

**APSAC CONFERENCE 2011** – Local Government stream – Wed 16/11  
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Local  
Government)

**“We just collect the rubbish, what’s the issue?” – Misconduct as a risk in local government (or is it?)**

Clearly local governments do far more than just collect the rubbish despite the views of some that this is the extent of local government activity – rubbish collection and of course, parking infringements – what else?. As we know, this view is far from reality. It could be said that local governments provide a wider and more diverse range of services to the community than most other public sector organisations. In the course of delivering these services they exercise considerable authority and broad discretion. The nature and the degree of engagement with the community and the business world is, as a consequence, considerable and intense. This is a complex operating environment. What does this mean for local governments and the management of misconduct and misconduct risk?

This session will endeavour to explore the prospect of misconduct risk in local government albeit briefly given time constraints, and consider some of the factors that would (or should) in the Commission’s view, place misconduct as a risk, high on the local government risk register.

The Commission and the local government sector – it’s enough to say here that this sector is currently a priority for the Commission. I am speaking here in a positive sense and primarily from the Commission’s prevention perspective. The Commission has embarked on a review of this sector in an endeavour to determine the capacity of local governments to deal with misconduct and misconduct risk.

Local government as a sector is considered a significant and important part of the Commission’s jurisdiction. This sector and the 139 individual councils or local governments within, deliver a hugely diverse range of services for the community and in doing so have an intense engagement with not only the community but with private enterprise, in all its forms. To deliver this diverse range of services local governments perform an equally diverse range of functions. In the Commission’s view it is an area in which we find a large group of agencies that are each more likely exposed to misconduct risk than perhaps any other single public sector organisation.

It is the scope and breadth of the exposure together with the question of how well aware and prepared these organisations are to deal with the issue, that is at the heart of the matter and the concern. While it is early days in terms of our review there are some significant factors presenting.

First let's consider the diversity and nature of the services provided by local governments – What is the business of Local Government?

- Local governments provide an exhaustive range of services which include –
  - **infrastructure and property services**, including local roads, bridges, footpaths, drainage, waste collection and management
  - **provision of recreation facilities**, such as parks, sports fields and stadiums, golf courses, swimming pools, sport centers, halls, camping grounds and caravan parks
  - **health services** such as water and food inspection, immunisation services, toilet facilities, noise control and meat inspection and animal control
  - **community services**, such as child care, aged care and accommodation, community care and welfare services
  - **building services**, including inspections, licensing, certification and enforcement
  - **planning and development approval**
  - **administration of infrastructure facilities**, such as airports and aerodromes, ports and marinas, cemeteries, parking facilities and street parking;
  - **cultural facilities and services**, such as libraries, art galleries and museums

In providing such a range of services local governments are exercising significant authority and do so in many instances with a considerable degree of discretion. As these services are delivered, this authority and discretion is delegated to and exercised by staff at all levels and to varying degrees across the spread of the organisation. Local governments engage in a constant process of approving, refusing, considering, providing, facilitating, promoting, regulating, assisting and advising. The process defines the nature of local government's relationship with the community and business. In referring to the 'spread' of the organisation it is important to take into account that delivering these services means that local government facilities and staff are of necessity physically widespread across the community. These are significant factors in considering the degree of misconduct risk that exist for each organisation, the exposure that exists for staff and management and the difficulties that present in managing that risk.

Does misconduct actually exist within this environment?

Need to take a moment to first explain in simple terms what we mean by misconduct. The legislation has several pages dedicated to defining or qualifying the term but I would rather take a more simple everyday approach and consider misconduct behavior as fitting within the following boundaries as a less complicated guide.

### 3 aspects

- Misuse or abuse of auth as public officers ...
- Failure to act in the public interest – a breach of the public's trust in us as public officers...
- Criminal behavior that has a relationship to our role or the performance of a function as a public officer ...

Accepting this as a 'simple' explanation we can see that misconduct relates to a broad range of behaviors. It follows as a consequence that misconduct as a risk can appear or will present in many forms. Importantly it will present differently depending on the nature of business activity and the various functions that are associated.

For example, and leaving local government for just a moment ... lets consider a health setting, say, a hospital – and within that setting take a hospital ward as a business activity area. The misconduct risks that exist here are more likely associated with the management and use of drugs and the relationships that exist between medical staff and patients. The theft of drugs and the misuse of drugs is a significant issue for WA Health and we only need consider the recent conviction of a doctor for the assault of a female patient in an emergency ward to see the reality of the relationship risk.

In local government the misconduct risk presents in completely different ways and across a range of behaviors. It naturally relates to the diversity of services and functions associated with the business of local government. For example it covers risks associated with: regulatory functions - rangers, health and building inspectors and the possibility of abuse of authority and improper influence; procurement and tendering processes and the prospect of corruption and fraud; planning and building processes and the possibility of bribery, improper influence and abuse of authority.

To get a realistic view of this we can look at the range of local government misconduct incident matters that have been raised with the Commission. These involve conduct that runs from very low level incidents to the most serious.

I will mention just some of these so that we get the idea, bearing in mind that these are categories only:

- Conflict of Interest
- Corrupt Conduct
- Use of Position for Personal Gain
- Stealing / Theft
- Breach of Confidentiality / Misuse of Information / Improper Disclosure
- Fraud / Falsification / Fabrication
- Bullying / Intimidation / Harassment
- Abuse of contracts and tendering process

- Failure to Act
- Abuse of Authority
- Making Misleading / False / Defamatory Statements
- Unauthorised Use of Agency Property
- Misappropriation of funds
- Drugs Related Conduct
- Misuse of Computer System / Email / Internet
- Election matters
- Failure to Declare Gifts
- Assault - Physical / Excessive use of force
- Bribes - Receiving of
- False Claims for Reimbursement - Petrol / Travel etc
- Assault - Sexual / Indecent
- Secondary Employment - Unauthorised / Inappropriate
- Serious Criminal Conduct
- Arson
- Misuse of corporate credit card
- Sexual Harassment
- Neglect of Duty
- Breach of Code of Conduct / Policy / Procedures
- Unprofessional Conduct - Demeanour / Attitude / Language

Within these categories we have misconduct that involves events at both metropolitan and regional local governments and occurring in both large and small organisations. To mention just a few of the more serious matters, we see the incidence of –

- Large scale corruption and fraud involving procurement and contracting of services for capital works maintenance.
- Large scale fraud and theft involving misuse of corporate credit card and widespread misappropriation of council funds.
- Corruption and fraud with regard to the procurement of building maintenance services.
- Theft by carers from care clients.
- Abuse of position for sexual favour.

This raises the obvious question – what enables these events to occur? Some of these situations have arisen in large local governments which generally seem to have a sophisticated approach to conducting business/to delivering services with the necessary structures, policies and procedures in place and in other instances in such small organisations that one would think that the behaviour in question could not go un-noticed. Nevertheless the events have occurred; in certain cases the misconduct behaviour has taken place over a considerable period – in some instances, many years.

What is evident is that often it is not a single issue that gives rise to the behaviour. It is frequently the case that it is a mix of shortcomings - in the checks and balances that are in place or the way in which the checks and

balances have been exercised, a lack of adequate internal audit function – its noticeable in local government that audit has been reduced to the twice yearly contracted high level audit – not every organisation has an internal auditor, it might involve organisational cultural issues around work ethic and general conduct – a less-than-desirable attitude to working and maintaining standards and relatedly it often reflects failings in basic good management and oversight of work activities. It almost always involves an over-reliance on ‘trust’. All of these are factors relevant to raising the level of misconduct risk and the likelihood of misconduct materialising.

What is of particular interest is that in so many of the cases there has been awareness within the organisation that something is amiss, something questionable about what is occurring and yet the behaviour continues.

The common factor is, in almost all of the cases, that organisationally there is little or no focus on misconduct as a risk, there is a limited understanding of what is meant by the term misconduct and a lack of any form of strategy and system for managing... that is – preventing, identifying, reporting and handling the misconduct/misconduct risk issue.

**If**, it is generally the case that local governments across the state are similarly lacking in misconduct management and misconduct risk focus and as a result are similarly lacking or have similar weaknesses in their misconduct resistance structure, (and the impression we have at this time is, that this is likely the case) then the very nature of the business activities of local government escalates the level of the misconduct risk across the sector.

This is a serious position. It is a position that becomes more serious if we consider some of the specific areas of local government business activity and the misconduct risk prospect.

For example, this prospect is heightened when we consider local governments in both metropolitan and regional areas that are engaged in relationships with large players from the private sector, particularly when they are in the course of negotiating large scale business developments. These can be commercial, residential, industrial developments driven by the interests of the private sector or infrastructure developments driven by government and community needs or a combination of both as exists in regional areas with expansions in the resource/mining industry.

In these circumstances the financial stakes are extraordinarily high and the local governments are in the difficult position of engaging with companies that often act as both client/applicant seeking cooperation and approval and good corporate citizen offering considerable financial assistance. It becomes an intense engagement and working relationship. The likelihood that the lines between these various roles may become blurred, that there is less impartiality, that there is the prospect of improper influence occurring and that the integrity of processes might be compromised, is significantly high. A considerable misconduct risk exists in these circumstances.

It is probably enough to say at this stage (given our time constraints) that without question, misconduct is a risk for local governments. From what we know to this point here in WA and from what we see and hear from our counterparts in the east, local government is particularly exposed to this risk. It is also apparent that the sector does not yet have a clear view about the extent to which misconduct places their organisations and their people at risk. Without an acknowledgment that this is an issue, without appropriate steps being taken to address the prospect that misconduct risks exist within the business activities in which they all engage, it is difficult to imagine that much will change in this sector and local governments will continue to be surprised by the events that envelop them.

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**Phil Barden**  
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