

## **Topics - Extracts from the Department of LGSCI Consultation Paper**

### **1. Relationships between council and administration pp 17 - 22**

#### Proposed Cambridge Position

- There is no specific Department of Local Government Operational Guideline on this matter and providing a guideline may enable the DLGCS to be more specific, which may also assist with role clarity.

#### **The Role of Council**

- The current LGA should be amended to be more specific in regard to the Council's obligations (section 2.7)
- There needs to be better definition of Council's roles (similar to the CEO section)
- The definition of Council's role should be expanded to be consistent with recent comments by the CCC on this matter and the latest governance practices for boards specifically should the Act should state the functional role of Council includes:
  - Strategic leadership
  - Set strategic direction of Council
  - Ensure the delivery of Council objectives
  - Audit and validate process and policy annually
  - Review compliance of CEO with delegations of authority
  - Drive the efficient allocation of resources and council objectives.
  - Provide succession planning.
  - Conduct regular reviews of services.
  - Approve all employment contracts for designated senior employees, including dismissal, renewal of contracts, and performance reviews.
  - Better explanation of the application of the principles contained in the Public Sector Management Act (Part 2, s7, 8 &9)
- The Act should clarify that Council may, pursuant to section 5.45 delegate to the third parties the performance of governance functions or may act through specified individuals to audit and validate compliance with process and policy.
- Council can also authorize elected members pursuant to Regulation 9 of the Local Government (Rules of Conduct) Regulations 2007. This mechanism is poorly understood by elected members, The Act should better explain these mechanisms. At present the only mechanism available to elected members to undertake this work is through the CEO and it therefore makes independent scrutiny of the CEO's conduct and compliance with policy and process almost impossible.

#### **The Role of the CEO**

This should specifically define the functions of the CEO. The following amendments are suggested to the current drafting of s5.41:

- (b) insert "accurate" before "advice and information";
- (c) after "implemented" insert "in a timely fashion";
- (d) after "government" insert "in an efficient manner"
- (e) insert "in an accountable and transparent manner"
- (g) replace word "responsible" with "have control of"

Insert new subclauses:

- (j) is obliged to provide full and frank advice and information to councilors upon request;
- (k) ensure that the statutory function of council is performed in good faith and in a transparent and accountable manner
- (l) avoid conflicts of interest and act honestly.
- CEO's should not be employed for more than 5 years without going to market prior to the renewal of their employment contract. S5.39(4) should be deleted for clarity as it is inconsistent with s5.39(2) of the Act.
- Council's should not be able to renew the CEO's contract more than 6 months beyond their election term.

Section 5.46 should be added to require the exercise of the power or discharge of the duty should state the person who has exercised the delegated power.

## 2. Training pp 23 - 31

### Proposed Cambridge Position:

- The training package proposed (pg26) is supported and could be enhanced with the inclusion of a Governance and Risk module and a CEO Performance Review Module. Any analysis of risk should include a review of the raw data surrounding risk events at the local government – not simply an endorsement of a risk register.
- Mandatory Training is supported if it recognizes prior learning at higher institutions. Such training should be in two streams:  
(1) essential training for new elected members including planning, governance and the LGA; and  
(2) ongoing EM training for elected members with more than 2 years experience.
- Essential mandatory training should be completed within 12 months of becoming an elected member
- Candidate training is not supported, but candidate briefing sessions (already undertaken by many local governments) should be encouraged.
- Continued professional development (CPD) should be encouraged, by way of policy. It is noted that there is no capacity for an Elected Member to be reimbursed for training time and often suffer financial loss of wages/business earnings due to the time commitment. The Act should consider a mechanism to pay Elected Members and allowance for training, similar to meeting attendance fees.
- Cambridge does not support a training pool for access by all Local Governments. The 'equalisation' of Local Governments is dealt with through the distribution of the FAGS grant, which compensates for additional costs of living in rural and remote areas.
- Cambridge notes that the roll of capacity building in the Local Government sector has been undertaken by WALGA, and not the DLGCS. The DLGCS should consider other accredited training providers delivering Elected Member Local Government training packages (e.g. AICD)

## 3. The behaviour of Elected Members pp 32 - 57

### Proposed Cambridge Position:

#### **Strengthen the Conflict of Interest provisions – Division 6**

s5.62(e) delete "and is living with the relevant person"

This amendment would bring the clause more in line with the definition in the Corporations Law.

s5.70(2) Must disqualify themselves ie same as s5.71

- Cambridge supports adopting a model code of conduct prepared by the DLG, which can be supplemented with additional provisions (for a higher standard), provided the existing model isn't contradicted (NSW/Vic/Tas).
- Cambridge supports enforcement of Code of Conduct through legislation, such that Members who fail to comply with the code commit misconduct and can be reported for investigation. (NSW/Vic/Tas/NT) The code has no legislative effect on employees through the LGA, but is dealt with through Workplace Relations Act.
- Cambridge does not support streamlining. It notes that streamlining Rules of Conduct will revert certain issues back to the local level. Support for streamlining is contingent on the structure and function of the body that ultimately deals with local/minor issues.
- Cambridge does not support an outcome based framework. It leaves matters open and its success or failure is contingent on the effectiveness of the body that undertakes the assessment.
- Cambridge does not support the rules of conduct being extended to all candidates in council elections as it impinges on the democratic process. Returning Officer should deal with all matters relating to candidates including gifts and use of Council material.
- Cambridge supports extension of the improper use of information to uphold the integrity of the Local Government.
- The existence and details of a complaint should remain confidential until the matter is resolved, consistent with the principles of natural justice.
- Cambridge supports Sector conduct review committees if streamlining.
- Cambridge supports the inclusion of mediation as a sanction for the Panel but does not support prohibition from attending council meetings (as that effects the Electors the Elected Member represents); compensation to the local government, a complaint administrative fee or cost recovery.
- Cambridge's position on the Review of Rules of Conduct is reaffirmed (CR16.16 23<sup>rd</sup> February 2016 refers)

- Cambridge supports tightening Election Regulations to require that the photograph of the candidate must be no more than 6 months old. Our electoral officer accepted a photograph of a candidate that was 18 years old. This would be likely to mislead ratepayers as to the age of the candidate.
- Cambridge supports tightening the defamation provisions in s4.90 and 4.88.
- Cambridge also support tightening s 4.85 of the Act where direct promises to specific organisations for capital projects are specifically excluded as being a statement of public policy or public action.

#### **4. Local Government Administration pp 58 - 70**

##### Proposed Cambridge Position:

- Cambridge does not support the deletion of 5.37(2). This is an important governance mechanism. Senior employees receive significant total remuneration packages and therefore such decisions to employ, renew or dismiss should be only with council's approval. This is a governance mechanism which ensures the strategic direction of the council is aligned with the CEO.
- However suggest the conflict with 5.41(g) in particular in relation to whether the renewal of a senior employees contract must be brought to council for approval should be clarified.
- Clarification of the Total Remuneration Packages earned by administrative staff over \$100,000 with full disclosure including superannuation contributions and other salary packaging entitlements in the local governments Annual Report so that there is full transparency in terms of the remuneration paid to senior staff.
- Cambridge supports both Option 1 and Option 2 regarding CEO performance reviews as outlined on page 66 and 67 of the discussion paper.
- The Public Sector Commission (PSC) resources should be accessible for Local Government to utilise in conducting performance reviews, but involvement of the PSC should not be compulsory.
- Local Governments should have a policy to guide the CEO performance review committee, which includes training. Review of the format for CEO performance is suggested with elected members able to raise issues regarding CEO performance specifically legislative breaches which are not adequately dealt with by or considered by the CEO Performance Review Committee. Such issues should be capable of elevation to the Public Sector Management Commission despite the inability of the elected member to obtain majority support from the CEO Performance Committee.
- Cambridge does not support a "cooling off" period before a Council can terminate a CEO after an election. Cambridge supports a requirement for a LG to adopt a policy of appointing an Acting CEO.
- Cambridge supports a policy of local governments having to go to market before renewing a CEO's contract if he has been employed for more than five (5) years.
- The standards that apply to State Government through the Public Sector Commission should also apply to Local Government.

#### **5. Supporting local governments in challenging times**

##### Proposed Cambridge Position:

- Cambridge supports an appointed person, but independent, so a person specialising in the particular discipline that requires support can be appointed, which may vary depending on the circumstances.

#### **6. Making it easier to move between State and local government**

##### Proposed Cambridge Position:

- Cambridge supports the transfer of skills and talent between State and Local Government but on the basis that the accrued liabilities are met by the respective government agency at time of transfer.
- Secondments are supported.

#### **7. Gifts pp80-91**

##### Proposed Cambridge Position:

- Cambridge does not support the provision of gifts except:
  - The provision of refreshments/sustenance when undertaking Local Government roles/functions.
  - A policy is required to guide what constitutes refreshments
  - Gifts provided in a personal capacity from an associated person (relative).

## **8. Transparency & Access to Information pp92-102**

### Proposed Cambridge Position:

- Cambridge supports continuation of Local Public Notice and electronic notice. It supports State wide public notice on a central website for such a purpose.

Section 5.92 -suggest further provision required regarding how breach or refusal by CEO to provide information reasonably requested should be dealt with. CEO only has discretion to refuse under s5.95(1)(b) of Act in relation to requests by the Public for information under s 5.94 of the Act.

Suggest in s 5.95 delete "CEO" and replace with "Council". This ensures transparency and accountability for the decision to refuse to provide information.

## **9. Available Information pp103-107**

### Proposed Cambridge Position:

- Cambridge generally supports expanding the information provided to the public.

## **10. Red Tape Reduction pp108-115**

### Proposed Cambridge Position:

- Cambridge supports the removal of red tape. This includes the requirement for a Special Majority of Council.
- Cambridge supports the WALGA position.

## **11. Regional Subsidiaries pp 116 - 122**

### Proposed Cambridge Position:

- Cambridge supports the WALGA position.