

Law Institute of Victoria Governance Review

Consultation Paper, June 2021



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Law Institute of Victoria Governance Review

Introduction

The LIV Board began a review of its governance framework during 2019, responding to a number of concerns about whether it is fit for purpose for current and future challenge. Following a suspension of activity during the pandemic in the second half of 2020, the Board is keen to pick up the Governance Review and re-engage with members. This paper provides a summary of the advice provided to the Board and ideas the Board are putting forward for members to consider and respond to.

Significant progress was made in the Review up to mid-2020, including consultation with members and key stakeholders, an exploration of the strategic challenges for the LIV, assessing strengths and weaknesses in the current governance and looking at potential areas of reform and how these opportunities could be best pursued.

[Follow this link](#) to view a brief introductory video from Tom Ballantyne, Board Member and Chair of the Governance Working Group

How to have your say

The aim of this round of consultation is to assess the degree of member support for some of the ideas being considered by the Board for strengthening the LIV's governance. The intention is to collect this feedback in two main ways:

- a. After each section below, members are asked specific questions. Your responses can be provided via a confidential online survey. Simply follow [this link and record your ratings](#). The survey also allows for you to provide free-form text comments.
- b. The LIV will also provide opportunities to discuss the ideas for improvement in open forums. Two webinars have been scheduled (follow these links to register your attendance: [Monday 28 June, 12.30–1.30pm](#) or [Wednesday 7 July, 5.15–6.15pm](#)) which are open to all interested members. Board members will also be making themselves available for discussions as part of member meetings (such as regular Section Committee meetings, etc) when requested.

The feedback will be used as input to the Board's consideration of which combination of ideas should be taken forward. The intention is that, subject to member feedback, a package of reforms would be put together into a coherent design, to be put to members for final approval.

Why governance reform

Even before the advent of the COVID-19 pandemic, it was clear that the LIV faces significant challenges and opportunities - including:

- a. A profession changing on a number of fronts
- b. Regulatory reform changing the LIV's role and income
- c. Competition from other professional associations and other CPD providers
- d. Diverse expectations and priorities on the part of members
- e. Diminishing membership of the LIV over some years (recently improving)
- f. Improving connection/confidence of members in the governance of the LIV
- g. The impact of disruptive technologies to the profession

h. Financial sustainability of the LIV

The Board members had identified governance reform as a strategic priority in early 2019 and in commissioning this Review, agreed that the LIV's governance arrangements should meet with modern good governance practice and enable the LIV to respond quickly and in an agile way to changes in the external environment.

Member feedback so far

The initial phase of consultation occurred in late 2019. This involved discussions with a wide range of stakeholders including a number of Council members, other members of the profession, leaders of a range of stakeholder organisations and LIV senior managers.

Governance - related feedback included:

- a. Board is too big
- b. Its election process and tenures are a weakness
- c. Board needs to be stronger on strategy and priorities
- d. Board needs better mix of skills - especially non-legal
- e. LIV Committees are our biggest strength - they drive advocacy but are often reactive and need stronger connection to the Board
- f. Representation of members in governance is important
- g. President terms are too short
- h. Even with a very large Board, not all the diversity of membership is represented

What we have now

The LIV's current framework is built around a large representative Board of 18 elected Directors from the membership, with three standing committees - Audit and Risk, Finance and Investment and Nomination and Remuneration. An Executive group meets between Board meetings. There is a practice of promoting office-bearers annually through progressively more senior positions (Executive Member, Vice-President, President-elect) until they are elevated to the Presidency for a year.

Constituent documents such as the Constitution and Charters are available on the LIV website.

Those with recent experience of the Board mostly described its key strength as its diverse experience of the profession in Victoria and its weaknesses as unwieldiness, the difficulty of achieving consensus and slow decision-making.

Contemporary governance practice

Our advisers CRK provided the Board with advice around how contemporary governance practice is being applied in membership-based professional associations. This included that membership-based organisations are increasingly facing common challenges:

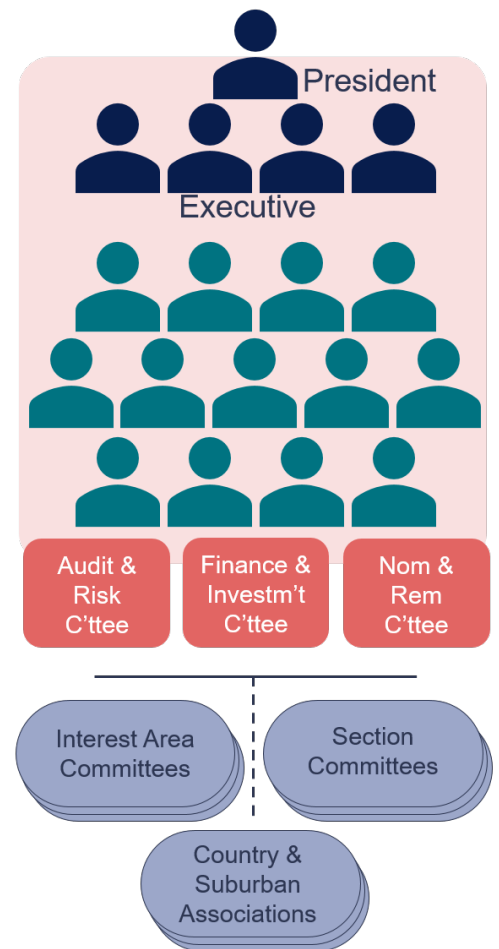
- a. in responding rapidly to a dynamic external environment and meeting increasing obligations of governance risk and compliance
- b. adapting to change in the nature of volunteering - from old-fashioned permanent committees towards episodic and project-based contribution
- c. reducing Boards to a more modern, manageable, effective size
- d. strengthening the skills available to their Boards - through more proactive selection of member Directors and with external independent Directors
- e. engaging with members in a more flexible way (e.g. using on-line technology, social networking and flexible forums tailored to different interests and preferences).

Board assessment of areas for improvement

The Board's assessment of the current strategic challenges and the current governance system recognised the need to strengthen the mix of skills, to improve the ability of the Board to contribute and to lead and to strengthen member connection and engagement.

The Board identified ideas for improvement that it felt showed the most promise for the LIV reflecting themes that came out of the member engagement, while retaining the generally accepted strengths of the current arrangements. These are set out below along with questions to prompt response.

To assist members' consideration of the issue, this paper also includes possible *counter arguments* for the proposals raised, to contribute an alternative perspective on the reform proposals.



A smaller Board

During initial consultation, the size of the Board came in for some criticism with LIV members calling it old-fashioned, too large and out of step with modern governance practice. Most current Board members described a slowness to react to emerging issues, the difficulty of achieving consensus in such a large group, slow and overly-compromised decisions, particularly when confronted with difficult challenges - as well as the administrative difficulty of organising meetings, communicating and making sure that all are fully across all developments.

This once-common large Board configuration can no longer be managed by using a subset of the Board (an executive group) to make most decisions. Director's duties and obligations have expanded considerably and court decisions mean that few Directors today are willing to take the risk of delegating decision-making to others.

79% of LIV Directors responding to a survey, supported or strongly supported reducing the size of the Board in principle with around 74% preferring a Board of 12 or smaller

The majority of the Board felt that between 10 and 12 Directors, although still a very large Board, would achieve the optimum balance of workability, skills mix, mix of perspectives and knowledge of the membership.

Q1. To what extent would you support a move to reduce the size of the LIV Board from 18 currently, down to 10–12 members?

Counter arguments:

The LIV is predominantly, if not entirely, a representative body for solicitors in Victoria. This is particularly so since the LIV has no disciplinary function.

The diversity of members, in type, size, location of practice, and those who work beyond law firms, should be able to be reflected at Board level.

The smaller the Board, the degree of representation is impaired.

The LIV's 18-member Board has dealt effectively with complicated matters over the years, with outcomes reached. Meetings with high attendance have been called on short notice.

It should be noted that the Law Society of New South Wales, the largest in Australia, has a Board of 17, only one fewer than the LIV.

With a smaller Board, there is greater potential for senior management to control it and its decisions.

The LIV does not operate on a national scale and so there is little or no need to have "efficiencies" which might dictate the Board be smaller rather than larger.

Strengthened Board skills

The need for a greater mix of skills in governing the LIV is already well accepted, with appointed external non-Board members of the Finance and Investment and Audit and Risk Committees providing valuable technical advice and input. The Board also felt that different skills and perspectives would bring great value to the main Board and identified a couple of ways to achieve this.

Currently, although the LIV publishes a desired Position Description prior to elections, the rules as well as the voting dynamics (voting for candidates from your workplace, specialisation or personal network) place the greatest weight on geographic and sectional representation.

An alternative would be to put greater emphasis on seeking specific skills amongst the LIV membership, such as governance, relevant commercial experience and risk and compliance - improving the Board's ability to deal with the challenges the LIV faces.

A separate but related issue is the current system requires that 11 of the 18 Directors are elected from specific categories of members. At present, the LIV constitution requires that the LIV Board comprises member solicitors representing both geographical constituencies and categories of practice type. The apparent intent of the provision is to ensure a broad range of members acting as Directors reflect the broad range of different types of solicitors in Victoria.

It is arguable that a representative model, that involves candidates nominated to represent a particular category in a political sense, rather than for the reasons a board member is appointed, is a somewhat outdated concept as it is quite clear what the law obliges: to act in the interests of the organisation as a whole. This will invariably be different to, and potentially at odds with, a representative strategic intention. Further, there is an argument that this model is not necessary as the vast majority of issues that come before the LIV Board, if not all, do not raise considerations for which a solicitor in one category would have a different view from a solicitor in another category.

On that basis, an alternative model may be for the LIV Board to comprise those candidates who receive the highest number of votes in the election, irrespective of their category. LIV members would then be able to elect as directors those members who they consider would best serve the LIV, unencumbered by the categories in the present constitution.

The Board could combine some continuing geographical/practice area representation - for a mix of member perspectives, or explicitly seek candidates with specific skillsets in elections for the Board, irrespective of member category.

Q2. To what extent would you support:

- a) Sticking with 100 per cent elected representative positions on the LIV Board?**
- b) A mix of elected representative positions and skills-based elected positions?**
- c) Moving to 100 per cent of positions open to any member category?**

Counter arguments:

In a membership organisation it would be difficult to rate the skills of candidates, other than by way of self-assessment, with potential pitfalls. The underlying assumption is that people with specific skills will be chosen through election but this also gives rise to both challenges and concerns. If specific skills are sought, it might be preferable to take a targeted approach via the Board co-opting a set number of members for this purpose.

The number of skills-based Board members appointed would be better expressed as a maximum percentage rather than in absolute numbers. The smaller the Board the smaller the number of such Board members. Skills-based appointees should not exceed around 15 per cent, with the majority of Board members lawyers.

There are current structures that allow non-member Directors to lend expertise – for example, the Audit and Risk, and Finance and Investment sub-committees. This allows the Board to have access to their skills and it is not necessary that they be Directors of the board.

There is also the question of remuneration for external Board members. Any payment to these Board members will introduce a two-tiered Board - one acting voluntarily, one being paid. This may introduce difficulties.

External experts on the Board with little knowledge of the profession and the membership might diminish the member connection to the Board. The Board liaison role, now held by Board members, is important and valued by Sections, which might not be the case if there were externals on the board.

The Board could also, where needed, appoint a small number (a clear minority) of LIV member Directors on a skills-basis to supplement elected LIV member Directors - recognising that if all ideas being canvassed in this paper were implemented, there could be a decrease in the number of elected Directors from 100 per cent of the Board to possibly as low as 60 per cent.

Q3. Provided that elected Directors remained a clear majority of the Board, to what extent would you support the ability to appoint a small number (2–3) of LIV member Directors to meet specific needs for skills and relevant experience?

Finally, the Board could also improve its mix of high-level skills and external perspectives by seeking Directors from outside the LIV membership. These skills may change from time to time but may include, for example, commercial /financial, strategy /marketing, digital /IT, political /lobbying, mergers /acquisitions and business transformation /restructuring. While the Finance and Investment, and Audit and Risk Committees have external subject matter expert members, this proposal is designed so the Board itself has an appropriate mix of skills and experience.

Appointing at least two external independent (non-member), experienced Directors would ensure that different perspectives and a robust independent mindset is brought to meetings (provided of course, that they remain in a clear minority). This practice is being adopted in many professional associations (e.g. the Law Society UK and the Institute of Chartered Accountants for England and Wales).

Q4. To what extent would you support the LIV Board being able to appoint a small number (2–3) of external independent Directors to meet specific needs for skills and relevant experience?

Some professional organisations have found it necessary to offer some remuneration to external Directors and others have been able to find skilled Directors willing to contribute in a voluntary capacity. This may have to be considered in the future if the idea is supported.

The Board also recognises that there is value brought to governance from member candidates who may not have extensive experience as a Director. Support for elected member candidates will always be needed and the Board is committed to strengthening the availability of governance training for LIV Board Directors.

More flexible role and term for the President

Many consulted recognised that the current demands of the role of President are too great and diverse and the normal term too short to enable the President to lead the organisation through times of difficult challenges.

Currently, the President is expected to perform external representation with the profession, the courts, the government and the business community, to be the voice of the profession in the media, to manage the business of the Board, to chair meetings, to lead and mentor other members of the Board, be the main point of contact between Board and the CEO, to oversee the CEO's performance, lead engagement with LIV members and internal ceremonial duties with members.

On top of this 'normal' workload, the President is expected to have their own 'personal vision' to achieve during their term and must also lead the organisation through difficult challenges such as a change of CEO, legislative or regulatory change, grappling with competition, financial sustainability, any reform processes such as this Governance Review as well as deal with external shocks such as the current pandemic.

Leadership is arguably the most important part of the role and yet few if any of these challenges can be effectively dealt within the one year term that is the practice at the LIV. This despite the role being effectively almost full-time as currently practiced.

The Board believes the LIV needs a more flexible approach to the President role (although recognising the challenge for a candidate's professional career), prioritising leading the organisation through major challenges ahead of executing 'normal duties' when needed. This ability should include:

- a. While selecting the President from among the current Directors has practical advantages, when needed the Board should be able to use its appointment powers to 'headhunt' LIV members for President with the skills or standing in the profession best able to lead through particular challenges (e.g. major law reform affecting the profession, a merger with other associations, a financial crisis, etc)

Q5. Would you support flexibility for the Board to be able to appoint a President from among LIV members (not current members of the LIV Board) when needed?

- b. A common problem confronted by professional associations is that significant challenges frequently require more than 12 months to see through. The President's term should be able to be varied to permit between one and three years as necessary to meet particular challenges.

Q6. Would you support flexibility for the Board to re-appoint the President annually, for a term of between one and three years (as needed by the circumstances)?

Counter arguments:

It would be difficult to recruit from outside the Board directly to the presidency. Such a President would have the disadvantage of not being acquainted with other Board members.

Flexibility of term (one to three years) has the potential to cause too many issues,. That is that the process becomes political with one person with a larger support group able to secure a longer term and push their own agenda.

Current constitutional arrangements provide that a President may be returned for a second year and, indeed, this occurred in recent years.

The position of President is effectively full-time. To take the role, that person needs to make alternative professional and personal arrangements well in advance. Uncertainty around years of opportunity may discourage interest.

As the President's role attracts remuneration, this could possibly influence a Board member, who may not be suitable, to seek a term beyond one year.

Restructuring current leadership positions

It was apparent that it is not clear to members what the roles of the various office bearer positions are and that the titles can sound somewhat old-fashioned.

Many similar organisations also rotate Directors through office-bearer positions as a form of 'apprenticeship' before ultimately elevating them to the role of President. While this provides a development path, it creates an expectation of automatic progression - which can lead to mediocre outcomes. If a candidate progressing through the ranks proves not to be suitable for the Presidency, the Board must proactively intervene to prevent this, with great risk to Board relationships.

An alternative is to have a more flexible process where the Board must proactively select the best candidate from amongst the most suitable Directors.

As part of this practice of competitive choice, to enable sharing the duties currently expected of the President, in anticipation of a smaller Board and to modernise the language, the Board proposes to abolish office-bearer positions of 5th Executive Member, of President-Elect and Immediate Past President, moving to only the President and two Vice-President positions.

Q7. To what extent would you support abolishing current office-bearer positions of 5th Executive Member, of President-elect and Immediate Past President, moving to a structure of a President and two Vice-Presidents?

Counter arguments:

The advantage of having an executive structure allows for training and preparation of the Presidential role and a more in-depth immersion over time with the LIV. It also allows the executive to prepare for their eventual role as President in terms of work arrangements with some certainty.

The Executive should comprise five members not three, so as to garner a wider range of views to deal with the matter at hand.

Abolishing the current executive structure, will make the pathway to President or leadership positions unclear, and fewer high-quality candidates would put their hand up and get involved.

Limiting terms and tenures for Directors

Stakeholders with experience of the Board raised concerns over tenures that are both too short and too long. It has been a regular occurrence for LIV members to nominate for the Board and find it is not what they expected and leave after one term or even resign early (the 'revolving door' problem).

The opposite is also seen as a problem by some where Directors stay on for extended periods, sometimes over 15 years - not as a criticism of their contribution but as reducing the opportunity for younger members to join and refresh the thinking.

The Board will work with LIV staff on processes to improve members' understanding of the role of the Board and of Directors, before they nominate as candidates.

The Board also felt that a maximum tenure was appropriate for a membership organisation where refreshment of perspectives is important and that adopting this governance practice was sensible (and especially important for an organisation of lawyers who provide governance advice).

The Board proposes three-year terms with a normal maximum tenure of nine years with a possible extension of a year in exceptional circumstances (e.g. when a Director's skill is particularly needed or the organisation is in some kind of transition). After maximum tenure, it is proposed that a Director must retire for at least three years.

Q8. To what extent would you support adopting a maximum tenure for LIV Directors of three by three-year terms?

Q9. To what extent would you support the possibility of a one-year extension in exceptional circumstances?

Q10. To what extent would you support a mandatory three-year retirement for Directors who reach the maximum tenure?

Counter arguments:

There is no need to change the current structure. At present there is only one out of 18 Board members who has been on the Board for more than three consecutive terms.

The advantage of having a small number of Board members who have been on the Board for a significant period is in bringing a degree of corporate memory to the deliberations of the Board.

If there were to be a maximum three by three-year terms, an extension of one year may upset the regular flow of elections to the Board. If there is to be a cap on consecutive terms for Board members, then there is no advantage in having a compulsory three-year retirement period. One year would suffice for that purpose.

Connections between Board and members

The Board was unanimous that strengthening connections between parts of LIV and between members and the Board is a critical priority and best addressed through improved and flexible engagement processes and initiatives that would reach more members and be adaptable to current issues - rather than any structural solution.

The Board has been working with the LIV management to strengthen the day-to-day connections within the LIV membership. Examples include increased engagement and outreach with Law Association Presidents and members in regional and suburban locations; targeted events and activities for suburban and regional practitioners; the introduction of a suburban and regional Law Association newsletter, and similarly, a targeted newsletter to leaders of large law firms; regular engagements with Section Chairs, Executive and Section Committees by the President, Board members and CEO; increased digital delivery of content and learning and development initiatives; increased social media presence through all key channels; increased dialogue with members through surveys and forums on ways to enhance experience and engagement with the LIV and increased face to face engagement with employers to reinforce the LIV member and employer value proposition.

Q11. Do you have any comments and or suggestions for improving the connection between member groups and between the Board and members?

Possible framework

It is important to consider how the whole framework fits together. The diagram below provides an indicative illustration of how LIV governance could look in if all of the suggested ideas were adopted.

A Board of between 10 and 12 - made up of:

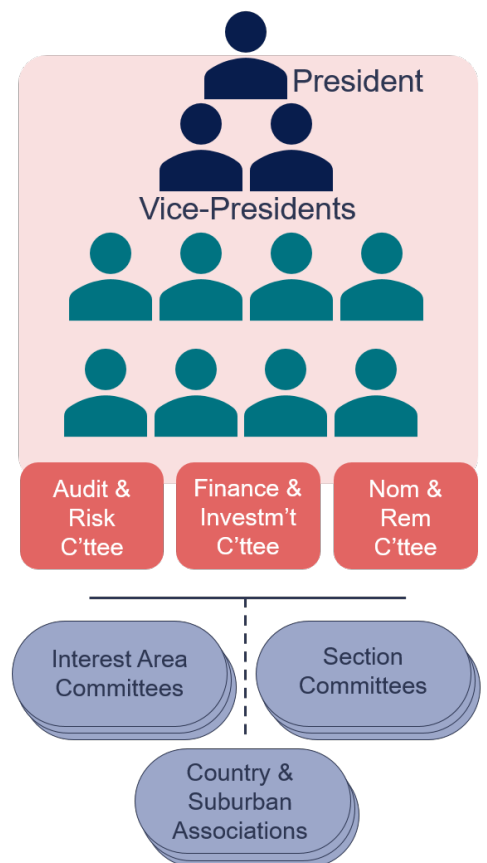
- An absolute majority of LIV members
- Six or seven elected Director positions - some reserved for specific geographies or sections - some open to all members
- Two or three LIV members appointed for skills /experience
- Two or three external Directors appointed for skills /experience

A President chosen from the Board or appointed from membership when needed

- Term of one to three years for President
- Office-bearers to be President and two Vice-Presidents (no other executive positions)

Capped tenures

- Three-year terms for all Directors
- Maximum of three terms (nine years) with one extra year in special circumstances
- Compulsory three-year gap following maximum tenure



Transition

The Board recognises that if a proposal for change is approved by members, there will need to be a transition period. This may require up to three years to fully complete the implementation.

Next steps

At this stage, the Board's intended timeline now allows for:

- A period of consultation with members based on the proposals in this paper - running during June and July and including collection of survey data
- Refinement of the proposals and development of detail in light of member feedback during August and September
- Providing a report, setting out the scope and design of any recommended changes prior to the LIV AGM in November and seeking in-principle endorsement from members. **If In-principle approval is obtained from members**, drafting of any proposed amendments to the Constitution would follow, with new drafts of the LIV constituent documents available for discussion with members and approval at a Special General Meeting in early 2022.

The proposed revised timetable for the Review up to the 2021 AGM is illustrated below. Transitional arrangements may take the overall process into 2023 or 2024.



Other feedback

In addition to the webinar-style online meetings, special sessions at LIV committee meetings where requested and the online survey, members are welcome to provide written feedback or queries by email to our governance advisers. Contact CRK Principal Phil Khoury at phil@crkhoury.com or on 03 9421 3111. Queries also welcome at the LIV by contacting Xian Volkmer on 03 9607 9513