

**Report to the Future Melbourne (Finance and Governance)
Committee**

Agenda item 6.6a

**Update on the status of the investigation into allegations regarding the
Lord Mayor, Robert Doyle AC and related matters**

6 February 2018

Presenter: Ben Rimmer, Chief Executive Officer

Purpose and background

1. The purpose of this report is to update the Future Melbourne Committee (FMC) on the status of Dr Freckelton QC's investigation into serious allegations against the Lord Mayor, and related matters.
2. On 15 December 2017, Councillor Tessa Sullivan made serious allegations against the Lord Mayor and also resigned as a Councillor. Given legislative obligations to ensure a safe workplace, the CEO immediately commissioned an independent external investigation of these matters by Dr Ian Freckelton QC to examine the facts related to the allegations. The Lord Mayor has agreed to take leave until the investigation is completed.
3. It is a matter of public record that other allegations have subsequently been made against the Lord Mayor and a separate investigation has been established by the Department of Health and Human Services.

Key issues

4. The City of Melbourne's legal representatives have been informed that the Lord Mayor is currently suffering serious ill health and accordingly additional time will be needed to finalise the investigation.
5. It is now likely that the investigation will need to report in two stages, interim and final. In the interests of Council, the community and affected parties it is important that the investigation is concluded in a timely manner while ensuring natural justice and procedural fairness. The CEO and the independent investigation team are acutely conscious of the need for rapid resolution. The details of matters under investigation will not be discussed in this report or elsewhere until an interim report is concluded.
6. To date, no concerns about the conduct of any person other than the Lord Mayor have been identified as requiring investigation.
7. The Minister for Local Government and the Chief Municipal Inspector have been advised of the status of the investigation.
8. During the course of the investigation management has identified some issues with the existing provisions of the *Local Government Act 1989* in dealing with allegations of this nature. These issues are summarised in Attachment 2.
9. The Chief Executive Officer has commenced productive discussions with the relevant Victorian Government department about these matters, and these discussions will continue in coming days and weeks.
10. In addition, the Chief Executive Officer intends to continue discussions with the Victorian Human Rights and Equal Opportunity Commissioner to encourage her to work with the Minister for Local Government to address the potential challenges faced by the local government sector as a whole in dealing with sexual harassment allegations.
11. Management has commenced a review of corporate policies covering (or purporting to cover) Councillor conduct and the outcome of this review will be reported to Councillors. The review will cover the sexual harassment policy, alcohol and drug policy and OH&S policies, among others.
12. Deficiencies in Council's Councillor Code of Conduct have also been identified and management recommends the Code be reviewed by Council, particularly in relation to reporting and management of sexual harassment allegations and occupational health and safety matters involving Councillors.

Recommendations from management

13. That the Future Melbourne Committee:
 - 13.1. Notes the status of Dr Ian Freckelton QC's investigation into serious allegations against the Lord Mayor.
 - 13.2. Notes that to date, no concerns about the conduct of any person other than the Lord Mayor have been identified as requiring investigation.
 - 13.3. Notes that management has commenced productive discussions with the appropriate Victorian Government department and the Victorian Human Rights and Equal Opportunity Commissioner about matters identified in the framework provided under the current *Local Government Act 1989* for handling serious allegations against a Councillor, such as sexual harassment.
 - 13.4. Notes management is reviewing all corporate policies that refer to Councillor conduct or purport to cover Councillor conduct.
 - 13.5. Recommends to Council that it agrees to review its Councillor Code of Conduct.

Attachments:

1. Supporting Attachment
2. Summary of issues identified

Supporting Attachment

Legal

1. Independent external legal advice has and will continue to be provided in relation to the investigation.

Finance

2. There are no direct costs associated with the recommendations from management.

Conflict of interest

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Stakeholder consultation

4. External stakeholder consultation is identified in the management report.

Relation to Council policy

5. The Terms of Reference for the Future Melbourne Committee (Committee) state that matters relating to 'Governance matters' and 'Councillor Code of Conduct and operating protocols' cannot be determined by Committee but the Committee can make recommendations to Council.

Environmental sustainability

6. Environmental sustainability issues or opportunities are considered not relevant to this proposal.

Summary of issues identified:

As users of the framework provided under the current *Local Government Act 1989* (LGA) for handling Councillor conduct matters, we have formed initial views about challenges that may be encountered when dealing with investigations of this nature. These views would benefit from further discussion with relevant agencies, colleagues in the local government sector and appropriate expertise.

Our experience may be reflective of sector-wide challenges. For this reason, the Exposure Draft of the LGA that is currently out for comment presents an opportunity for consideration of the matters identified.

Chief Executive Officers (CEOs) are public servants who are accountable to Councils, and through Councils to the community. It is right and proper that a CEO does not have the power to control or manage Councillor behaviour or actions. However, it is important that when allegations of this nature arise there are clear, effective and timely avenues for effective management of all parties.

The following six issues have been identified:

1. The CEO is accountable for workplace health and safety for Councillors, and for the impacts of Councillor actions on the safety of the workplace, yet has insufficient ability to control, influence or mitigate Councillor behaviour.
2. In particular, in extreme circumstances, where there is a significant risk to the health and safety of Councillors or Council staff, the process set out in the LGA is not sufficiently flexible or rapid. This could present challenges given that the CEO is responsible for workplace health and safety for Councillors where risks may arise very rapidly and before an investigation or other legislative process can practically produce an outcome. In the current circumstances we have had to rely on the goodwill of a Councillor, who is the subject of an investigation of alleged serious misconduct, to absent themselves from the workplace voluntarily for the duration of that investigation.
3. Councillor Codes of Conduct are not required to contain procedures relating to allegations of sexual harassment by or between Councillors.
4. Councillor Codes of Conduct are not required to have failsafe mechanisms for use when the complaint is against the Mayor, or in the City of Melbourne's case, the Lord Mayor.
5. The misconduct framework established under the LGA makes no specific provision for misconduct that takes the form of sexual harassment, despite the fact that it is implausible that among the 79 councils in Victoria there is no sexual harassment occurring.
6. The practical application of the misconduct framework could, in certain circumstances, be too weak; it could have the effect of tolerating behaviour by Councillors to each other and/or to Council staff that falls well short of community expectations.