flows through to poor decision-making on complex issues as Councillors take a risk-adverse approach in a policy vacuum. The result is two-fold; ad hoc decision making, and continual delays in making a decision until a crisis erupts. In the absence of specific training in these areas Councillors struggle to be future-focused thereby relying too heavily on Administration blurring the lines between governance and management, and performance and compliance (Figure 4). In particular there appears to be a culture of ‘set and forget’ regarding strategy rather than building strategic awareness into decision-making focusing on what matters to the vision of the Council and the impact that has on the community at each and every Council meeting.

Figure 4. Implementing strategic leadership through governance³



³ http://apra.gov.au/PHI/PHIAC-Archive/Documents/PHIAC_Governance_Sept_09.pdf

The role of Committees

Well-functioning Committees that perform an advisory role to aid the process of governance have the potential to significantly improve risk taking and policy making by Councillors. To function well a Committee must have a strong Chair, include diverse representation, be no more than nine members (including the Chair) and be driven by a Terms of Reference and a Business Plan. As with Council meetings, attendance at Committee meetings should be mandatory.

Issue 2: Training

Competencies

In my experience Councillors need the following skills and knowledge to perform their role:

- leadership
- policy making
- strategic decision-making
- strategic thinking (including risk)
- community engagement
- land use planning
- understanding of the law and finance

Funding and mandating training

Elected member training should be mandatory for first time and existing Councillors with exemptions provided for those who already hold an approved Masters of Business Administration and/or are Graduates of the Australian Institute of Company Directors (AICD). First time Councillors should complete training within 6 months of election, and existing Councillors should have 6 months from enactment of new Regulations to complete the training. There should be no requirement for candidates to undertake preliminary training as this could be wasted effort by all parties concerned if the candidate is not elected.

The Department could work with the AICD and WALGA to design an appropriate course for elected members supported by ongoing professional development training to acquire minimum points to maintain competency standards. Funding of mandatory training could be an 80/20 split between a government-funded training fund and elected member contribution as skills acquired are likely to be transferable beyond Councillor duties.

There is likely to be pushback to mandatory training from experienced Councillors and those Councillors working full time given time constraints. Given the pace of change these days the former are unlikely to be across all of the contemporary aspects of governance. As for the latter, many full time workers fit study in around jobs and providers of post graduate education make allowances for this.

Issue 3: Behaviour of elected members

Codes of conduct

There is no reason why standards of conduct/behaviour should differ between local governments. For this reason local governments should adopt a model code with certain clauses subject to modification. The code of conduct should be enforced as per the enforcement requirements in place currently in NSW, Victoria, NT and Tasmania.

Streamlined rules of conduct (Option 1)

These are a good idea, as are the suggested areas of focus. Lesser instances of inappropriate behaviour should be managed through strong leadership at a local level by the Mayor or President (or Deputy if the complaint is about the Mayor or President) aided by an independent Mediator or Advisor to ensure proper functioning of Council decision-making.

Three months to submit a complaint is sufficient.

Revised disciplinary framework (Option 2)

An outcomes-based framework is not presently supported in the current environment as it is open to far too much interpretation. If mandatory training for elected members is required and includes leadership training then over time an outcomes-based framework may be more appropriate.

Application of rules of conduct

A caretaker-like period should be declared during council elections during which time the rules of conduct should govern behavior of both elected members and candidates. Therefore, some training in the acceptable behavior will be required when a candidate nominates. With social media a big part of campaigns now, appropriate sanctions are needed to manage behaviour in this environment.

Offence provisions and confidentiality

These should apply to former members and employees but only for a period of 6 months and a maximum penalty of 1 year imprisonment.

Details of a formal complaint should remain confidential at all times to protect the integrity of the process and potentially avoid 'trial by local media.'

Review of elected member non-compliance

A two-step process introduces more red tape, more people into the decision-making process and a potential for more errors with more room for reviews of decisions. With appropriate leadership training of all elected members, and a greater role played at the local level in dealing with some disputes the status quo should prevail and function more efficiently.

Mediation, prohibition from meetings and compensation

Mediation is supported as a sanction for the Panel to reduce potential for recurring behaviour. A financial penalty and suspension from 2 Council meetings is also an appropriate sanction. The Panel should not award financial compensation to the local government as it may be that the 'Council's culture' is at fault and needs addressing particularly as complaints since 2007 have come from less than 10% of the State's local governments.

Complaint administrative fee and tabling of decision report

Yes this is supported as it is likely to deter nonsense complaints. The fee should be \$100 and non-refundable. A decision report should be tabled at the next Ordinary Council meeting.

Elected member interests and additional suggestions

Only those who are office holders in not for profit organisations should refrain from participating in decision-making.

Mayors and Deputy Mayors should undergo specific conflict resolution training to manage minor issues or disputes between Councillors to reduce the load on the Standards Panel.

Issue 4: Local government administration

CEO Recruitment

Five year contracts for CEOs demand a rigorous selection and recruitment process particularly as termination comes with a one year payout. This may mean independent advice and oversight by the PSC through a CEO recruitment standard. Such an approach, also describing the common requirements that a CEO should possess could assist in benchmarking CEO performance across the sector lifting overall standards.

The most important attributes and competencies for a CEO to have are leadership, strategic thinking and interpersonal skills.

CEO Performance Reviews

The PSC should be involved in CEO Performance Reviews and in the process develop a standard for such reviews to again assist in benchmarking. Reviews should be undertaken twice a year given increasing pace of change and fluidity in today's workforce.

If an election involves the Mayoral position there should be discretion given to the new Mayor to review the CEO's performance within 3 months of the election. The Mayor-CEO relationship is a vital one and it's important for good governance that the relationship is productive.

Staff performance

Greater oversight is required of recruitment of staff to avoid potential criminal behaviour that can be problematic in small organisations where too many people have access to confidential information given the need to cover staff shortages etc.

There is a general feeling that staff numbers in metropolitan councils are ballooning without a corresponding increase in value from rates. A general audit of the sector's staffing ratios to ratepayers, and revenue over the past 10 years, with identification of service areas where numbers have greatly increased may be appropriate.

Issue 5: Supporting local governments in challenging times

In situations where the governing body is failing to adequately serve electors and ratepayers provision should be made for the community to meaningfully partner with State and local government to resolve the issue (whether minor or major). For example, in April 2016, the Victorian Parliament passed legislation to dismiss the Greater Geelong City Council and provide for the election of a new Council in October 2017. During the debate of this legislation, the Victorian Government committed to consult the Greater Geelong community about the structure of its future elected Council. The Minister for Local Government selected a citizens' jury format as the approach to consult the community. A citizens' jury enabled the community to be fully informed of the issues and options, to put forward its views and ideas and to deliberate and decide what it wants and expects from its future Council⁴.

Issue 6: Moving between State and Local Government

There are many benefits to allowing seamless movement of employees between State and local government. As the complexity of issues increases a collaborative approach is required to solve the wicked problem. This has been particularly evident in the work I've undertaken with Nedlands Council, Western Power and the Public Utilities Office to implement a fairer funding model for retrofitting underground power. The concepts of 'shared

⁴ https://www.localgovernment.vic.gov.au/__data/assets/pdf_file/0027/66087/Victorian_Government_Response_to_the_Geelong_Citizens_Jury.pdf

value' and 'who benefits, who pays' demand an awareness and understanding of other entities operating contexts and this can really only be obtained through spending time in different entities.

Issue 7: Gifts

The new framework for disclosing gifts is appropriate to balance administrative burden against maintaining ethical standards, but the threshold should only be \$100.

Issue 8: Access to information

In the interests of greater transparency and engagement through higher levels of customer and community empowerment local and state-wide notice requirements should include print and electronic notices (option 6) with appropriate exemptions for regional and remote Councils.

The Department should also oversee a trial of a 'Ratepayer only' portal on several LGA websites through which a greater level of information can be made available with the potential to ultimately move to providing many services online. A rates record, maintenance and complaints registers, a summary of the asset register, performance review of CEO, recordings of meetings and a community noticeboard could feature.

Issue 9: Available information

While some Councils do livestream their meetings the viewing rate is quite low⁵ probably because many do not know about it or indeed are not engaged enough to care. There should be a requirement for all Councils to record their meetings and make them available as a podcast through the Ratepayer only portal. Quite often limited minute taking at Council meetings does little to help ratepayers understand why a decision was made⁶.

Fully support disclosure of elected member attendance at Council, Committee and external meetings including whether only partially attended. Required attendance levels of Council and Committee meetings should increase to reflect the significant increases several years ago in remuneration of elected members.

Issue 10: Red tape reduction

Council and Committee meeting procedures

These are outdated and require an overhaul to reflect modern day practices.

Development Applications Committee

The demands on local governments to address complex issues require greater focus on strategic planning, policy making and risk management. Often this is left until the 'rats and mice' of Council decisions is completed. This could be ameliorated through the creation of the above Committee Chaired by the Mayor and inclusive of a Ward Councillor from each Ward (for a 12 month term), the LGAs Director of Planning Services and 2 technical experts. Newly elected Councillors could be automatically placed on this Committee to build up their core skill sets.

Greater use of technology

As described above a lot more could be done online to reduce paperwork and processing times by empowering customers to self-serve. Councils run many facilities and services not all of which make best use of technology to maximise use. For example, tennis courts could be used far more often if booking could be done online and

⁵ <http://www.abc.net.au/news/2017-06-12/wa-councils-stream-meetings-to-engage-public/8606404>

⁶ Ibid

access granted through a security code keypad at the facility. This negates the need for picking up and dropping off keys. Alternatively ratepayers could apply for seasonal access to universally keyed facilities using a phone app to book facilities.

Issue 11: Regional subsidiaries

Fully support the capacity of regional subsidiaries to borrow money as a means of collective and collaborative service provision taking some Councils one step closer towards amalgamation when they see the benefits that flow from such relationships. Strict terms on the borrowing of money are needed by requiring Ministerial approval and adopting a two stage process. Firstly borrowing only allowed from Treasury Corporation with member councils liable for the debt at the cost of their ratepayers. If successful, move to the second stage where borrowing is allowed from financial institutions adopting the NZ model that debts are not guaranteed by member councils.

Such an approach could be very useful to Councils proactively exploring opportunities to plan and implement infrastructure strategies and management plans for environmental assets that cross boundaries. It could also facilitate greater development of large scale projects such as CityDeals projects where member councils partner with State and Federal government to deliver ground breaking changes in integrated land use and transport planning.

Sincerely,

Cilla de Lacy
City of Nedlands Councillor

