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This submission addresses two issues, namely;

1. That the relationship defined in the Local Government (LG) Act 1995 between a CEO and a Council is vulnerable to distortion and the likelihood of this happening is increased by contemporary social mores, and
2. That the Act does not address the role local government has as a foundational part of the Australian system of government.

The conclusion drawn from analysis of these issues is that; for local government to function as the Act was designed to have it do, relies on social mores that are in decay. However, the Act contains under-used mechanisms that can remediate this. Before making changes to democratic fundamentals of the Act the effects of human factors that closer scrutiny might remedy should be very carefully considered.

This is a response to question 126 of the of the [Local Government Act 1995 Review Phase 1 Consultation Paper](#). (p119).

### **1. Fundamental contradiction in roles.**

Under the Act 5.41 (a)&(b), a CEO is required to explain to a council its responsibilities under law and provide it with the information necessary for it to make informed decisions. However, those decisions include the policies of the local government (LG) that would reasonably be expected to include constraints and requirements on the CEO. Further, it is the council not the CEO that carries responsibility for the performance of the LG (Act 2.7(1) (b)).

Self-evidently there is a conflict of interest in an employee explaining responsibilities to their employer. Indeed, by defining this as a role of a CEO the law implicitly assumes that councilors are likely to be ignorant of the law and the functions of a LG. There is strong evidence that this assumption is apparently valid in that the vast majority of councils depend upon their CEO to propose policies for them to adopt rather than independently come to a consensus on necessary policy. Very few councils for example have policies that require that verified understandable business efficiency and effectiveness information be provided to them so they can be sure that good value for rates paid is being delivered.

Further, given a CEO has control over agenda setting and that there is a lack of an equivalent to party discipline in a council to counter the risk of under-deliberated positions, it's not unusual for there to be deep divisions within councils. A CEO by contrast has singular authority over all staff. The practical effect of this is that CEOs are likely to have very significant informal control over councils and there no direct counter in the Act to this influence being misused. It is difficult for a council even if it is unified and diligent, to acquire the resources to address such misuse if it happens.

At a time when even the leaders of religious organisations are being proven to be undeserving of public trust it is a serious omission that there is no effective counter to the risk of an inappropriate culture of manipulating councils to develop among CEOs and senior LG staff.

## **2. Investing in maintenance of foundations of democracy; the LG role.**

Political participation is the cultural linchpin that has made liberal democracy the foundation of economic and social vitality worldwide. It does this by fostering the cultural mores that serve the cause of good governance, excluding corruption and building confidence that the system will deliver fairness. Falling levels of political engagement by contrast diminishes all that; weakening scrutiny and diminishing the talent pool for all politics. Participation has been falling for many decades.

Participation is more than just voting, whilst membership of the two main political parties has crashed from over 15% of the population after WWII to below 0.5% now (96% decrease), the proportion of politicians who transition from local government to state politics has reduced much less, for example; just over 30% of the members of the current State Government have previously been elected to a LG. This proportion has been higher but the fact that hasn't collapsed suggests a strong divergence of inclination between people with political ambitions and the general population, who's votes it is that create political volatility.

Political volatility saps economic and social vitality. Larry Diamond, a political scientist at Stanford University, a decade ago put forward the idea of a global "democratic recession". According to the Economist magazine Intelligence Unit's Democracy Index this unwelcome trend remains firmly in place in 2018.

No government can ignore evidence of a growing risk to the welfare of the system it was elected under because its members are bound by their oath to serve the people with that office; it's a fundamental duty like defense of the realm. Further, as low participation and confidence in the system is the threat, the logical place to defend it is at the local level where politics is closest to its voters.

The LG Act and the associated Planning Act already contain many requirements for LGs to consult with their community. This requirement is typically discharged by a routine invitation for comment that typically attracts a small number of responses that cannot statistically be deemed representative. If consultation was required to be meaningfully representative it would require LGs to find ways to attract substantially more engagement. This possibility creates what seems the best step towards a healthier degree of participation.

The difficulty with legislating for better engagement is that the most effective way of achieving it likely varies from suburb to suburb. This makes the simpler legislative option of compulsory voting attractive. However, compulsory voting at state and federal level has been in place for decades while the disengagement problem exacerbated. It is also easy to predict an alarmist ideologically-based political reaction to compulsion.

The middle ground would be to trial a voluntary engagement approach in LGs such those close to the city centre. These LGs are likely to be able to afford it because it would meld well with activation strategies that most of these LGs already invest in. Even just the expression of a clear will to do due maintenance on the foundational ethics democracy depends upon will be valuable, but much more is possible.