

Local Government Reform

Earlier intervention, effective regulation and stronger penalties.

Early intervention. Effective regulation.

Background

Pre 1994

From a technical background at Main Roads before commencing local government at the Shire of Esperance, prior to 1994 I was a public sector officer for some 25 years. A major influence was the leadership of a Clerk (CEO) who was not overbearing but required order and transparency with attention to statutory compliance and a focus on well informed Councillors prepared for inclusive formal debate, decisive governance and everyday two-way communication with the community.

Behind simple principles like *"You can only work for one boss"* and that *"With authority goes responsibility; that's accountable"* was respect and apt empowerment of assigned roles with proportionate responsibility. The progressive enabling from juniors to Councillors, fostered individual development (distinct from promotion) and stimulated organisational expertise, harmony, flexibility and efficiency. Rarely punitive the discipline to self-regulate was inherent.

Senior officers were answerable for the performance, development opportunity, fair treatment and welfare of supporting staff. Blame was not accepted.

Job security and family welfare was inseparable from ensuring and demonstrating the efficient use of public revenue to the best advantage of the community.

This was supported by a *"modern"* costing system with the general ledger fronting a developed job ledger that provided quality financial records. Knowing where and how allocated revenue was spent was a mainstay of efficiency, transparency, accountability and future planning.

As the senior officer responsible for delivering a major rural roadworks programme with a mixed workforce of employees and contractors distributed over a large area the quality of those records was invaluable.

Of course constant diligence was necessary but with clear roles and responsibilities self-regulation, transparency and accountability became characteristic.

Ironically, the Local Government Act 1960 was in force yet the management was consistent with the functions of CEOs and Chief Officers of the *Public Sector Management Act 1994*.

Local government is undeniably challenging but from that background I believe that:

- a) Governments Federal, State and Local are complementary with a progressive duty to represent, manage public revenue and ensure common compliance.
- b) Local Government is the foundation of democracy and serves the State by advocating for the welfare of its communities. Indeed the *Local Government Act 1995* requires that

In carrying out its functions a local government is to use its best endeavours to meet the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity.

- c) Local governments are capable of functioning as efficient and sustainable community businesses that impartially evaluate innate personal and factional interests to ensure maximum community benefit from limited public revenue. .

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- d) Adherence to statutory and common standards generally enhances efficiency.
 - e) Communities generally accept good, transparent local government albeit inevitable that some residents will be displeased with particular decisions of the Council.
 - f) It is vital that Councillors (and communities) are thoroughly and truthfully informed. Quality management and administration is essential.
 - g) **Clear roles and responsibilities foster staff career development, organisational expertise, the discipline to self-regulate and accountability which is fundamental to early intervention and effective regulation. The CEO is critical.**
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Post 1994

Returning to my home region of the Great Southern as an experienced officer after Parliament had enacted the *Public Sector Management Act 1994* and a few weeks before the *Local Government Act 1995* came into force, over the next 18 years I was employed by the Shire of Plantagenet, City of Albany and Shire of Jerramungup. The contrast with the previous 25 years was profound.

Upon arrival, none had the management, administration, technical proficiency or job cost records that are fundamental to informed governance, the efficient expenditure of public revenue and meaningful future planning. To various degrees, all suffered significant internal turmoil. The order and accountability that stems from the ability to self-regulate, adhere to an organisational structure and respect assigned roles

Whilst bringing extensive experience to those municipalities, I was unaware that from 1994 I was no longer a public sector officer but a corporate officer with a public sector mindset. I was to find that the methods which I held to be the industry standard, were the exception.

Shire of Plantagenet

I understood the findings of an inquiry and Council Advice Programme (CAP) at the Shire of Plantagenet between 1998 and 2000.

- a) “Inward” instead of “outward” looking with a “culture of blame”.
- b) Mistrust between the President, CEO, Councillors and staff.
- c) The CEO must determine and report the organisational structure.
- d) Officers occupying multi professional roles didn’t work.
- e) The President and Councillors must leave day to day management to the CEO.
- f) The absolute necessity for a “modern” works costing system.

Why did the CAP overlook basic management flaws to promote consultants for “team building” asset management and public consultation exercises? The Director Local Government Services indicate that asset management would address concerns about CEOs?

Odd? Isn’t the discipline to function efficiently and use limited public revenue to the best advantage of communities a statutory priority of local government? Was the intent that asset management demonstrated a revenue shortfall and justified amalgamations, which would reduce the number CEOs?

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City of Albany

Albeit amalgamated and a large organisation with an influential CEO, I found similar weaknesses at the City of Albany. It was surprising to find no “modern” job costing system. Expenditure worked to “bring projects out on budget”, by officers who knew no difference.

Of course consultants would oblige, but it wasn’t possible to reliably plan asset management from the data available. The Council was being informed of a substantial future revenue deficit.

However I sensed a loss of applied knowledge and skills, standards falling, repressive management being normalised? A shift in the balance of power from Councils to officers? Public revenue becoming a “vulture basket”? Limited funds indulging inefficient bureaucracy at the cost of operational services? Self-interest at the expense of communities?

Shire of Jerramungup

For family reasons, consolidation for old age and content with a return to my technical and operational management origins, in November 2005 I accepted the senior Works Department position at the Shire of Jerramungup. The hostility was immediate and intense.

The workplace was in disarray; employees aggressive, feuding, openly contemptuous. Within days it was made clear that my presence was unwelcome and that I would be “*taught some lessons at Jerramungup*”. I was told by employees who they would work with, that the Council needed them and that they would do more if paid more.

Several volatile, undisciplined local employees routinely reported to and accepted instruction from the CEO, Administration Officers, Councillors and influential residents.

When asked, the CEO advised that he had been instructed to secure my appointment, before he left in a few weeks and thought it best that I arrive to find out what was going on, for myself. (That CEO was later engaged as a consultant for the annual review of replacement CEOs).

It was a Councillor (President at the time) who later told me that it was the Council’s expectation when I was employed that I would address the conduct of the outside workforce

Records disclosed a long, repetitive history of mismanagement and workplace conflict; that started soon after the Shire of Jerramungup was excised from the Shire of Gnowangerup in 1982, No CEO was held to account. Repeatedly an undermined senior officer of the Works Department was blamed and forfeited; a cycle of abuse sustained by public revenue.

From an undermined position and influence limited to the Works Department, it was critical that the new CEO accepted responsibility for implementing an organisational structure.

I engaged and reached agreement with Works Department employees to define positions, functions, responsibilities and structured crews. Renegotiated the Enterprise Agreement to give employees greater incentive and fairer working conditions. Pursued the upgrading of plant and equipment to properly resource those crews and introduced “modern” works costing methods. An effort that was later described by LGIS as “superior”.

Agreement with Works staff about roles and responsibilities provided some ability to contain but not eliminate the unrelenting bullying, which aggravated the perpetrators who resented being managed and were protected amid family and community relationships that exerted a strong influence over the workplace. Newcomers remained particularly vulnerable.

Nepotism, cronyism, systemic bullying was normalised over decades and generations.

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This was far beyond workplace bullying by undisciplined, volatile local employees in a small community. This was decades of absolving CEOs whose careers had prospered while exercising power, abstaining the associated responsibilities and not being held to account.

The inability to self-regulate by CEOs is unfair at many levels. The undisciplined employees who I was compelled to manage to defend the right to fair treatment of others. The welfare of victims and perpetrators? Families? Entire communities? Compromised?

Given a long history of workplace conflict, inquiries and professed ethics how to respond if:

- a) An experienced CEOs believes it is acceptable and accountable that on an everyday basis the CEO issues instructions to employees, imagines that another officer is responsible and not be held answerable by the Council?

Regardless of experience, how can a competent local government CEO make the comment that *"It will be ok. He will be responsible to you but I will give the instructions"*?

How can these divisive CEOs, with an inability to self-regulate and respect a "chain of command" establish an organisational structure and order?

Might divisive CEOs who covet power and shun responsibility, draw Councillors into workforce management through "confidential meetings of the elected group", which promotes bullying and mobbing and at other times blame Councillors for interference?

What becomes the local government's culture? Repression? Bullying? Blame? What if those CEOs mentor novice CEOs across decades and generations? What becomes the local government industry culture?

- b) As an example. An unidentified person(s) contacted a Councillor(s) and made accusations against two Works Department employees and the manager? The Councillor(s) informed the President? A "confidential" meeting is held by Councillors and the CEO? The manager is excluded? No minutes are recorded?

The CEO then tells the manager that the issue must be addressed but as the meeting was "confidential" the CEO can't disclose details of the accusations or his discussion with Councillors?

Time consuming investigations by the manager finally find nothing to support the accusations? As authorised a Works Department light vehicle was used for transport from Jerramungup by an employee who was required to carry out relief duties at the Bremer Bay Community Resource Centre?

With impunity, the unidentified accuser(s) was replicating a pattern of destabilising and triggering the termination of the Works Department manager?

Unfair to the other accused employees? Malicious, interference with the manager's contractual duty that was enabled by the CEO and Councillors, who ignored the statutory obligations of an employer and the right to fair treatment and a safe workplace?

- c) An example. Details were unclear but a report had been received, from the Deputy CEO, about of a spiteful incident that day. That evening one of the employees involved

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sought to discuss the incident with the manager at a social event. The manager declined and simply advised that we would discuss the matter at work the next day.

A short while later the manager was confronted and verbally abused, in the male toilet at the social event, by the disgruntled employee's wife. When informed the CEO responded that he "felt sorry for what the wife had to put up with". The CEO abstained the responsibilities of position and disregarded the welfare of all involved including the disgruntled employee, his wife and family, the victims, their careers and their families?

- d) When told that the adoption of Procedures for Poor Performance and Misconduct Management provided by LGIS is necessary, the CEO responds that "Procedures aren't needed. Just make life hard for those you don't want until they leave"?
- e) Workplace feuding and bullying is dismissed as trivial by the CEO and Councillors? The class of person? Typical local government employees? A cause for mirth?

Did the CEO and Councillors degrade and stereotype employees? Discriminatory? OHS obligations of an employer? Nepotism and cronyism?

- f) With Works Department functions, responsibilities and crew structure agreed with employees, but not reinforced by the CEO and Council, the manager first seeks support from Local Government Insurance Services (LGIS) in 2007?
 - i. LGIS visits and assesses the workplace? *"Change will only occur if change is wanted by the CEO"*? (Does the CEO want change?)
 - ii. WALGA? A registered agent of the WA Industrial Relations Commission under s.112A of the Industrial Relations Act 1979? *"Will support the CEO"*?
 - iii. WorkSafe? Policy is that WorkSafe will only intervene if all other avenues are exhausted? Where are those avenues? When are they exhausted?
 - iv. Nella Global Solutions? A preferred supplier of WALGA? *"Generally engaged by the CEO. The CEO could engage Nella Global as an independent agency to review/investigate the matter"*? Can't engage Nella Global as an advocate?
 - v. LGIS? Continue regular monthly meetings with Regional Risk Co-ordinator. Frequent contact with LGIS Senior HR Risk Consultant / Psychologist.
 - vi. LGIS HR Risk Consultant assesses Works Department PDs in March 2012 *"I must compliment you on the PD layouts and detail they are quite superior"*.
 - vii. Met with the LGIS Senior HR Risk Consultant / Psychologist and the three Works supervisors, in Perth on 03/08/2012. The consensus was that the CEO must stop bypassing the chain of command and that he needed to accept the responsibilities of that position; albeit that a CEO had never been held responsible at that local government. Even by the Minister.

Nonetheless, upon returning from Perth I told the CEO that *"I need you to accept the responsibilities of your position"* The response; "I won't give somebody else control when I can be held responsible. Attack is the best defence and I don't lose".

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I was later contacted by the supervisors, who wanted me to stop the CEO from using his iphone to issue them instructions, even though the CEO was on leave.

- g) In August 2013 I informed the CEO and LGIS Regional Risk Coordinator that:

"It has been extremely difficult to comprehend the motives behind a serious and persistent culture, which degrades and drives employees from the workplace regardless of performance and is damaging for individuals, families, the community and local government.

I intended to seek advice before raising my concerns with the local government and request that in good faith I am able to do so without further prejudice, abuse or frustration of that basic entitlement".

- h) The Regional Risk Coordinator forwarded my advice to the Senior HR Risk Consultant / Psychologist, as follows:

Reference the email from Graham that I received on my return from leave, I know I have raised these issues with you previously but the assistance you was able to provide then, was limited without the approval of the CEO.

Although I have not yet spoken with Graham (since returning from leave), I do believe (based on his email and earlier conversations) that the situation is becoming critical in regard to potential stress leave etc.

Please could you provide advice/assistance to Graham and myself in regard to possible future actions that can be taken to resolve/mitigate the situation?

Pardon? After all of that time, effort and many discussions, the local government's insurer LGIS, a founding corporate partner of WALGA represented by a Psychologist (M. Psych (Org), a mental health professional, required the approval of the CEO to inform the Council? Why was that? What was going on?

- i) Subsequently, in December 2013 I wrote to the Shire President.

Notwithstanding that the Works Department has consistently delivered record Works Programmes during my tenure, all the while:

- My position has been disrespected, maligned and systematically dismantled as my time has been spent containing high risk workplace behaviour with damaging individual, family, community, social and industry consequences.*
- It has been at the expense of my career, my family and personal objectives which have been left in disarray.*

The workplace is abusive and unsafe for me. I now reserve the right to raise a number of concerns with the local government and enter mediation pursuant to my contract of employment.

I request that in good faith I am able to do so without further prejudice, abuse or frustration of that basic workplace entitlement.

The LGIS Regional Risk Coordinator said that if I pursued this I would never work in local government again.

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- j) The President responded that there had been:

“A subsequent discussion with the elected group. Although the specific point of conflict disagreement or differences remains unclear the Shire has contacted LGIS to investigate mediation options pursuant to your contract of employment.

The Chief Executive Officer will be in Perth on 7 January 2014 for a meeting with the Health Minister. If possible we would like to arrange a mediation session with the assistance of LGIS during this visit.

- k) While prepared to attend mediation in Perth, I had already had many discussions with the CEO and LGIS Senior HR Risk Consultant / Psychologist. I still sought mediation with the Council.

The CEO, decided that mediation wouldn't proceed and upon returning from Perth I was advised to resign and leave immediately, which I declined then used annual and long service leave entitlements to conclude my contract. During those months:

- i. I received several calls informing me of my forthcoming retirement and asking about my role at Jerramungup.
- ii. A Jerramungup Councillor was named as my opposition by a guest from Albany at my nieces wedding in Perth.

Even after my contract concluded the hostility was evident:

- i. It was made clear that my presence was unwelcome by the husband of a Jerramungup Shire officer, during a visit to Bremer Bay with my son.
- ii. An Albany businessman told me that he was *“surprised they didn't shoot you”*.

Notwithstanding that my position was unrelenting disrespected and maligned, the Works Department consistently delivered record works programmes during my tenure. Nonetheless, my 43 year local government career was terminated.

I had come from an alternative local government background and introduced methods that were foreign at a local government with a toxic workplace, poor standards and a long history of management and administration deficiencies.

Who was that challenging? The CEO? The Council? WALGA? LGIS? The Minister? Local Government Managers (Professionals) Australia?

I recall the hostility of that publically funded workplace, the treatment I (and many others) received and the sense of betrayal I feel that there was no support.

I was not responsible for the CEO or the Council. However I had a right to procedural fairness, mediation with the Council and credit for a very significant achievement at the Shire of Jerramungup, despite the hostility..

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How to reconcile local government post 1994?

Public Sector Management Act 1994.

After the 1992 Royal Commission into the Commercial Activities of Government highlighted concern at the conduct and accountability of public officials Parliament enacted the *Public Sector Management Act 1994*. Local government was classified as a *Schedule 1* entity.

Although still publically funded local government officials were no longer classified as public officials and were excluded from public sector principles and standards for management, administration, human resources, conduct and ethics.

Parliament had altered the status quo but was the public sector exempt from a duty of local government scrutiny? Where was the benefit by Parliament:

- a) Removing the public status of local government officials?
- b) Lowering the benchmark for conduct and accountability of local government officials?
- c) Weakening local government as a foundation of democracy?

Where was the benefit of excluding local government CEOs and chief employees from public sector standards pursuant to the *PSM Act 1994* which include to ensure:

- a) Leadership, strategic direction and a focus on results for the local government?
- b) The proper organisation of a local government and its departments?
- c) The appropriate division of responsibilities and the assignment of functions to the employees (including contractors) of a local government and its departments?

Please consider amending the *Public Sector Management Act 1994* to reclassify:

- a) **Local governments as public sector organisations; and not Schedule 1 entities.**
- b) **Local government officials as public officials who are bound by the principles of management, administration, human resource management, conduct, ethics and standards that apply to the public sector pursuant to the *PSM 1994*.**

Shire of Jerramungup

In August 1995 the Minister informed the Council and residents that “*Your Shire has been the subject of intense scrutiny. A number of deficiencies were identified in administrative and management procedures. Improvements can still be achieved but none of these are critical*”.

Was the Minister indifferent to deficiencies that included:

- a) Councillors heavily involved in day to day operations.
- b) The Clerk (CEO) failing to ensure compliance with the Local Government Act, the Local Government Accounting Directions and Council Policy.
- c) A failure to meet the Occupational Health and Safety, Equal Opportunity and Anti-Discrimination obligations of an employer.

Bearing in mind Ministerial discretion, did the Minister excuse the Municipal Inspectors from their duty and transfer greater risk to vulnerable employees?

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For whom was it fortunate that:

- a) The culpable Clerk (CEO) was absolved with his career intact by relocating?
 - b) A competent mechanic who was instructed to take on plant operation duties by a former CEO before being coerced into a supervisory role, when he didn't believe he was capable, was bullied into resigning because he lacked supervisory proficiency; using methods that were rebuked by the Inspectors?
 - c) The Council would have found it difficult to overcome its problems if the resignation wasn't secured?
 - d) The replacement CEO, a novice with a Health/Building background attended a CEO Support Program?
 - e) Within less than a year a Special Meeting of the Council resolved to summarily terminate the employment of the new Manager Engineering Services?
 - f) An established pattern of excusing Clerks (CEOs) and forfeiting the senior Works Department officer was continued? An established pattern of blame and abuse?
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Local Government Act 1995

Came into force from 1 July 1996. Local government was corporatized. Proceedings could be taken by or against a local government in its corporate name.

Shire of Plantagenet

The Director Local Government Services indication that asset management would address concerns about CEOs?

Asset management can easily be used to demonstrate a revenue shortfall but isn't the discipline to function efficiently and use limited public revenue to the best advantage of communities a local government priority? A statutory duty?

Was the intent to use asset management and justify amalgamations, which would also reduce the number of CEOs?

City of Albany

The Council had provided ample software and of course consultants would oblige, but it wasn't possible to develop reliable asset management plans from the available data. Asset management was demonstrating a major revenue shortfall, rather than the efficient use of limited public revenue.

Shire of Jerramungup

Consultants conducting an Asset Management Masterclass advising the most powerful officers in local government against accepting responsibility?

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When queried the organising consultant, a former LGIS Regional Risk Coordinator replied that teaching asset management had replaced best practice management. Did the consultant not regard asset management an integral component of best practice management?

WALGA

From December 2001 local government was consolidated under the aegis of the Western Australian Local Government Association (WALGA).

If Ministerial discretion had transferred greater risk to vulnerable employees, how would the directive of the Local Government Act 1995 be achieved? *“WALGA is to establish and manage, for the benefit of itself and any eligible body that chooses to participate, a group self-insurance arrangement against liability to pay compensation under the WCIM Act, to be achieved?”*

- a) WALGA is not a government department or agency but a powerful, independent, private entity that claims to be the peak organisation for local government in Western Australia. WALGA has formidable corporate partners and associates with a vested interest who will understand the benefits of the status quo?
- b) Local Government Insurance Services (LGIS) is a founding corporate partner of WALGA and simultaneously a corporate partner of Local Government Managers Australia; an associate member of WALGA represented on the State Council?

The corporate arrangement between LGIS and LGMA has now been reframed as a partnership between Local Government Professionals Australia (LGPA) and Jardine Lloyd Thompson?

- a) As an insurer has LGIS managed the risk by shielding powerful officials? LGIS does not alert a Council about mismanagement unless authorised by the CEO?

WALGA, LGIS and Local Government Professionals Australia are logically opportunistic with a vested interest in maintaining the status quo? Does maintaining rather than eliminating a risk that is transferred to the more vulnerable present a commercial opportunity?

Is public revenue advantaging opportunistic empire building by formidable corporations at the expense of vulnerable employees and communities? Might local government officials be included? Mercenary corporate conduct?

After all, albeit publically funded are these independent, private entities:

- a) Responsible for a Government's diligence, fiscal management and statutory administration?
- b) Compelled to heed the rights and welfare of individuals, families and communities that Parliaments and Governments have a duty to represent?
- c) Obligated to care if individuals, families and communities pay a premium price for corporate profit?

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Stronger penalties

The impact of problems, disputes and dysfunction within local government goes far beyond ratepayers, local businesses, and local government services.

The workload was debilitating and the workplace distressing but the undisciplined employees I was compelled to manage were a responsibility of my position. Some exhibited disturbing emotional distress but they were a symptom and not the cause of a dysfunctional local government workplace. Also victims.

The damage I experienced was from exploitation and betrayal by officials who occupied a position of power and trust. Decades of mismanagement and abstaining responsibility by powerful officials who were not held to account.

Is Parliament attentive to the magnifying effect of profit at any cost and public revenue funding mercenary corporate empire building?

Is it not binding that local government chief officers occupy a position of power, influence and trust with a statutory duty to ensure a safe workplace where every employee is free from abuse and treated fairly? Might the avoiding of responsibility by those officials be insidious fraud?

Perhaps the protection of malpractice by WALGA and LGIS warrants strong penalties?

The social and economic consequences for families, communities and the State from mismanagement that manifests as workplace bullying and a “culture of blame” are well documented. When workplace abuse is overlooked, dismissed, minimised or even actively perpetrated by the employer the damage is compounded.

When attempts to seek help and support to address workplace malpractice fall on deaf ears, the consequences are further magnified

Relationship and family breakdown? Child welfare? Small business? Mental health? Poverty? Career loss? Domestic violence? Suicide? Some who are genuinely disadvantaged and worthy? Others who are honest, hard-working and deserving? The prospects of future generations compromised?

Small, rural communities are especially vulnerable. Everyday rural employment devalued? Volunteers courted as an untapped resource; free labour sustaining services and facilities to oblige powerful, corporate empire building and indulgence? Admirable communities, honourable citizens? Expendable?

Complaints relating to local governments should be minimised and resolved quickly to reduce the risk of damage that may be done when there are serious problems in how a local government is functioning.

Quality management and administration are basic to good governance and transparency, The CEO is critical. Will there be stronger legislation to define duties and penalties for CEOs?

Local government oversight needs to be focused on targeting and fixing significant problems and stopping misconduct.

Agreed. There are significant problems and misconduct. Amoral, pervasive abuse. An overwhelming power imbalance.

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The Local Government Inspector

A new oversight Inspector for local government will be appointed to handle complaints, manage investigations, and coordinate the proactive resolution of significant problems identified within local governments. The Inspector will have the authority to receive complaints about local government CEOs.

Essential.

Stronger Penalties

Stronger penalties will be imposed by a new Conduct Panel. This will include short-term disqualification or withholding of allowances for elected members who have been found to be in breach of the Local Government Act or Regulations.

Will there be stronger penalties for CEOs and chief employees?

Mandatory Training

Elected members who do not complete mandatory training within a certain time will not be eligible for any allowances or sitting fees. They will also be liable for other penalties.

Will there be a process to ensure that CEOs are competent before they are appointed.

Rapid Red Card Resolutions

Mayors and Presidents will have consistent powers to eject anyone who disrupts a council meeting, with appropriate checks and balances by the Local Government Inspector, to prevent the misuse of these powers. This reform will also be supported by mandatory audio or video recording of council meetings.

Other Amendments

Other amendments may further strengthen oversight of local government. Early intervention and oversight reforms will also be supported by the other reforms, especially new transparency and democratic decision-making reforms.

Graham Edwards

