LOCAL GOVERNMENT BOARD

REPORT TO PREMIER APRIL 2002.

Introduction

Since the Board last reported in early 2001, it has conducted and completed five general reviews of Kentish, Glamorgan/Spring Bay, Kingborough and Hobart City Councils and the Kentish Latrobe Joint Authority.

It has also commenced a further general review of Kentish Council in which the Board, as well as addressing all matters that are the subject of a general review, is paying particular attention to matters listed in Section 9(1) of the Local Government Act 1993, (the Act). This second general review of Kentish Council has been adjourned, pending the outcome of a Board of Inquiry and of a plebiscite, which the Administrator is to conduct into a number of alternative municipal boundary alternatives.

The Board has also provided advice to you on a specific matter relating to Kentish Council.

In addition to conducting the general reviews referred to above, the Board has produced a Discussion Paper on “Codes of Conduct” which was provided to the Premier’s Local Government Council. The Board understands that this Discussion Paper has been forwarded to the Local Government Association of Tasmania.

In compiling this report, the Board has focused primarily on the more recent general reviews it has conducted. It has, however, drawn upon the outcomes of a further seven general reviews which it has completed since early 1999.

Board’s positive observations

In carrying out reviews throughout the State, the Board was pleased to find general evidence of goodwill, regional cooperation, increased professionalism and positive attitudes towards partnership agreements.

A survey of the Board's reports has found a number of positive general trends to which the Board wishes to draw particular attention:

• The sharing of resources, expertise and knowledge particularly on a regional basis in such areas as the development of regional strategies and partnerships, in tourism promotion and in the development of by-laws;
• Increased acceptance of the philosophy and practice of community consultation;
• Rotation of council meetings around numbers of centres in geographically dispersed municipal areas;
• Improvement in the quality of annual reports;
• Improved processes involving greater transparency in the making of grants and donations to community groups and individuals;
• The large amount of time that many council elected members spend in representing councils and their communities on committees and by other means;
• Improved documentation associated with the induction of employees and human resource management policies and practices generally;
• The growing number of councils that have produced action plans under the Disability Discrimination Act 1992;
• The willingness of councils to engage with their communities through such techniques as forums and search conferences, in order to understand community needs and to exercise a leadership role in advocating for their communities for the provision of services.
• The willingness of councils to identify gaps in service delivery and take a pro-active role in filling them, or working in partnership with other levels of government to fill them;
• The acceptance of the responsibility of councils with regard to the stewardship and long-term management and funding of infrastructure assets;
• A growing recognition of the importance of Occupational Health and Safety and improvements in risk management practices generally, with a consequential improvement in the insurance rating of many councils; and
• A growing awareness of responsibility for good customer service.

Areas identified for improvement

Roles of Mayors, Councillors and General Managers

This is the third occasion on which the Board reports on the continuing uncertainty regarding the roles of mayors, councillors and general managers under the provisions of the Act.

In the Board’s view there continues to be a misunderstanding by elected members of the powers they have as individuals compared with their powers as part of the corporate body. The Board also continues to observe tensions on the part of elected members who believed that management was not sufficiently transparent and accountable.

The Board believes that the current legislation is deficient in that it does not specifically set out the functions and powers of the elected body, as distinct from those of the council as a corporate entity. Nor are the respective responsibilities of the elected body and the general manager adequately described.

Because of this, the Board is concerned that many councils are not providing the necessary leadership in strategy and policy formulation and in performance monitoring. An example of this is the deficiencies the Board has identified in some instances with regard to annual reviews of general managers contracts of employment. It is also the Board’s view that elected members should expect to be involved at an early stage to gain a fuller understanding and give guidance to management in the formulation of the annual Operational Plan, Budgets and Estimates.

Much of the tension between elected members and general managers centres around the function of the general manager in the appointment of employees, the allocation of duties, control and direction and the suspension or dismissal of employees.
The Board notes that, in some cases, these functions of the general manager are interpreted as meaning that all employee and human resource management issues are “off-limits” to the elected body. During every general review conducted since its last report, the Board has reminded elected members and council management that this is not the case. It has pointed to the Act and its requirements that council is to ensure that all employees are appointed and promoted according to merit and without discrimination and that all employees receive fair and equitable treatment without discrimination.

Disturbingly, the Board has observed that in a number of general reviews it has conducted, it is not confident that the council has complied with the legislation in this regard. Furthermore, the Board does not see how an elected council can fulfill its strategic role without having some say in the organisational structure and the level of financial and human resources which will be required to enable objectives in the operational plan and budget to be met.

The Board is of the view that, at the very least, there should be in place a system of formal delegations given to the general manager with detailed reporting and accountability mechanisms put in place. In this regard, the Board believes that general managers must recognise that, in appointing and directing employees, they are acting as the agent or the servant of the council. On the other hand, the Board has reminded elected members that they have no power to appoint or direct council employees, other than the general manager.

The Board recognises that a good relationship between the council and the general manager is crucial to the functioning of any well-run council. For this reason, the Board, in its general reviews, pays attention to the accountability mechanisms that exist in the form of the general manager’s annual performance review. Wherever this does not occur, the Board recommends that an independent facilitator be employed to assist in the conduct of the review and that the review be conducted in a manner which encourages elected members and employees of the council to take an active part. It is the Board’s view that involvement of an external facilitator would also ensure procedural fairness and continuity when elected members change.

**Councils as Planning Authorities**

A number of concerns have arisen about the performance and practice of councils when they act as a planning authority. It is the Board’s view that increased recognition of the role of elected members as part of a planning authority is urgently required.

The Board has discussed with elected members the potential impact of the *Judicial Review Act 2000*. In the Board’s experience councils have not yet come to terms with the requirements of the Act.

The introduction of the Act has implications for planning authorities given that planning schemes are legal documents and planning decisions affect individual rights. It is important that procedural fairness be afforded to all parties. All relevant material, including written qualified advice and comprehensive reports should be provided to all concerned and councillors must act fairly and impartially in their decision making. The Act also places an obligation on all decision makers to record the reasons for decisions, particularly when these conflict with officer recommendations.

The Board understands that officers of the Resource Planning and Development Commission will be conducting workshops and seminars on these and related issues and it urges elected members of all councils to participate.
Committees and Workshops

A committee system is a feature of the operation of many councils. While the Board understands many of the benefits which can be derived from such a system, it remains concerned about a number of negative features. These include the tendency to duplication and the encouragement that it can give to elected members to focus on management issues at the expense of the higher level strategic, policy and monitoring role that the Act envisages. Such a system can also be a cause of division. It is also possible that a complex system of referral of recommendations from committees to the council for ratification can be confusing for the public and may not promote the need for transparency of decision-making which is inherent in the Act.

Exclusion of the public is even more of an issue where workshops are concerned. While the Board recognises the efficacy of workshops for skill development and interchange of ideas, such workshops cannot make decisions since to do so excludes access by the public and the transparency which such access is intended to guarantee.

Officer Reports to Council and Committees

The Board has become concerned about the quality of officer reports that are presented to some councils. The Board believes that councils are entitled to receive comprehensive reports for their consideration. The full range of relevant issues should be described and analysed, the background having been provided.

Reports should be well researched, risk management, human resource management and financial implications should be described and options provided for consideration. The report should conclude with a recommendation and be accompanied by a Qualified Advice Certificate. Some councils use standard templates to ensure that each report covers a standard range of topics and one of these templates is referred to in a later section of this report.

Speaking on Behalf of the Council

The Act provides that the mayor is the principal spokesperson of the council. The Board believes that this implies that others may speak for the council, subject to policies and procedures being in place that preserve the primacy of the mayor in this regard.

The Board has been disturbed to find evidence of the following, which it believes, is in potential breach of the Act and acceptable protocols:

- Mayors and councillors expressing their own opinions while purporting to speak on behalf of the council; and
- General managers commenting publicly on the performance of the mayor or councilors.

The Board believes that each council should have a formalised media communications policy and procedures that will ensure that the letter and spirit of the Act are complied with in a manner which is consistent with the preservation of the right to freedom of speech.

Support for Elected Members

Elected members have generally complained that the allowance which is payable is inadequate, given the increased length of time and commitment which is required of them.
The Board has also discovered differing levels of support facilities that are available for elected members, with some councils providing adequate resources, while others provide very little. It believes that, as a minimum, an office should be provided for the mayor and also a meeting and resource room for the elected body as a whole.

Differences in the level of assistance with the travelling expenses of the mayor were also a feature of reviews the Board conducted. Some councils comply strictly with the Act, which involves payment of an amount per kilometer. Other councils provide the mayor with the use of a car.

**Human Resources**

Similar differences have been found where workplace accommodation of employees is concerned. In some councils, the standard is low and working conditions are difficult as a result. While action has been taken in some cases, in others it has not. Notwithstanding the significant improvements which have been made in many councils in workplace safety and incident reporting, more needs to be done. The same is true of staff training and treatment of staff in some instances.

**Assets and Finances**

As the Board has already indicated, there is generally a higher level of awareness of the responsibility which councils have as the custodians of infrastructure assets. When conducting general reviews, the Board pays particular attention to this issue and encourages councils to fund a significant proportion of the depreciation expense. It believes that the regulations should prescribe, in accordance with section 72 (1)(e) of the Act, that the annual report contain a statement of the percentage of depreciation that is funded, and that creation of new assets should not be included in this calculation.

The Board has found that the calculation of depreciation expense is subject to wide variation between councils. During two recent general reviews, the Board became aware that the carrying values of roads were subject to even greater variation with the recommendation of a firm of consulting engineers that road pavements have significant residual values. The Auditor General has been concerned to obtain agreement between the accounting and engineering professions in an attempt to provide councils with guidance on the valuation of road infrastructure.
As part of the recent general review of the Glamorgan/Spring Bay Council the Board has made a recommendation as follows:

"That an investigation be undertaken to determine a uniform approach to asset valuation and depreciation policies taking into account Australian Accounting Standards and practices in other states to ensure the accounting treatment of these issues will result in councils managing infrastructure assets effectively."

In addition, the Board has reluctantly come to the view that no meaningful comparison or benchmarking between councils will be possible on this issue until definitional problems and a broadly acceptable range of valuation and depreciation policies are resolved on a statewide basis.

**National Competition Policy**

The Board has become aware that there is some confusion among councils concerning the precise obligations that the Policy imposes upon them. There also appears to be a lack of consistency with regard to water pricing.

Councils are reminded that under regulation 32 of the *Local Government Regulation 1994*, the Annual Report is to include sufficient financial information to demonstrate that the council is applying the pricing guidelines in relation to water supplied by it for domestic consumption as specified in the Urban Water Pricing Guidelines issued by the Government Prices Oversight Commission.

**Public Access and Joint Authorities**

As a result of a general review of a joint authority, the Board is concerned about two matters concerning the oversight of these authorities by constituent councils. Firstly, it is concerned that the principle of public access and accountability which applies with respect to the operation of councils, does not seem to apply to joint authorities. Decisions that would, if they were made by a council, be the subject of public scrutiny, may be made in closed meetings by a joint authority governance body. The growth of such authorities into an increasingly large sphere of local government activity could, in the absence of changes in legislation, result in an important principle of the Act being circumvented.

The Board is thus concerned that such representative bodies may not always provide the management of joint authorities with adequate policy and strategic direction and that the reporting mechanisms to constituent owner councils may also be defective.

**Leading Practice**

According to the guidelines issued by the Board for the conduct of general reviews, one of the outcomes of such reviews is the identification of leading practice. For the first time, this report contains reference to a number of such examples. In providing these details, the Board wishes to stress that they are drawn only from those councils that have been reviewed since the current guidelines for general reviews came into operation early in 1999. There are doubtless examples of leading practice in other councils that are yet to be reviewed under these guidelines.
Information concerning the practices listed may be obtained from the general managers of the councils concerned. References are provided below to the Board’s reviews. References to the Hobart General Review are only given to the chapter as final formatting was being undertaken at the time of writing.

- Induction of employees; documentation and policies and practices.
  - Devonport, Chapter 8 page 84
  - Hobart, Chapter 6
- Performance appraisal of managers and employees; policies and practices.
  - Central Coast, Chapter 7 page 32
  - Devonport, Chapter 8 page 86
  - Hobart, Chapter 6
- Annual Review of General Manager using a 360 degree approach.
  - Devonport, Chapter 8 page 91
- Asset Planning and Management.
  - Devonport, Chapter 9
  - Hobart, Chapter 7
- Financial Management.
  - Devonport, Chapter 10
- Resourcing councillors.
  - Hobart, Chapter 5
- Economic Development and Information Technology.
  - Burnie, Chapter 7 page 55
- Community Consultation.
  - Devonport, Chapter 7
  - Central Coast, Chapter 6 page 28
  - Kentish, Chapter 7 page 60
  - Flinders, Chapter 6 page 25
  - Hobart, Chapter 4
  - Huon Valley, Chapter 7 page 59
- Community Development.
  - Hobart, Chapter 4
- Sewage treatment and effluent re-use.
  - Hobart, Chapter 7
- Laboratory.
  - Hobart, Chapter 7
- Small Town Plans.
  - Central Coast, Chapter 6 pages 28-9
- Meeting special needs.
  - airport (Flinders) Chapter 5 page 22
  - medical practitioners (Glamorgan/Spring Bay) Chapter 11 pages 82-3
  - aged care (Huon Valley) Chapter 12 pages 137 - 8
  - hospital (West Coast) Chapter 7 pages 64 and 76
- Website.
  - Hobart, Chapter 2
  - Kingborough, Chapter 4 page 73
- G.I.S.
  - Devonport, Chapter 5 page 16
- Young People.
• Council publications.
  Central Coast, Chapter 6 page 30
  Devonport, Chapter 7
  Flinders, Chapter 4 page 17
  Hobart, Chapter 4,
  Kingborough, Chapter 4 page 83
• Comprehensiveness of Annual Report.
  West Coast, Chapter 5 pages 20-1
• Foodsafe and Healthy Options projects.
  Kingborough, Chapter 3 pages 35 & 40
• Stormwater treatment.
  Kingston Wetlands – Kingborough, Chapter 3 pages 39-40
• Healthy Rivers.
  Huon Valley, Chapter 7 page 81 & Chapter 6 page 49
• Rotation of meetings.
  Glamorgan/Spring Bay, chapter 7 page 40
  Kentish, Chapter 7 page 70
  West Coast, Chapter 5 page 24
• Regular visits by senior staff to outlying centres.
  West Coast, Chapter 5 page 26
• Customer Service Centre.
  Hobart, Chapter 3
• Officer Reports to Council.
  Hobart, Chapter 5
  West Coast, Chapter 5 page 37
• Template for officer reports to Council.
  Hobart, Chapter 5

Yours sincerely

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Chairperson