

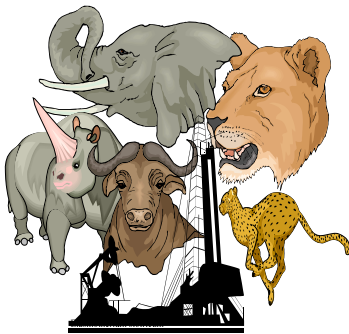
lessons series

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Shared legal expertise in the North West

The work of the Bojanala Platinum
District Municipality Legal Task Team



Bojanala Platinum
District Municipality



Local Municipality
of Madibeng



Moses Kotane
Local Municipality



Moretele
Local Municipality



Rustenburg
Local Municipality



Kgetlengrivier
Local Municipality

"Making knowledge work for us"

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OVERVIEW

1.1 Project aim

This unique intervention set up by the Bojanala Platinum District Municipality (BPDM) in the North West Province successfully incorporates scarce local government legal resources into a shared services structure, the BPDM Legal Task Team (LTT). The LTT produces generic municipal policies and by-laws of a high standard in a very cost-effective manner for the benefit of all participating municipalities.

1.2 Members and partners

The Legal Task Team comprises legal advisors and officials responsible for drafting policies and by-laws, from:

- The five constituent municipalities of the BPDM (Moretele, Madibeng, Rustenburg, Moses Kotane and Kgetlengrivier Local Municipalities) as well as representatives from:
- The Department of Developmental Local Government & Housing (DDLG & H) of the North West Province;
- The South African Local Government Association (SALGA); and
- Representatives from the other three district municipalities in the province, ie Ngaka Modiri Molema DM (Mafikeng LM), Bophirima DM (Naledi LM and Greater Taung), and Southern DM (Matlosana and Tlokwe/Potchefstroom).

1.3 Time frame and budget

The LTT is coordinated and funded by the BPDM. The LTT meets bi-monthly for a work session over two days based on a fixed annual meeting programme determined in accordance with the corporate calendar of the BPDM and all other members.

Each participating member or institution pays the salary, travel and accommodation expenses of its own task team members attending the work sessions.

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WHY AND HOW WAS THE LEGAL TASK TEAM FOUNDED?

The LTT is an initiative of the BPDM. During the latter half of 2005 when the LTT was formed, there were only three legal advisors in the BPDM district. The situation in other DMs in the North West Province was no different: four DMs, 21 LMs and only six legal advisors to draft or review policies and by-laws! A desperate situation called for desperate measures. The only option was to join forces and to pool the resources that were available at that time.

Once the activities of the LTT became known, DDLG & H and SALGA joined the team. Later the Provincial Extech requested that this process be cascaded to the other three district municipalities and their constituent local municipalities. Membership was based purely on a voluntary basis. Presentations were made to the three other district municipalities, ie Bophirima, Southern and Ngaka Modiri Molema and they subsequently became voluntary and respected members of the LTT.



WHAT IS ITS MANDATE?

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During 2005, the need to review or redraft certain policies and by-laws was identified by most municipalities. At that stage extensive use was made of outside consultants for these projects. It soon became apparent that both the quality and approach with regard to most outputs were unacceptable for various reasons and the process proved very expensive.

The LTT was established to tackle this problem and was subsequently mandated to:

- draft and review generic policies;
- draft and review generic by-laws;
- give ad hoc legal comments; and
- attend to priorities as identified by Councils.

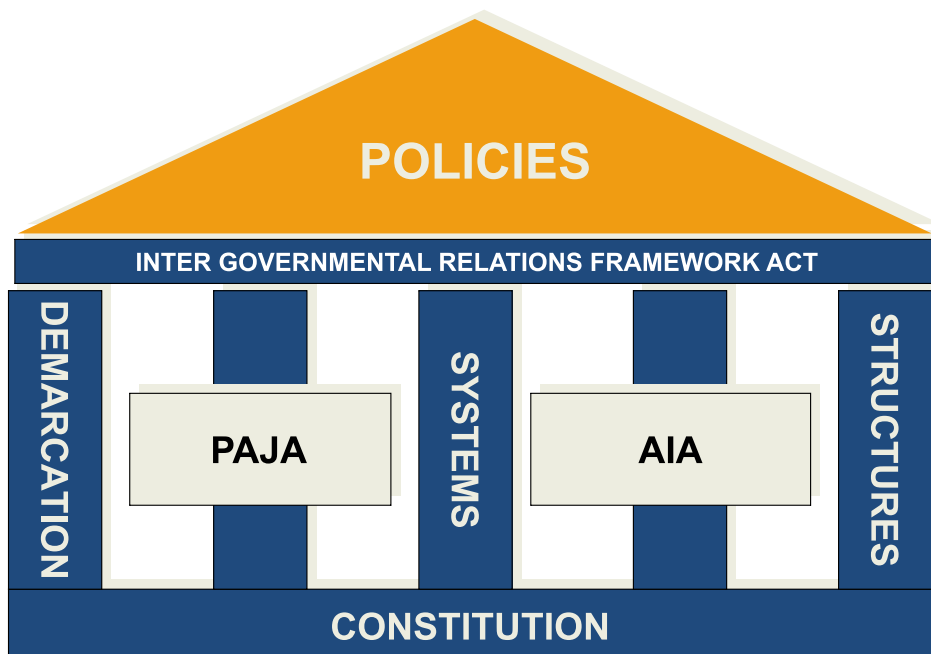
This mandate was submitted to, and formally approved by, all the participating municipal managers and the political leadership of the member municipalities, thereby establishing the legitimacy of the process.

The LTT has had to deal with many misconceptions about its role and responsibilities. The team explained as follows: "There are instances where people tried to pass on their line functions to the Legal Task Team. We stopped that, because our mandate was to focus on by-laws and policies and not to function as a legal advisory centre. You have to be narrowly focused in a structure like this, otherwise your focus can shift and the emphasis can move to non-essential business." The task team is not a substitute for the legal advisory function within each municipality's legal unit, their exclusive focus is to develop a common language that all can speak in terms of policies and by-laws, and to adopt a uniform approach and standard.

WITHIN WHICH LEGAL FRAMEWORK IS IT OPERATING?

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The LTT operates within a very specific legal framework. The figure below depicts the legal framework or the 'municipal house' as it is called by the LTT. The Promotion of Access to Information Act (AIA, Act No 2 of 2000) and the Promotion of Administrative Justice Act (PAJA, Act No 3 of 2000) are viewed by the LTT as "the two windows that allow people to see what we are doing inside our municipalities." The team is acutely aware of the implications and dangers, of this legislation and all new drafts are scrutinised for compliance with them. All relevant local government legislation - even pre-1994 - are considered and applied where appropriate.



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WHAT ARE THE OPERATIONAL PRINCIPLES?

The task team does not believe in **re-inventing the wheel**, but uses available expertise and documentation. Contrary to the widespread practice of turning to external consultants in the face of a resource scarcity, the LTT **utilises and consolidates its own in-house expertise**. All the members are local government practitioners. Some experts are in local government, some are in provincial government, and some are from SALGA.

"We work on a **share and care** principle", the team said. "We have **permission** from the participating municipalities to **use and share information** where relevant and required."

"We also try to **remain relevant**. We do not sit here as an exercise in drafting policies and by-laws that don't mean anything to anybody. For instance, we on behalf of Rustenburg as a Host City for the Soccer 2010 event, assisted Fifa and the LOC to draft the Soccer 2010 by-laws." The recommendation from the LTT to consolidate the five separate by-laws into one Soccer 2010 by-law was adopted by the LOC and Fifa as well as the other host cities. Priorities are identified as they become relevant.

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WHAT METHODOLOGY DOES THE LTT FOLLOW?

Work sessions

Bi-monthly work sessions are held over two days. The host municipality is rotated in order to accommodate all members, because the province is large and the travelling distances are lengthy. The host municipality is responsible for the meeting venue and the catering arrangements for the meeting (at no cost to the other municipalities).

Each participating municipality carries the travel and accommodation costs of its own task team member.



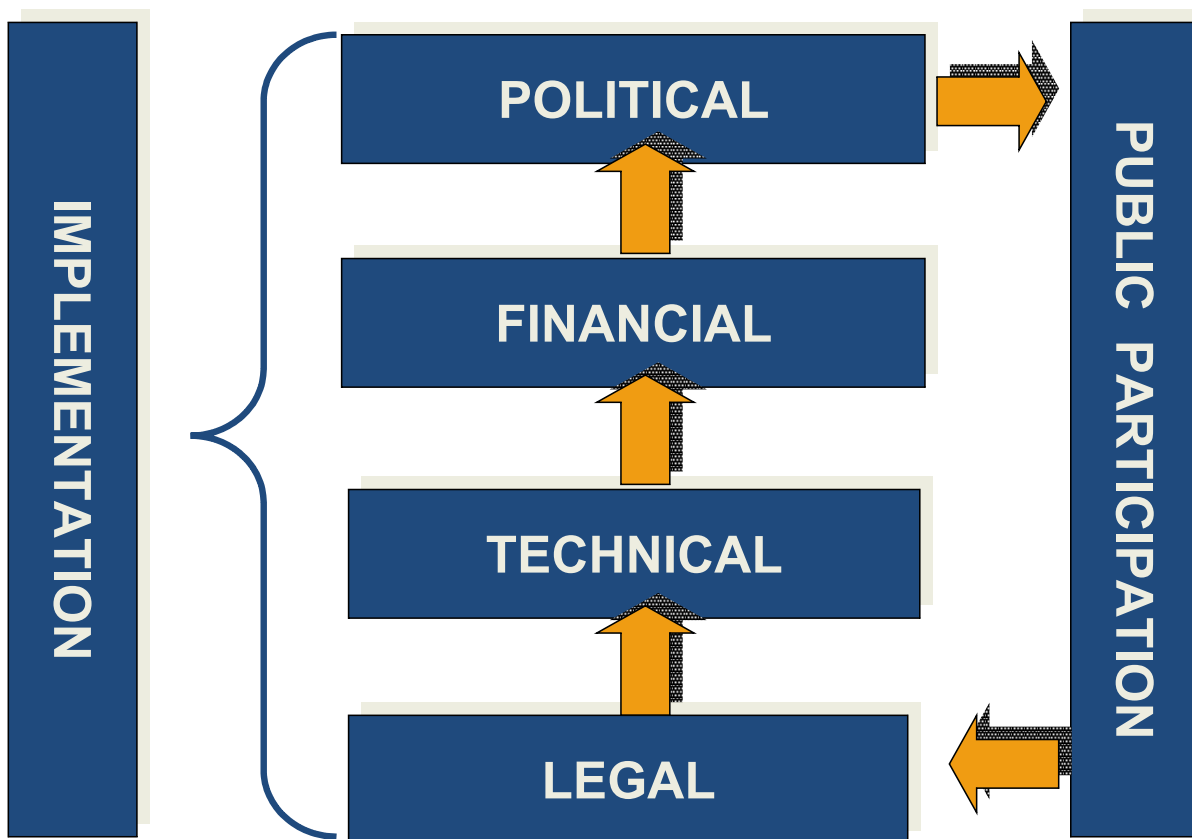
Advocate Jurie Vorster, the coordinator of the Legal Task Team

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Work process

The task team applies the operational principles (set out below) in a process that follows a very specific route: Legal input, technical input, financial input, political input, public participation, and, finally, implementation.

METHODOLOGY ADOPTED (LTT)



The legal process

The LTT identifies specific policies and by-laws that need to be attended to and develops them into a project. Desktop research into available documentation is always a first step. Copies of available documentation are procured. The Coordinator of the LTT, Adv Jurie Vorster from the BPDM contacts metros, smaller and larger municipalities, to find out whether they have a policy or a by-law on the specific subject. He works through the sample policies or by-laws and condenses them into a first working draft. This draft is then circulated to the LTT members, after which it is discussed in detail at the LTT two-day work session. All drafts are considered and evaluated against the stated legal framework. Complex legislation or policies are sometimes considered over two or three working sessions until the LTT is satisfied that they are correct.

The technical and financial processes

The legal process is followed by a technical process, which is determined by the nature of the subject. For example, if it is a water and sanitation by-law, the team refers it to the technical task team that has also been established by the Bojanala DM. They comment on it from a technical point of view.

The technical task team is currently split into sub-teams for water and sanitation, housing, electricity, environment, roads and storm water and these, in turn, are linked to the Bojanala DM Municipal Managers' Forum. The sub-team structure changes as the powers and functions and the authorisations of the district and local municipalities change.

The financial process follows a similar route. The draft document is scrutinised by a financial task team which considers the financial implications.

The political process

The nature of the political process depends on the type of municipality.

The task team explains this with an example: "The BPDM has an executive mayoral system. The document will therefore go to the responsible portfolio committee and from there to the Mayoral Committee and then to Council. If a municipality only has an EXCO, then the document goes to the EXCO and from the EXCO to Council. So its internal processes depend on the type of that specific municipality." It is for this reason that "one shoe cannot fit all" and all generic drafts are then customised to suit the particular municipality.

Public participation

All tasks include a public participation process in order to obtain input from the public and the relevant stakeholders.

Once the public participation process is completed, the document is final and it is promulgated in the North West Provincial Gazette and implemented.

Sectoral expertise

Sector specialists such as engineers, town planners, health practitioners and fire chiefs are invited to join the LTT work sessions to provide specialist inputs during these sessions. They are, after all, the practitioners who would be responsible for the implementation and administration of those policies and by-laws and therefore need to be instrumental in their creation.

Customisation process

The final generic draft is customised by the internal legal advisor of each member municipality, to suit the requirements of that specific municipality, and this person then drives the document through all internal consultation and approval processes until final approval by Council and promulgation. In those instances where the municipality does not have an internal legal advisor, the district municipality, province or SALGA would assist where possible.

Access to LTT products

All products developed by the LTT are transferred onto a CD and every member receives a copy of the CD. This CD is updated on a regular basis. The BPDM also has a website (www.bojanala.gov.za) from where all municipalities in the North West Province, as well as other municipalities can access the LTT products, provided they have the necessary password.

The work of the LTT is available to consultants on very specific conditions, in order to prevent plagiarism. The most important condition is that consultants are not to be paid by municipalities for work that has already been done by the LTT.

Standard documents tailored to specific needs

The LTT produces a generic version of legal documents with two purposes in mind: To standardise the by-laws and policies and to make them uniformly applicable. It is a basic principle of their work that all legal documents should be user-friendly and accessible to any person receiving a service from the municipality.

When the task team started off there was no agreed format for by-laws and policy documents: "All the by-laws looked different. All the policies looked different," said the task team. They then decided that they were going to use the same format as national legislation.

Below is an example of a standardised generic document produced by the LTT.

MORETELE LOCAL MUNICIPALITY



WATER AND SANITATION BY- LAW, 2005 (No. 1 of 2005)

To regulate the provision of water and sanitation services in the area of jurisdiction of the municipality and to provide for matters connected therewith.

Be it enacted by the Municipal Council in terms of section 11 (3) (m) of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), as follows:-

CHAPTER 1 DEFINITIONS

"However, no two peas in a pod are the same," the team explained. "You will always have variations, additions, etc depending on the size and powers and functions of the municipality."

The LTT does not have the power to enforce standardisation. Standard legal documents and guidelines are provided as a free service to municipalities. Municipalities can customise these template documents to suit their specific needs. The LTT does not have the mandate to monitor implementation of their documents. However, the members from the DDLG&H and SALGA play a valuable role in this regard. A circular from SALGA to all municipalities within the province resulted in various other municipalities requesting and receiving the products of the LTT on CD. The DDLG&H has also launched a programme to monitor policy and by-law implementation by the municipalities.

The synergy between the provincial and national Departments of Local Government on the one hand, and SALGA on the other hand, as well as the municipalities, offer wider distribution opportunities for the products of the LTT. The task team explained with an example: "One of the key focus areas of Project Consolidate is by-laws. In their interaction with municipalities they tell them about the products. They even gave them copies of the CD and a list of all the by-laws that we have done."

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MEASURING SUCCESS

Outputs to date

Initially it was a huge task to put all these documents on CD and it took the coordinator of the task team a whole year to do it, because most of the old legislation, policies and by-laws were not available in electronic format, and the majority had to be re-typed.

Since then, more than 50 draft policies and by-laws have been finalised by the LTT and provided to members on a CD in MS Word format. Products include generic policies and by-laws on Water and Sanitation, Rules of Order, Delegations of Powers and Functions, Financial Policies, Policies on Waste Management, Soccer 2010 by-laws and Fleet Management to name but a few.

Cost effectiveness

No legal firm can match the output of the LTT because of the financial implication. Instead of one legal advisor, an average of, between 12 and 15, legal advisors with expertise in local government work together on a document during work sessions. The average cost of outside consultants amounts to R100 000 per document! For this service, a municipality only pays the salary of the contributing task team and his/her travel and accommodation costs.

Legal documents of high quality

The task team sets high quality standards for its work. It is their wish that these standards will be adopted and implemented by all municipalities. To the task team this would be a key measure of their success.

"We hope that one thing will lead to another and that success will ultimately be measured in what is overall taken home, in a lasting or enduring manner."

LIMITATIONS

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The LTT is an enabling agent which provides generic policies and by-laws for the benefit of all its members. It is not an implementing agent.

Implementation is a painfully slow process. There are three, or four, policies and by-laws that have been fully accepted, implemented and promulgated across the province within the last three years.

"That is below the expected rate. There are greater expectations of what we are doing here. The LTT was expected to improve the rate of implementation, although it falls outside the scope of their work."

"It is the responsibility of the provincial department of local government to follow up with the municipalities to make sure that what we have done here is not in vain," said the task team. The provincial department has recently established a unit that has been tasked with ensuring that municipalities receive assistance with regard to adoption and implementation of by-laws and policies.

CHALLENGES

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"The problem is that a bottleneck has formed," the task team responded to a question on their challenges. "The municipalities cannot keep up with implementing the work of the LTT."

There are various reasons for this:

- a. **Lack of political buy-in or participation.** "It is our experience that some councillors feel that legislation is a guideline only, it is not a law that needs to be followed and adhered to."
- b. The technical and financial task teams fall behind with their comments and inputs on the draft legal documents, because of a **lack of capacity in the municipality in most of the technical fields.** "Technical people seem to be leaving the municipalities for some or other reason and some of those who remain have limited capacity."
- c. **The seniority of legal advisors:** "There is a situation in our municipalities where the legal advisor is normally a junior person in the Directorate Corporate Support Services. If you don't have a champion that drives your process then it goes nowhere. So if you have a champion who is a junior person then it does not get anywhere."
- d. **Lack of internal sector capacity:** "Whatever the sector is, Health, Municipal Services, Waste, Planning, there is a lack of sector capacity virtually everywhere. We try and address this through our Technical Task Team and the Financial Task Team, but it is not working as well as we thought it would be."

The way forward: The Legal Task Team within the Intergovernmental Relations Forum (IGR) context

The role of the LTT, as shared services provider, was not the intention when it was established. Originally its function was to share legal capacity and administrative capacity to draft generic policies and by-laws without the assistance of outside consultants, as a district exercise, to support its local municipalities without the required capacity.

The IGR Act provided for the establishment of technical support structures to support and assist the Forum. Technical, Financial and Legal Task Teams were thus identified and established within the BPDM IGR Forum. These task teams feed into the Municipal Managers' Forum which, in turn, feeds into the IGR Forum. The LTT could, therefore, easily be accommodated within this new legislated support structure without too many amendments to its structure or its mandate.

The IGR Forum provides a platform where all the sector departments and all the spheres of government could come together to coordinate and integrate projects, efforts, policies, guidelines, etc. This model is still being developed as role-players engage each other in discussions to come up with appropriate solutions. Central to this point of discussion is the development of a fully integrated and functional shared services model or structure.

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Scarce resources can be shared

The shared services model approach of the LTT pools scarce legal resources and utilises in-house expertise in an inclusive and transparent manner, in order to produce high quality legal products for the benefit of all participating municipalities at a fraction of the cost of external consultants.

The idea of a legal task team was initiated when Advocate Jurie Vorster was appointed as Legal Advisor to the Planning, Information and Management Support Centre of Bojanala Platinum DM. During his first year in this position, he sent out letters to the five municipalities in the district to identify their legal needs. From the responses it was evident that the municipalities all struggled with by-laws and that generic by-laws would help all the municipalities. This was the beginning of the LTT.

Political buy-in

It is essential for the success of a shared services model to have the buy-in of the senior management and the political leadership in all participating municipalities.

At the first presentation to the municipal manager at Bojanala DM, the municipal manager instructed Advocate Jurie Vorster to get the buy-in from the five municipalities in the district. He subsequently invited the five municipal managers to a presentation. These municipal managers, in turn, informed the mayors in their municipalities of the work of the LTT.

In order to establish credibility for the task team, SALGA and delegates of the provincial departments were also invited to be part of the LTT. Currently the LTT is a sub-structure of the IGR Forum which lends further credibility to its work.

With political buy-in and credibility the documents produced by the LTT are assured of political acceptance, which improves the chance that they will be used.

Clear roles and responsibilities

It is important that the participating municipalities of a shared services forum have a clear understanding of roles and responsibilities. For example, the LTT produces generic legal documents, but it is the duty of the legal section of each municipality to customise these documents to their own needs. If a municipality has its own internal legal advisor, this message is communicated directly with the legal advisor by the relevant task team member. Unfortunately, some municipalities do not have their own internal legal advisors. In such cases the LTT will give their standard presentation to the management and political leadership of a municipality. As part of the presentation, the LTT leads by example in explaining how roles and responsibilities work in Bojanala Platinum DM. It remains, however, the prerogative of each municipality to decide how it will follow the best practice.

The status of internal legal advisors

The LTT recommends that municipalities elevate the position of the internal legal advisor to the office of the Municipal Manager. In this capacity the municipality can appoint external legal experts on a contract basis and pay them a salary commensurate with their qualifications and experience.

Champion required

For all levels of the LTT's activities, whether it is the legal drafting of a by-law, or the technical or financial scrutiny of a draft legal document, it is necessary to have someone who is prepared to take the responsibility to champion the process.

The success of the task team also depends on good relations with the financial and technical people, and these relations need to be worked on continuously in order to provide support to them. Different approaches have been worked on as it is necessary to get technical input to determine their specific needs. For this reason technical and financial people are invited to a drafting session which directly affects them as they will ultimately administer and implement the by-law. "For example, we recently did a by-law on fire services. We invited all the fire station managers to give their inputs and to become involved in the drafting of the by-laws." The task team agreed that this is the only way to ensure ownership and the eventual implementation of the drafted generic documents.

CONCLUSION

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The BPDM Legal Task Team has commendable goals and objectives. They exemplify the importance of the contribution to effective local government that municipalities could make by sharing scarce resources for the benefit of all.

Hopefully, municipalities will take note of the efforts of this remarkable team and undertake similar steps to add value to their municipalities by sharing whatever expertise they have amongst themselves, without necessarily utilising outside assistance to achieve these objectives.

"It works for us, it may also work for someone else!"



The LTT at work. Members are M Mphane (Greater Taung LM), L Molotsane (Rustenburg LM), T Phefo (DDLG&H), M Manamela (SALGA NW), Adv R Bosman (Moses Kotane LM), J Kriek (Madibeng LM), Adv BT Morule (Mafikeng LM), W Bekker (DLG&H (Finances), Adv J Vorster (BPDM), B Groenewald (Klokwe LM), KI Lesabe (DDLG&H), F Sardiwalla (DDLG&H), A Ntoane (DDLG&H) and A Smit (Naledi LM).
The chairperson changes for each work session.

The quotes in this lesson cannot be ascribed to any individual, as they represent the views of the Legal Task Team.

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Our mission is to ensure the body of knowledge in the sector is well managed, readily accessible and applied, leading to improved decision-making and performance, especially of local government.

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