

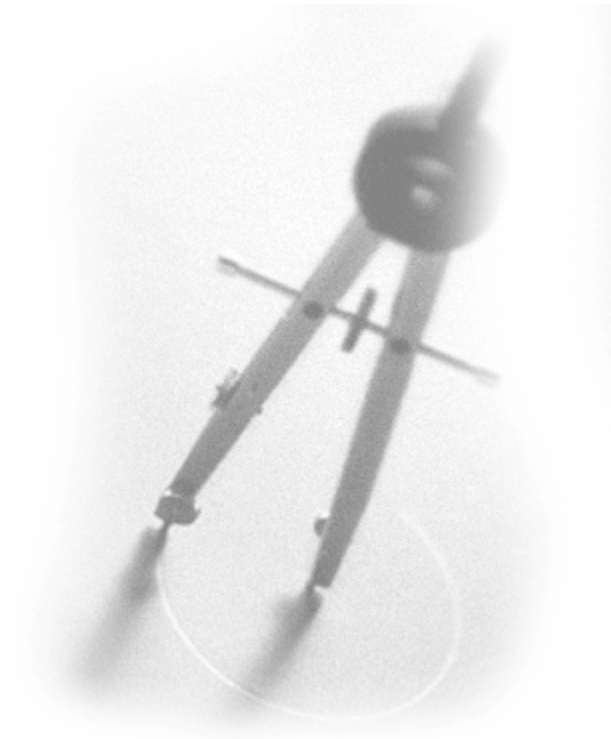


cameron. ralph. khoury

LIV Governance Review

Phase One – Listening

October 2019





1. Introduction

1. The LIV Council is undertaking a review of LIV's governance arrangements. The goal of the review is good practice by contemporary standards. *cameron. ralph. khoury* have been engaged to assist with the review.
2. The Board has established a Governance Working Group to oversee the review. The Vice President of the LIV Council is the Chair of the Working Group. We will follow the convention amongst the governors and staff which is to now refer to the Council as the Board – interchangeable terms. We did find that stakeholders who are at a remove (either by their role or passage of time) from the governance system – use the term Council, with some potential for confusion.
3. The Review has been widely publicised within the LIV membership via the Law Institute Journal, LawNews and LIV social media channels (facebook, twitter and linkedin). LIV members have been encouraged to participate in the review including by proactively contacting us to express their views.

Consultation Process

4. Together with the Governance Working Group, we have agreed a two stage consultation process.
5. The first stage is 'listening' – seeking member views as to what aspects of governance arrangements are working well and what

could be improved. Whilst all were invited to participate, we focused much of our effort on current and recent office bearers who had direct experience of LIV governance. There are still some consultations not yet complete however. We will persist with these and continue to incorporate the feedback received into our analysis, however we will also press on with the overall project.

6. The second stage of consultation will be an 'ideas testing' phase that will be informed by the views that have been expressed to date. We hope in this phase to reach more broadly into the LIV membership including by attending more LIV committee and section meetings.
7. This second consultation will position us to formulate recommendations to be set out in a Preliminary Report to be presented at the December Board meeting. If the Board considers governance change is appropriate, the details will be determined early next year so that consultation with members about specific proposals can occur well in advance of the 2020 LIV AGM.

This Report

8. This Report informs LIV members about the views expressed in the first stage of the consultation that has been undertaken. That consultation has involved:
 - a. One-on-one meetings with 22 LIV members including 8 current Board members
 - b. Group meetings involving a further 35 or so LIV members including Past Presidents and Section Committee Chairs

- c. Consultation with 8 LIV senior managers
 - d. At the time of writing, there were further individual interviews planned and a scheduled series of attendances at section and association committee meetings
9. In a large, diverse membership organisation, there will always be a wide range of perspectives. Not every individual view expressed to us is repeated in this report, rather we have adhered to the key

themes of the feedback. We do however maintain a record of every opinion put to us and in particular, ideas that are suggested - and we continue to refer to these throughout the review process.

10. This report is an opportunity for members to validate what we have heard – and to identify what we may have missed, or misunderstood. We will use this validation information to help us to form a view about what change may or may not be sensible or acceptable.

2. Threshold issues

Diversity of views

11. Most of the consulted members held the view that the Board's focus needed to be more strategic and aimed at guiding the organisation to more effectively represent the profession for the benefit of its current and future members. Many identified impediments in the current framework that work against achieving this.
12. Other argued that the current structures have evolved over time and while not "by the book", were sufficiently effective given the nature of the organisation.
13. Those in support of some reform have some common areas of concern (eg. the size and skills base of the Board), but not yet at any consensus about what other specific governance attributes should change and the extent of change needed.

LIV value proposition

14. One of the issues raised with us when discussing LIV governance was some uncertainty about the purpose/ value proposition of the LIV in today's legal profession.
 - a. Some looked back to LIV's regulatory role and the days of 100% membership – contrasting today's environment.

- b. Others compared LIV with other membership/professional associations such as the accounting bodies, the AICD, the Pharmacy Guild and the AMA – somewhat unfavourably.
- c. Some looking forward, identified a range of ways the profession is continuing to change and what they perceived as the LIV's failure to strategically respond.

Amongst these, some argued that the purpose of LIV must come before the governance model – and others saw the governance system as a reason that LIV had not or could not address these fundamental issues and reform was needed in order to strengthen the ability to grapple with these challenges.

We note that the LIV's current strategic plan (2019-2022) addresses many of these issues but may not have been known to some of those commenting.

What is governance

15. Another threshold issue was uncertainty about what is 'governance' in the LIV context. We heard an array of views about what is and isn't within the scope of governance. Some considered that policy and advocacy was quite separate to 'governance' – really the domain of specialist committees, the President and staff. Others took a much broader view of what governance should encompass – and what this review should address. They raised issues that included the extent to which LIV governance is connected with the active member forums such as sections, committees and law associations.

3. Summary of feedback

16. The feedback from consultation to date is summarised into some grouped topics below - in no particular order of importance.

Membership representation

17. Those consulted could clearly identify arguments for a member representative Board. LIV's purpose to be 'the trusted voice of members, respected for delivering value to members', underpins the need for a governance framework that is broadly inclusive of the various groups of members. The Board composition aims to achieve this with board positions based on practitioner categories (city practice, suburban practice, country legal practice, corporate legal practitioner, legal assistance sector practitioner, government legal practitioner, law firm Australia principal and new lawyer).
18. A number of those consulted said that the goal of achieving some diversity of membership on the Board was being achieved – but that (for example) ethnic or gender diversity was still well behind that of the membership – as well as not achieving proportional representation of areas of employment either of the Victorian profession as a whole or of LIV members.
19. This raised the question of whether LIV should be striving to represent the profession or only members. They pointed to many areas with significant numbers of lawyers that were not members of LIV (eg. government lawyers, medium to large CBD-based firms, in-house corporate lawyers to name a few). The point was also made that even within the membership, the representation on the Board was significantly skewed to members from small practices with low involvement from the large city firms.

20. This it was argued led to frequent board turnover and limited nomination pools. It was acknowledged by a number of interviewees that individuals could be elected to the Board with just a handful of votes. Some said that the elections created a 'popularity contest', with those most connected – rather than the most skilled – gaining and retaining positions on the Board.
21. A couple of interviewees considered that individual Board members may sometimes become focused on the issues of interest to their electing constituency, rather than those of priority for the organisation and/or profession. Most interviewees felt, however, that individual Board members have been clear that their role is to act in the best interests of the organisation as a whole.
22. A number questioned whether combining oversight of policy and advocacy with the corporate governance focus of the Board was the most effective model. Some described this as the difference between democracy and corporate governance and that the two dimensions could be working more effectively if separated.

Board skills

23. It is clear that most LIV members nominate for Board roles because they want to make a difference for the legal profession, the law and the broader community. Some said that they nominated unaware of what the role entailed, and that they have felt unprepared,

inexperienced and to some extent not terribly interested in aspects of the corporate governance role such as financial oversight.

24. Some commented that having prior Board experience would have been helpful before becoming a Board member. Others said that early corporate governance training (such as the AICD Director's course, or some essential modules) would have mitigated the experience gap. Some argued that Board experience or formal training should be pre-requisites for any candidate.
25. There were mixed views on the LIV Board skills. Some were content for the Board to be made up entirely of lawyers saying that there are sufficient skills across the LIV membership while others felt that insufficient effort was made to attract the most skilled members. Others argued for inclusion of some independent members with non-legal practitioner expertise in areas such as financial governance, investment oversight, political advocacy, information technology, human resources and community engagement.
26. Some consulted commented that the lack of broader expertise on the Board could limit the discussion on key strategic priorities and risks, with members prone to making decisions based on their legal practice experience, rather than broader governance experience.
27. The Audit and Risk Committee of the Board has 2 independent members and a few pointed to this model as a way of broadening the skills base without changing the composition of the Board.
28. There were many comments about the overall need for better use of Board Committees and some calls for a Policy strategy/oversight Board Committee to set priorities for advocacy and policy responses

to government and regulators and to brief the full Board on achieving the agreed work program. This was aimed at maintaining a focus on agreed strategic priorities rather than diversions to areas of interest of individuals (whether on the Board or on LIV sections).

29. The question of Board remuneration was raised by some, arguing that the time imposition was significant for busy professionals and that all Board members should receive a modest stipend (as do the executive office-bearers) to encourage Board members' sense of obligation to read all papers thoroughly, to contribute to the discussion and to attend all Board meetings.

Size of Board and committees

30. The most frequent criticism we heard was of the very large (18 member) Board. While most accepted that membership organisations tend to have larger boards, the current LIV Board size was frequently described as clumsy, or even unworkable, hindering the quality of Board discussion and decision making, and as tending to reduce individual Board member accountability. Some felt that the large size allowed some Board members to remain quiet, leaving others to dominate – in turn leading to 'group think' and failure to sufficiently test propositions in Board papers. However others said that while the Board size is difficult, the Board has proven that it can be made to work, citing recent examples of dealing with performance management and the sale of the LIV building.
31. There were also comments that the Board Committees are too large – each has six Board members to ensure the spread of representation. Some Board members indicated a reluctance to be

on the Audit and Risk Committee as they did not consider they had the relevant skills to make a proper contribution.

32. When asked about what size the Board should be there was not a clear consensus view. There was acknowledgement that a smaller LIV Board, would need to rethink its role and structure. There also would need some better way of connecting with the LIV Sections to best understand the broad spectrum of membership interest.

Tenure of Board

33. Currently, Board members are generally elected for a three-year term (except where filling a casual vacancy) and can nominate for re-election for successive terms. There is no limit to their tenure. Most feedback was that overly lengthy tenure could serve to restrict new participation on the Board and serve as an impediment to change.
 34. A few interviewees focused on the extent of Board turnover and said that up to a third of the Board can be new each year. Their concern was that this meant that a significant portion of the Board had 'training wheels' on. They considered that this tended to delay the Board in identifying and responding to issues that emerged.
 35. While new Board members have the opportunity for induction sessions and a comprehensive Director's Manual, we also heard that the induction process is not enough to sufficiently prepare inexperienced members to be able to act as Directors.
- ### Leadership of organisation
36. For LIV, the President role is seen as critical, with much made of their standing and ability to represent the profession to the media, to government and regulators and the LIV to the profession. The role was also seen by many as quite problematic.
 37. Some said that the current sequential, automatic progression path to President may not result in the best person being selected. Some said that this convention raised expectations in candidates' minds that elevation to the Presidency was an inevitable entitlement. Practically, this means that it requires a significant intervention and personal confrontation to argue against a candidate becoming President – a substantial disincentive to ensuring the best candidate.
 38. Although the theory is that sequential progression will prepare a candidate, some argued this only happens if the individuals involved make significant effort. Some said that it would be very difficult to involve (say) the President Elect more extensively in external engagement and speaking on behalf of LIV (by way of preparation) unless expectations and remuneration were adjusted accordingly.
 39. The tenure of the President was raised many times – with a consensus that a term of one year is not enough to be fully effective. It can take a President some time to find his or her feet in the role and the term can be over just when the President is becoming most effective.
 40. Another dimension mentioned was that the 'revolving door' of an annual change in the Presidency resulted in weak and inconsistent oversight of the CEO and organisational performance.

41. Additionally, some observed that the convention is that a President is seen as having the right to choose their own priorities and projects. This can result in a diversion of effort from the agreed longer term strategic priorities and can result in new projects left 'orphaned' and incomplete at the end of the President's term.
42. For all of these concerns, there was almost universal acknowledgement that the Presidency in its current construct can come at a significant cost to the candidate's personal professional practice and a longer term of office may well be even more problematic and further narrow the pool of candidates.

Board engagement with active members

43. The LIV has as a significant strength its large cadre of active members, willing to commit great effort to the work of Sections and other member Committees. It would be reasonable to expect that this level of member activism would provide for a rich source of potential Board members or office-bearers, however we heard from both active members and Board members that there is a significant disconnect between the member Committees and the Board.
44. Most section Chairs we spoke to commented that they had quite unsatisfactory level of connection with the Board and very little idea of the role and focus of the Board. In some cases, the current committee liaison responsibility held by individual Board members was seen as quite effective, but inevitably some were more engaged than others and subject matter expertise was not always guaranteed.

45. A number of Committee Chairs mentioned that they had little or no opportunity to connect with each other and that this heightened the sense of operating in silos without involvement from the Board.
46. For the Board's part, a few saw the disconnect as a weakness that should be addressed and others as a natural divide between the respective areas of interest of member activism and governance and of no great concern.

Policy and advocacy

47. The lack of an effective connection between the Board and the active members was also raised in the context of the LIV effectively advocating on policy matters. While we received some quite positive feedback about the President's media profile and ability to respond to legal issues of the day, members of Committees reported frustrations with trying to escalate what they saw as priority issues for proactive action by the LIV as a whole and sometimes receiving little or no feedback.

Support for the Board

48. One dimension of governance effectiveness is the quality of the support for the governors from the full-time staff of the organisation and this was an area that was widely viewed as recently much improved. Comments included a more open and transparent approach, thorough organisation and improvements to the quality of the Board information.

4. Further feedback

49. As discussed, this report is intended to provide interested members with a flavour of the perspectives of the LIV governance system that our consultations received – for information and most importantly to test if our understanding is reasonably accurate and complete.
50. We would encourage those interested to contribute to the Review to let us know if the feedback in this report resonates with your own experience, if you think we have misunderstood what those consulted are saying and if there are other issues that we should be taking into account in thinking about the LIV governance arrangements.

51. Feedback on this report is most welcome on the contact details below:

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or 03 9421 3111

5. Next steps

The next step in the Review will involve a second round of consultation – in which the advisers will discuss the issues raised in this report with members and test some of the ways in which the governance system might be changed to address the issues. Details of opportunities to contribute will be made available over the next couple of weeks.