

Local Government Reform

Less Government More Governance

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[(*) the views expressed in this article are those of the author and may or may not be shared as the considered views of AICD]

1 Introduction

- (a) Local authorities (**LAs**) in Australia provide valuable and essential social and community infrastructure and services within their geographic and functional areas of responsibility. The effectiveness with which they meet their civic responsibilities can very much depend on the quality and fitness for purpose of their adopted and applied governance framework and practices.
- (b) LAs exercise devolved authority from State or Territory Governments by virtue of enabling local government legislation consistent with the acknowledged governance principle of “subsidiarity” which encourages the appropriate devolution of authority and decision making to the lowest (local) level of efficient and effective functionality.
- (c) Although this governance principle remains sound, the environment within which LAs operate has changed markedly over recent decades including due to:
 - radical advances in technology, especially information and communication;
 - nationalisation and globalisation of business and organisational endeavour to gain economies of scale and efficiency;
 - transportation advances resulting in greater mobility of people and business activity;
 - the continuing urbanisation of society;
 - increasing community expectations as to the quality, standard, availability and nature of social infrastructure and services at their disposal;
 - increasing stakeholder expectations as to the proper governance of organisations (government and non-government) and their accountability to the community.
- (d) At the same time LA's have received considerable opprobrium over recent years including on account of:
 - bureaucratic red tape;
 - rises in rates and increases in the cost of local government services in excess of CPI;
 - the quality of decision making concerning proposed project developments;
 - undue focus on parochial issues rather than broader regional policy and strategic advancements;
 - inter-personal politics at Council level;
 - internal tensions between Council and LA management personnel;
 - integrity issues including conflicts, corrupt payments and misuse of position/power.
- (e) These concerns have driven calls for local government reform, which over recent years have manifested themselves in:
 - forced LA mergers and consolidations (sometimes through questionable process and rationale);

- legislative reform with increased prescriptive regulatory controls and State government department intervention powers;
 - attempts to tighten governance related prescriptive controls through public sector management, financial and integrity framework oversight.
- (f) Yet despite these initiatives serious concerns remain and questions are legitimately being raised as to whether the reforms are adequate, or even appropriate, to address the concerns raised.
- (g) Just as society at large and the investment community are now insisting on better governance and performance outcomes from the corporate sector, so too are local communities and rate payers voicing their demands for stronger governance and better performance outcomes from their LAs.

2 **Six initiatives towards better governance and performance outcomes for LAs**

[Initiative 1] A third tier of government?

The community must disabuse itself of this notion. LAs are an exercise of delegated authority from State and Territory governments by virtue of legislative enactment and mandate. State and Territory governments must demand greater accountability and take ultimate responsibility for LA performance as they should for any other statutory authority established by governments under their legislative powers, including as necessary effective interventional powers to “hire and fire” those in control of the LA.

[Initiative 2] Improved governance framework and governance accountability

The art and the science of the governance of corporations and organisations have evolved significantly over recent decades with common principles that can also properly be applied to improvements in LA governance:

- (a) **[Remove prescriptively legislated division of responsibility between LA Councils and management]** LA Councils need to take full responsibility for the management and direction of the LA with delegation of day to day operations to management, but with retention of oversight responsibility. Currently local government legislation prescriptively divides LA operations between Council and management, a principle sound in concept but flawed in practice as it relieves Councils from LA operational performance outcomes and responsibility, and excuses Councillors from effective management oversight. Yes in practice Councils should govern and LA management should manage. But an absolute divide should not be regulated.
- (b) **[Fiduciary responsibility]** Commonly Councillors are now remunerated comparably to many company directors but are not held accountable to a similar level of fiduciary responsibility and liability that apply to directors under the Corporations Act or even to community organisation officers under associations incorporation legislation. The rationale for this approach warrants serious review. Councillors and LA officers must take fiduciary responsibility and accountability for their actions and the proper performance of their roles.

- (c) **[Skills based Councils]** LAs are now multi-million dollar business operations with vital strategic planning, social infrastructure and service delivery responsibility for their communities. Appropriately skilled and experienced Councillors are needed to effectively fulfil the responsibilities of office, not well-meaning but competence-for-the-task-challenged individuals often standing for election to office on relatively parochial and narrow interest based platforms.

Lessons from the evolution of “skills based boards” on commercial corporations might translate to the LA sector including Council skills matrix analysis and disclosure, and induction and continuing professional development programs for Councillors (including reporting against the implementation of such programs on an “if not why not basis”).

Opportunity should also be afforded for Councils to “round out” perceived gaps in their skills and experience base through Council appointments of (say) 2 appropriately qualified external independent Councillors, other than via the uncertainty of outcomes through local election processes.

- (d) **[Remove LA ward structures for electoral representation]** Although such electoral structures help ensure proximity of Council representation to their constituents, it embeds the potential for conflict of interest of Councillor duty and responsibility, and confuses ratepayer expectations of the proper role of their elected Councillors. At law all Councillors, irrespective of their ward or district allegiance, must act in the interests of the LA as a whole without ward or district bias.
- (e) **[Remove the institution of popularly elected mayors/presidents]** The concept is problematic from a sound governance perspective and lends itself to the politicisation of LA governance and representation. Mayors/presidents should be appointed by the elected Councillors as “first amongst equals”. If the mayor/president does not have the support of the Councillors (but only the electorate) then the effectiveness and efficiency of Council meetings and processes risk being compromised.
- (f) **[Council meeting formalities and functional workings]** Firstly, despite the theoretical benefits of “transparency” of Council processes, Councils (i.e. the board or cabinet of the LA) are the only executive decision making body (whether parliamentary, public sector, NFP or corporate sector), that must deliberate and make often sensitive and complex executive decisions in a public forum. Even if governments exercise their legislative powers in open parliament, executive decision making is undertaken in cabinet, at Ministerial level and within government departments, with “confidentiality” of deliberations and process championed. Executive decision making in a public forum materially inhibits proper deliberation and biases outcomes towards short term populist and emotive decisions responding to and currying favour with popular electorate appeal. Executive decision making processes should be in closed session and be confidential, without denigrating the desirability and importance of prior and post community input, consultation and engagement, and transparency in and accountability for the decision once made.
- Secondly, Council standing orders and Council meeting formalities need to be liberated and brought up to 21st century good corporate governance practice from their anachronistic and technical compliance base. Strict adherence to what might be a due and necessary process to maintain good order in a politically charged Westminster style parliamentary gathering of several hundred delegates, risks bureaucratic and technical inefficiency, and should not be necessary, in a meeting of around 10 Councillors who should all be similarly minded and mutually respectful of one another in acting in the best strategic interests of the LA.

[Initiative 3] Improved financial awareness and management by Councils of LA affairs

Great efforts have been made over recent decades to better manage the financial affairs of LAs with longer term strategic and financial planning. Yet Councillor understanding and oversight of LA finances has material shortcomings in practice. To address the moral hazard of LA solvency risk, public sector commission financial oversight has resulted in significant cash investment reserves

being accumulated within the accounts of most LAs with minimal debt other than in exceptional and justifiable cases. The question must be asked “is this the best use of accumulated rate payer funds?” rather than those funds being used to drive a better social dividend and return, perhaps within prudentially set bounds by an APRA style regulatory body of LAs. Further work is warranted in this area.

[Initiative 4] Red tape reduction

Perhaps due to the fallacious image of being a “3rd tier of government”, LAs typically are keen to enact their own individual local laws, by-laws and regulations at a parochial level rather than relatively uniform or standardised approaches being applied across all LAs, with only such modifications as are strictly necessary to accommodate the genuinely unique needs and circumstances of the LA. This current approach results in regulatory fragmentation with bureaucratic red tape inefficiencies, not only for the LA itself but importantly for those served by, or doing business in the district of, the LA, especially businesses providing essential employment and services, as those enterprises roll out their business models and service offerings across multiple LA districts.

[Initiative 5] Greater functional co-operation, strategic alignment and integration of operations between adjoining LAs

Through processes of functional co-operation, strategic alignment and integration of operations between LAs, improved economies of scale and scope, and regional integration of essential LA services, social infrastructure and planning should be possible. Although some regional LA initiatives are currently being undertaken by some adjoining LAs, the opportunity for much greater co-operation, co-ordination and engagement between LAs within a common regional district must surely be a prioritised strategic objective, with parochial populist LA bias discouraged in the interests of the greater good for broader regional long term outcomes (including those of each LA in the region).

[Initiative 6] Councillor integrity issues – conflicts, corruption, hospitality/gifts, electoral funding

Local government legislative and regulatory controls have become too prescriptive, arbitrary and bureaucratic with “disclosure” prospectively tainted behaviours and practices now appearing to be the ultimate objective rather than ethical standards of whether or not the subject behaviour or practice is “right” to be engaged in or tolerated. This is not to impugn the benefit of transparency arising from disclosure, but rather to acknowledge that disclosure is a means towards a more ethical end, rather than an end in itself. Greater focus on Councillor fiduciary responsibilities (refer Initiative 2(b) above) and their enforcement, and enhanced education, training and professional development of Councillors (refer Initiative 2(c) above), should help in facilitating a more “descriptive” and ethically sound culture to develop and prevail within LAs.

3 Conclusion

The communities of each LA district in Australia deserve strong governance and performance outcomes from their LAs and those in control of them. Legislative and regulatory efforts to date have failed to deliver reforms which in practice facilitate desired behavioural and performance outcomes.

There are lessons that can be learnt from the developments in corporate and organisational governance in other sectors of the economy over recent years.

The initiatives proposed in this paper are worthy of consideration to help provide better accountability and performance outcomes of our LAs, and to instil greater community confidence in our system of local government, by providing for “less government and more governance”.