

MUNICIPAL ASSOCIATION OF VICTORIA

28 February 2022

Dear Local Government Project

Local Government Culture Project Discussion Paper

Thank you for the opportunity to make a submission in response to the Local Government Culture Project Discussion Paper.

The Municipal Association of Victoria (MAV) is a membership association and the legislated peak body for local government in Victoria. All 79 Councils are members of the MAV. We support the development, adoption and implementation of high-quality governance processes, protocols, conduct and relationships across the local government sector. Our work in this area includes delivery of a comprehensive learning and development program for Mayors and Councillors and providing sector-wide advice and support on a broad range of governance matters.

We welcome a focus on the importance of culture and conduct and how these underpinning elements of good governance practice can be improved. It is understood the purpose of the Discussion Paper is to summarise the culture and conduct issues the sector is experiencing and provide initial views on the reasons for them and seek responses about these issues. We understand a final report will be prepared proposing actions and activities that will help address Councillor culture and conduct issues. Our submission makes preliminary comments prior to responding to the questions asked in the Discussion Paper.

Preliminary contextual comments

We are concerned the Discussion Paper includes inaccuracies, which negatively skew and potentially misrepresent the sector to the reader. For example, statements are included that there is a *'clear and growing problem of poor and unacceptable behaviour in certain sections of the local government sector, particularly amongst some Councillors'* and there are *'increasing numbers and severity of poor Councillor behaviour'*.

We acknowledge there have been instances of poor Councillor behaviour. However, the Paper conflates poor Councillor behaviour of a few with poor organisation values. It lacks evidence to support the conclusions that poor behaviour is a growing problem, of increasing numbers and severity. In our view the great majority of Councillors demonstrate effective leadership, behave ethically and respectfully, and contribute to good decision making in the best interests of their communities.

The portrayal of Local Government in the Discussion Paper also does not provide a completely accurate nor consistent description of the sector. The 'Background to the issue' section of the Discussion Paper opens by describing local government as *'the part of government responsible for delivering many community services'*. Local government is much more than this and is accurately described later in the Paper as declared by the Victorian Constitution as 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'*.



The *Local Government Act 2020* (LGA 2020) provides the role of a Council is to provide good governance for the benefit and wellbeing of their communities. The social, economic, environmental and cultural issues impacting on our 79 Councils to achieve this role are different. Given the needs of their communities no two Councils are responding to the issues in the same way. It could be argued the differences are greater than the similarities. These differences bring complexity to what is required to perform the role of a Councillor.

The LGA 2020, our new modern primary piece of governance legislation which is arguably the most progressive of the Australian jurisdiction is principles based and encapsulates and articulates the requirements for overarching and supporting principles for Councils to demonstrate it is providing good governance. The Act provides the role of Councillors is to participate in the decision making of the Council; and represent the interests of the municipal community in that decision making; and contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

The Act also provides to perform the role, a Councillor must consider the diversity of interests and needs of the municipal community, support the role of the Council, acknowledge and support the role of the Mayor, act lawfully and in accordance with the oath or affirmation of office; act in accordance with the standards of conduct and comply with Council procedures required for good governance. Furthermore, the LGA 2020 has introduced a new governance framework which has required the adoption of Governance Rules, Transparency Policy, updated Code of Conduct, Expense Policies etc.

The MAV considers the complexity of the role and functions of a Councillor (as described above), a democratically elected position, in 2022 must be acknowledged and further understood. There is no cookie cutter approach to performing the role of a Councillor. Immediately following election there are community expectations, media scrutiny, critical budgetary and other decisions to be made, strategy documents and budgets to be prepared and adopted, Councillor colleagues and officer relationships to establish and governance requirements to understand and comply with. How Councillors respond and are supported to deal with these pressures and workloads at the initial stage following election and throughout their four-year term is fundamental.

From the time a person nominates to be a candidate for election as a Councillor there needs to be a flow of information and advice which is followed once elected with an induction program that is not a one-off session but a continued deliberately planned program extending across the council term. The complexity and regularly changing demands on a Councillor requires such an approach to assist Councillors to have confidence and the ability to meet the requirements of their role.

To obtain a true picture and understanding of why instances of poor behaviour have been demonstrated by Councillors, a rigorous primary research project considering the effect of the complexity of the role of Councillor is required to establish the evidence base upon which to draw educated conclusions and to develop appropriate responses.

Other jurisdictions have dealt with similar issues as those highlighted in the Discussion Paper. In 2019 the United Kingdom's Committee on Standards in Public Life conducted a review of Local Government Ethical Standards and noted 'it is clear that the vast majority of councillors and officers want to maintain the highest standards of conduct in their own authority. We have, however, identified some specific areas of concern. A minority of councillors engage in bullying or harassment, or other highly disruptive behaviour and a small number of parish councils give rise to a disproportionate number of complaints about poor behaviour. We have also identified a number of risks in the sector: the current rules around conflicts of interest, gifts and hospitality are inadequate; and the increasing complexity of local government decision making is putting governance under strain. The challenge is to maintain a system which serves the best instincts of councillors whilst

addressing unacceptable behaviour by a minority and guarding against potential corporate standard risks’.

More detailed consideration of the interventions in place by other jurisdictions in addressing the issues of poor Councillor behaviour may assist in the Victorian context.

Responses to the questions in the Discussion Paper

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 LGA 2020 clearly defines the roles of Councillors, Mayors and Deputy Mayors. Role clarity, in the opinion of the MAV, is not the cause of poor behaviour or culture.

While this legislative prescription brings clarity, including by making the distinction between these roles and that of the CEO, documenting the day-to-day duties of the Councillors, Mayors and Deputy Mayor roles by adopting a position description for each position may assist more generally. When read together such positions descriptions may assist to improve role clarity by establishing the boundaries and expectations for each role and ensure an agreed understanding of what is required when a Councillor nominates for a leadership position such as Mayor or Deputy Mayor. Such position descriptions could be prepared using a sector led/co-design model and included in candidate information resource kits.

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?

The question implies diversity and experience of candidates’ backgrounds are barriers to good governance.

Councillor diversity of opinions, skills and backgrounds are important features of a democratically elected council. They provide the building blocks for developing a shared community vision and strengthen locally lead decision making about local issues, in the best interests of communities.

Councillors require a broad range of leadership capabilities to navigate the complexities of Local Government decision making. The essential work of a Councillor includes a cycle of in-depth briefings, discussions and debate about the business of council – all areas where Council’s devote considerable time and resources in supporting Councillors.

Further research may be of benefit to determine the current level of investment Councils are devoting to Councillor development and the cultivation of an environment of transparency, honesty, integrity and trust. This research could include better practice case studies, and the application and benefits of governing body tools like Board self-assessments, which are designed to assess (individual and collective) leadership capabilities, skills and performance.

In the UK, standards committees are established by councils to continuously review ethical standards and draw attention to areas where standards could be better upheld. Standards committees see themselves as playing a leadership role in setting expectations of behaviour and continually holding the authority to account on standards issues. Whilst the MAV is not advocating a similar standards committee for each Victorian council there may be an argument for an overarching Local Government standards committee assisting and playing a leadership role in setting standards and expectations and as a resource for the sector to draw on.

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 merits of establishing a mentoring program and LGV consideration of broader implementation of community leadership programs to strengthen the capacity of individuals who are seeking to take on leadership roles, including nominating for Council, and which have a focus on leadership skills and capacity, civic participation and government would also be welcomed. Research into the programs and initiatives in other local and international jurisdictions may also identify useful case studies or examples of good practice.

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?

Councils are not Boards. Councils are a democratically elected tier of government which adopt a Council Plan, policy and other strategic plans following deliberative engagement processes conducted with their communities. Councils are focused on their communities and deliver these plans effectively. Debate and differing views are part of the process in the Council chamber in making good decisions through robust debate which is conducted respectfully.

Local Members of Parliament should refrain from gratuitously attacking Councils in their area, and from encouraging perceptions of 'parliaments of opposition'.

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?

Noting the good behaviour and practice underpins good culture and governance, the introduction of candidate training prior to the 2020 elections was a step in the right direction. The next General Election offers an opportunity to improve the depth and breadth of information in the mandatory training.

The new legislative requirement for councillors to complete mandatory induction training is a welcome recognition of the importance of the role, however, it is unclear the extent to which the training varies across the sector. This training occurs in amongst a full schedule of key strategic priorities and competing commitments and we are aware some Councillors feel this training needs to be revisited to reinforce the key elements as Councillors deepen their knowledge of the role.

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

As noted in the Discussion Paper the MAV provides a Councillor Professional Development Program. This Program includes courses which cover a range of competencies which are core skills a Councillor requires such as LG finances, meeting procedure, land use and building, negotiation and influencing, dealing with difficult people, discrimination & bullying, sexual harassment, conflict resolution, managing the CEO employment cycle, mayoral induction and much more. In 2021 we delivered over 50 training sessions of this nature.

In addition, we offer the AICD Company Directors course tailored specifically for Councillors and council officers. This is one of our most popular courses on offer and is consistently fully subscribed.

The MAV suggests examination of existing packages of training and development which specifically target Councillors be conducted. The Australian Industry and Skills

Council approved an updated LGA Training Package Products in December 2020 which was approved for endorsement by the State and Territory Skills Ministers in January 2021. This package includes a Diploma of Local Government for Elected Members, however, at this stage the Diploma is not being offered by any Nationally Registered Training Organisation in Victoria.

There may also be value in considering some form of continuous professional development for elected representatives noting this would have broad application across all levels of elected government.

The MAV supports the establishment of a separate professional development or training fund to improve access given not all council budgets are able to accommodate the specific development needs of individual Councillors. Promoting the benefits of a sector fund would also assist in mitigating the negative community perceptions associated with the disclosure of the costs of training for Councillors.

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 guidance provided and use of social media should be addressed in the same way as other communication tools.

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?

With the decline of local and regional media, social media is becoming an important tool for councils and councillors in the dissemination of council news and engaging with their communities on local issues.

Councils have codes of conduct and social media policies in place and provide training support to users. The sector may benefit from analysis of the application of these policies; the level of support and training provided to Councillors as users and publishers of their own social media accounts; and guidelines or a model code of practice to assist councillors to navigate the risks and opportunities of social media.

Given the pace of change of digital technologies, regulating social media usage maybe more appropriately dealt with through commonwealth and other state legislation. For example, the recent federal announcement of proposed anti-trolling legislation following the ruling in the high court found publishers can be held liable for public comments in online forums.

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?

Setting and documenting the expectations and agreed mechanisms to address poor Councillor behaviour and misconduct from the start of a council term provides a strong basis for addressing issues when they arise. Acting quickly to manage the smallest instances of poor behaviour reinforce the requirements. Creating an ethical culture for an organisation which is supported by the actions of all leaders – Councillors, Mayors, Deputy Mayors, CEOs and Council staff – is a basis upon which to facilitate poor behaviour being called out without fear of retribution. Investing in leadership training and development and having an organisation wide culture which is based on agreed good governance values is crucial.

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

Councillors find it difficult to navigate the conduct/arbitration processes with feedback that some matters have been dismissed on technical grounds such as submissions

made on the wrong forms or for not referencing the exact parts of the Code of Conduct. This appears contrary to what these processes are designed for and overly legalistic. Processes should be reviewed to ensure they are more appropriate and focus on genuinely trying to resolve the issue in contention.

Ensuring councillors have a clear and detailed understanding of the process involved in dispute resolution is essential to a successful outcome. Officer support to guide Councillors with the process is important as is a step-by-step guide for each dispute resolution process. Councillors without experience of the resolution process need written information and guidance and officer support about what is involved and expected from all parties to a dispute.

The Discussion Paper mentions the possibility of broadening the role of a Municipal Monitor to be appointed on the request of a Council to provide supportive and preventative function. While this is an option there is nothing precluding a Council from currently appointing a suitably qualified governance expert to take on this role and provide a report to the Council about issues which are identified however, a potential positive of the appointment of a Monitor would mean this is a truly independent person and would most likely bring with it greater transparency that the Council is looking to resolve a particular matter which could be seen as a positive or a negative to some.

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?

Whilst there is a list of standards of conduct which applies under the LGA 2020 ensuring a focus on ethical standards and behaviour from the beginning of a council term may assist if behaviour issues arise. Having a statement about such standards, putting in place a Council Performance Assessment process which includes an examination of performance against the standards and the development of a professional development program for councillors on an individual and team basis may assist as an early intervention mechanism.

The MAV considers early intervention is critical to the confidence councillors have in the process however, it must be acknowledged that each dispute is unique and stipulating an acceptable arbitrary duration or timeframe is most likely not providing an adequately nuanced process to come to a resolution which resolves each matter sufficiently. It is important for the procedural fairness of all parties to ensure matters are dealt with in a timely and efficient manner without undue and unnecessary delay.

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?

The LGA 2020 provides a framework of interventions to address poor behaviour claims. A whole Council should not be penalised by a process to address the poor conduct of one individual or a minority of councillors. To avoid the matters escalating to excessive punitive measures and costly interventions on the entire council, processes could be sharpened to ensure sufficient resources and timely directions on conduct matters that proceed to the Panel stage and or referral to external complaint resolution bodies. Also, identification and consideration of non-legislative mechanisms available at the Minister's discretion or offered through LGV.

Consideration could also be given to including reporting of conduct matters which proceed to a formal stage in a Council's annual report.

Finally, and although to some extent outside what appears to be the scope of Project, the MAV notes the basis of a well-functioning Council is heavily reliant on the

political and administrative arms working together in a way which is underpinned by an agreed values base and a strong appreciation and respect for each other's roles and responsibilities. The critical and central role of the CEO in managing the organisation and working with the Councillor team is essential. Strong and robust relationships between Councillors, CEOs and Executive Teams where there is trust, understanding, agreed values and vision promotes an organisational culture which enables the organisation to govern positively for the best interests of local communities.

We seek a meeting to discuss our submission.

Kind regards

A handwritten signature in black ink, appearing to read 'K Thompson', with a stylized flourish at the end.

KERRY THOMPSON
Chief Executive Officer