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From: Paul Jackson [redacted]
Sent: Wednesday, 18 May 2022 10:50 AM
To: Local Government Board
Subject: Local Government Review Submission - Local Government Professionals - General Manager members

Categories: For follow up

Attention: **Ms Sue Smith**
Chairperson
Local Government Board

Dear Sue,

LG Professionals Tasmania made a submission to the review on 6 May which was the result of engagement with its membership base. In addition to that submission on behalf of Local Government Professionals and its General Manager members, the following submission is made to the Future of Local Government Review.

This submission focusses on legislative changes that aim to promote good governance and workplaces for elected members, council staff and the public.

Unlike the federal and state levels of government, local government has a different operating environment. While there are clearly political aspects to the role elected members undertake, there is a clear and obvious alignment between local government councils and commercial / not for profit boards. This is because councils do not have upper and lower houses, nor do they have an elected party and an opposition. At a macro level, these differences should be recognised within the architecture of any revised local government legislation.

The first suggested change involves section 28 of the *Local Government Act*. Broadly speaking, section 28(1) sets out individual functions of an elected member. Section 28(2) sets out collective functions. The sections are not linked – legislatively they stand alone. There are two suggested changes:

1. That the individual and collective functions set out in section 28 should be clearly stated as needing to be undertaken within the context of the requirements placed on a council in accordance with section 20(1) of the Act.
2. That the requirements set out in section 28(2) should be primary functions with the functions set out at section 28(1) to be subservient.

The logic of these suggested changes is simple. Firstly, the actions and decisions of individual elected members should always be within the context of the broad functions of a council. Secondly, giving primacy to the functions set out at section 28(2) would assist councils to focus on collective decision making and outcomes over individual issues. Collectively, these changes should aim to place good governance principles at the forefront of council activities and decision making.

The second suggested change is to bring good governance principles into the legislative structure. In the same way that the Corporations Law sets governance standards for directors that are legally enforceable, so should local government legislation. Such a change would assist to recognise that local government does not operate within a traditional parliamentary structure. It does not have a 'house of review' nor does it have Estimates Committees. Clear and relevant legislated governance standards will assist to guide elected members (and council officers) in the execution of their functions while also giving their communities a degree of comfort that their council operates efficiently, transparently, honestly and in a manner that is consistent with 'normal' boards. To be clear, this suggested change is not seeking legislative incorporation of the 8 major characteristics of good governance (Good_Governance_Guide_June_2018.pdf (dpac.tas.gov.au)). While those characteristics are important, the suggestion here is to include a set of relevant duties derived from Chapter 2D.1 of the *Corporations Act 2001* (Cth).

The third change seeks to address workplace safety. Presently, section 5(5) of the *Work Health and Safety Act 2012* (Tas) excludes an elected member from responsibility in respect to the PCBU. That places General Managers in an invidious position in circumstances where a duty is owed to both elected members and council staff, but one party is not able to be reasonably or reliably directed. As a potential solution, a legislative amendment to section 5(5) of the WHS Act could make clear that the Mayor assumes PCBU responsibilities in respect to elected members (and all aspects of their workplace) while the General Manager assumes PCBU responsibilities in respect to all other workplace participants together with necessary amendments to the *Local Government Act*. Overt incorporation of all levels of local government organisations into WHS Act obligations would assist to provide elected members with a safer workplace – in effect responding to issues and concerns that have emerged in recent times.

The fourth suggested change is to legislate (either within the Act itself, through regulation or Ministerial Order), a requirement for training and induction for elected members. Specified training should occur within an identified period after each election and include an obligation to refresh that training again after each election. Focal areas should include governance obligations, financial and procurement management within local government, planning and work health and safety as a minimum. This suggested change aims to embed meaningful change arising from the first three suggested changes.

Thank you for the opportunity to provide this submission. We wish the Board well with its endeavours and would welcome the opportunity to clarify any aspect of this submission, or to expand upon it.

Regards
Paul

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