

**Local Government Act 1999—4.10.2018**

Chapter 5—Members of council

Part 4—Conduct and disclosure of interests

Division 3—Conflicts of interest

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**Division 3—Conflicts of interest**

**Subdivision 1—Material conflicts of interest**

**73—Material conflicts of interest**

- (1) Subject to this section, for the purposes of this Subdivision, a member of a council has a ***material conflict of interest*** in a matter to be discussed at a meeting of the council if any of the following persons would gain a benefit, or suffer a loss, (whether directly or indirectly and whether of a personal or pecuniary nature) depending on the outcome of the consideration of the matter at the meeting:
  - (a) the member;
  - (b) a relative of the member;
  - (c) a body corporate of which the member is a director or a member of the governing body;
  - (d) a proprietary company in which the member is a shareholder;
  - (e) a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee;
  - (f) a partner of the member;
  - (g) the employer or an employee of the member;
  - (h) a person from whom the member has received or might reasonably be expected to receive a fee, commission or other reward for providing professional or other services;
  - (i) a person of a prescribed class.
- (2) A member of a council will not be taken to have a material conflict of interest in a matter to be discussed at a meeting of the council—
  - (a) if the relevant benefit or loss would be enjoyed or suffered in common with all or a substantial proportion of the ratepayers, electors or residents of the council area; or
  - (b) on account of an interest under subsection (1) of a relative of the member, other than the member's spouse or domestic partner, if the member does not know, and could not reasonably be expected to know, of the interest.
- (3) A member of a council who is a member, officer or employee of an agency or instrumentality of the Crown, will be regarded as having a material conflict of interest in a matter before the council if the matter directly concerns that agency or instrumentality but otherwise will not be regarded as having an interest in a matter by virtue of being a member, officer or employee of the agency or instrumentality.
- (4) In this section—

***agency or instrumentality of the Crown*** includes—

  - (a) an administrative unit of the Public Service;

- (b) a body corporate comprised of, or including or having a governing body comprised of or including, a Minister or Ministers of the Crown or a person or persons appointed by the Governor or a Minister or other agency or instrumentality of the Crown.

## 74—Dealing with material conflicts of interest

- (1) If a member of a council has a material conflict of interest in a matter to be discussed at a meeting of the council, the member must—
  - (a) inform the meeting of the member's material conflict of interest in the matter; and
  - ~~(b) leave the meeting room (including any area set aside for the public) such that the member cannot view or hear any discussion or voting at the meeting, and stay out of the meeting room while the matter is being discussed and voted on.~~
  - (b) leave the meeting (physically or by disconnecting electronic means) such that the member cannot view or hear any discussion or voting at the meeting about the matter; and
  - ~~(b)-(c) not view or listen to the discussion or voting at the meeting about the matter via any live stream or recording of the meeting.~~

Maximum penalty:

- (a) if the member votes on the matter with an intention to gain a benefit, or avoid a loss, for the member or another person—\$15 000 or 4 years imprisonment; or
  - (b) in any other case—\$5 000.
- (2) However, a member of the council does not contravene subsection (1) by taking part in the meeting, or being in the chamber where the meeting is being conducted, or being connected to the meeting using electronic means if the member—
  - (a) has been granted an approval under subsection (3); and
  - (b) is complying with the conditions of the approval.
- (3) The Minister may grant an approval in writing to a member of the council to take part in the meeting, or to be in the chamber or to be connected to the meeting using electronic means where the meeting is being conducted, if—
  - (a) because of the number of members subject to the obligation under this section, conduct of the meeting would be obstructed if the approval were not given; or
  - (b) it appears to the Minister to be in the interests of the council's community and area.
- (4) The Minister may grant an approval under subsection (3) subject to any conditions determined by the Minister.
- (5) If a member of a council discloses a material conflict of interest in a matter to be discussed at a meeting of the council, the following details must be recorded in the minutes of the meeting and on a website determined by the chief executive officer:
  - (a) the member's name;

- (b) the nature of the interest, as described by the member;
  - (c) ~~if the member took part in the meeting, or was in the chamber during the meeting, under an approval under subsection (3), the fact that the member took part in the meeting, or was in the chamber during the meeting (as the case requires).~~
  - (c) if the member took part in the meeting, or was in the chamber during the meeting, or was connected to the meeting by electronic means, under an approval under subsection (3), the fact that the member took part in the meeting, or was in the chamber during the meeting, or was connected to the meeting by electronic means (as the case requires).
- (6) This section does not apply to a matter of ordinary business of the council of a kind prescribed by regulation for the purposes of this section.

(7) In this section—

*connected to* means able to hear and/or see the meeting, including via a live stream or recording of the meeting;

*disconnecting electronic means* includes—

- (a) ending a telephone connection such that the discussion and voting at the meeting cannot be heard;
- (b) ending a video conferencing connection such that the discussion and voting at the meeting cannot be seen or heard;
- (c) logging out of a virtual meeting room or space such that the discussion and voting at the meeting cannot be seen or heard;
- (d) signing out of a virtual meeting room or space such that the discussion and voting at the meeting cannot be seen or heard; or
- (e) disconnecting any other electronic means such that the discussion and voting at the meeting cannot be seen or heard;

*live stream* means the transmission of audio and/or video from a meeting at the time that the meeting is occurring;

## Subdivision 2—Actual and perceived conflicts of interest

### 75—Actual and perceived conflicts of interest

- (1) In this Subdivision—
- actual conflict of interest*—see section 75A(1)(a);
- conflict of interest*—see subsections (2) and (3);
- perceived conflict of interest*—see section 75A(1)(b).
- (2) For the purposes of this Subdivision but subject to this section, a *conflict of interest* is a conflict between—
- (a) a member of a council's interests (whether direct or indirect personal or pecuniary); and
  - (b) the public interest,
- that might lead to a decision that is contrary to the public interest.

- (3) A member of a council will not be regarded as having a conflict of interest in a matter to be discussed at a meeting of the council—
- (a) by reason only of—
    - (i) an engagement with a community group, sporting club or similar organisation undertaken by the member in his or her capacity as a member; or
    - (ii) membership of a political party; or
    - (iii) membership of a community group, sporting club or similar organisation (if the member is not an office holder for the group, club or organisation); or
    - (iv) the member having been a student of a particular school or his or her involvement with a school as parent of a student at the school; or
    - (v) a nomination or appointment as a member of a board of a corporation or other association, if the member was nominated for appointment by a council; or
  - (b) in prescribed circumstances.
- (4) A member of a council will not be taken, for the purposes of this Subdivision, to have a conflict of interest in a matter to be discussed at a meeting of the council if the relevant member's interest in the matter is held in common with all or a substantial proportion of the ratepayers, electors or residents of the council area.

#### **75A—Dealing with actual and perceived conflicts of interest**

- (1) If, in relation to a matter to be discussed at a meeting of a council, a member of the council—
- (a) has a conflict of interest in the matter (an *actual conflict of interest*); or
  - (b) could reasonably be taken, from the perspective of an impartial, fair-minded person, to have a conflict of interest in the matter (a *perceived conflict of interest*),
- the member must deal with the actual or perceived conflict of interest in a transparent and accountable way.
- (2) Without limiting subsection (1), the member must inform the meeting of—
- (a) the member's interest in the matter; and
  - (b) if the member proposes to participate in the meeting in relation to the matter, how the member intends to deal with the actual or perceived conflict of interest.
- (3) If a quorum at a meeting cannot be formed because a member of a council proposes to exclude himself or herself from the meeting in order to comply with subsection (1), the member will not be taken to have contravened subsection (1) by participating (including by voting, for example) in the meeting in relation to the matter if the attendance of the member, together with any other required number of members, forms a quorum for the meeting.

- (4) If a member of a council discloses an actual or perceived conflict of interest in a matter to be discussed at a meeting of the council, the following details must be recorded in the minutes of the meeting and on a website determined by the chief executive officer:
  - (a) the member's name;
  - (b) the nature of the interest, as described by the member;
  - (c) the manner in which the member dealt with the actual or perceived conflict of interest;
  - (d) if the member voted on the matter, the manner in which he or she voted;
  - (e) the manner in which the majority of persons who were entitled to vote at the meeting voted on the matter.
- (5) To avoid doubt, it is declared that non-participation in a meeting of a council is not the only way in which a member of the council may appropriately deal in a transparent and accountable way with an actual or perceived conflict of interest of the member in a matter to be discussed at the meeting.
- (6) This section does not apply to a matter of ordinary business of the council of a kind prescribed by regulation for the purposes of this section.

### **Subdivision 3—Other matters**

#### **75B—Application of Division to members and meetings of committees and subsidiaries**

- (1) The provisions of this Division extend to committees and to members of committees established by councils as if—
  - (a) a committee were a council; and
  - (b) a member of a committee were a member of a council.
- (2) The provisions of this Division extend to subsidiaries and to board members of subsidiaries as if—
  - (a) a subsidiary were a council; and
  - (b) a board member of a subsidiary were a member of a council.

## **Part 5—Allowances and benefits**

### **76—Allowances**

- (1) Subject to this section, a member of a council is entitled to the allowance determined by the Remuneration Tribunal in relation to the member's office and indexed in accordance with this section.
- (2) The Remuneration Tribunal must make determinations under this section on a 4 yearly basis before the designated day in relation to each set of periodic elections held under the *Local Government (Elections) Act 1999*.

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- (3) The Remuneration Tribunal must, in making a determination under this section, have regard to the following:
- (a) the role of members of council as members of the council's governing body and as representatives of their area;
  - (b) the size, population and revenue of the council, and any relevant economic, social, demographic and regional factors in the council area;
  - (c) the fact that an allowance under this section is not intended to amount to a salary for a member;
  - (d) the fact that an allowance under this section should reflect the nature of a member's office;
  - (e) the provisions of this Act providing for the reimbursement of expenses of members.
- (4) For the purposes of the proceedings before the Remuneration Tribunal but without derogating from the operation of subsection (3), the allowances to be determined under this section will be taken to be in the nature of a fee under the definition of **remuneration** in the *Remuneration Act 1990*.
- (5) Without limiting section 10 of the *Remuneration Act 1990*, the Remuneration Tribunal must—
- (a) allow persons who are entitled to be enrolled on the voters roll for an area a reasonable opportunity to make submissions orally or in writing to the Tribunal in relation to a determination under this section that relates to the members of the council for that area; and
  - (b) allow the LGA a reasonable opportunity to make submissions orally or in writing to the Tribunal in relation to any determination under this section.
- (6) Nothing in subsection (5) requires the Remuneration Tribunal, for the purposes of making all determinations required under this section in any 4 year period, to hold more than 1 hearing to receive any oral submissions that persons may care to make (and the Tribunal is not required to hold any hearing if it appears to the Tribunal that no one is seeking to make oral submissions).
- (7) The rates of allowances may vary from office to office, and from council to council.
- (8) An allowance determined under this section will, in relation to the members of a particular council, be payable for the period—
- (a) commencing on the conclusion of the relevant periodic election; and
  - (b) concluding at the time at which the last result of the next periodic election is certified by the returning officer under the *Local Government (Elections) Act 1999* (including in respect of a member of the council for whom the conclusion of the next periodic election is, for other purposes, the last business day before the second Saturday of November of the year of the periodic election as a result of the operation of section 4(2)(a)).
- (9) An allowance determined under this section is to be adjusted on the first, second and third anniversaries of the relevant periodic elections to reflect changes in the Consumer Price Index under a scheme prescribed by the regulations.

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- (10) Sections 17 and 19 of the *Remuneration Act 1990* do not apply in relation to a determination under this section.
- (11) Subject to subsection (8), a member of a council who holds an office for part only of the period in respect of which an allowance is payable is entitled to the proportion of the allowance that the period for which the member held the office bears to the total period.
- (12) An allowance under this section is to be paid in accordance with any requirement set out in the regulations (unless the member declines to accept payment of an allowance).
- (13) Despite any other Act or law, the reasonable costs of the Remuneration Tribunal in making a determination under this section are to be paid by the LGA under an arrangement established by the Minister from time to time after consultation with the President of the LGA and the President of the Tribunal.
- (14) Regulations made for the purposes of this section may make different provision according to the offices or classes of council to which they are expressed to apply.
- (15) In this section—
- Consumer Price Index** means the Consumer Price Index (All groups index for Adelaide) published by the Australian Bureau of Statistics;
- designated day**, in relation to particular periodic elections, means the day that is 14 days before the day on which nominations close for those elections.

## 77—Reimbursement of expenses

- (1) A member of a council is entitled to receive from the council—
- (a) reimbursement of expenses of a kind prescribed for the purposes of this paragraph incurred in performing or discharging official functions and duties; and
  - (b) reimbursement of expenses of a kind prescribed for the purposes of this paragraph, and approved by the council (either specifically or under a policy established by the council for the purposes of this section), incurred in performing or discharging official functions and duties.
- (2) A policy under subsection (1)(b) lapses at a general election of the council.
- (3) A person is entitled to inspect (without charge) a policy of a council under subsection (1)(b) at the principal office of the council during ordinary office hours.
- (4) A person is entitled, on payment of a fee fixed by the council, to a copy of a policy under subsection (1)(b).

## 78—Provision of facilities and support

- (1) A council may provide facilities and other forms of support to its members to assist the members in performing or discharging official functions and duties.

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- (2) The provision of facilities and services under this section is at the discretion of the council subject to complying with the following requirements:
- (a) the council must specifically resolve that the provision of the facilities or services is necessary or expedient to the performance or discharge of official functions or duties;
  - (b) facilities and services must be available to members on a uniform basis (other than facilities or services specifically provided for the benefit of the principal member);
  - (c) any property provided to a member remains the council's.
- (3) A member of a council must not use a facility or service provided by the council under this section for a purpose unrelated to the performance or discharge of official functions or duties (unless the use has been approved by the council and the member has agreed to reimburse the council for any additional costs or expenses associated with this use).

### 78A—Obtaining of legal advice

- (1) The regulations may establish a scheme under which a member of a council may directly obtain legal advice at the expense of the council to assist the member in performing or discharging official functions and duties.
- (2) The scheme may require the preparation and adoption of a policy by a council and include provisions for the variation of the policy and its availability to the public.
- (3) The scheme or a policy adopted under the scheme may—
- (a) impose limitations on the obtaining of legal advice; and
  - (b) provide for a process for approval of requests to obtain legal advice; and
  - (c) allow for conditions to be imposed on an approval, including a condition limiting the expenditure that may be incurred; and
  - (d) provide for a council to set an overall budget for the purpose; and
  - (e) include other relevant provisions.

### 79—Register of allowances and benefits

- (1) The chief executive officer of a council must ensure that a record (the ***Register of Allowances and Benefits***) is kept in which is entered, in accordance with principles (if any) prescribed by the regulations, in respect of each member of the council—
- (a) the annual allowance payable to the member; and
  - (b) details of any expenses reimbursed by the council under section 77(1)(b); and
  - (c) details of other benefits paid or payable to, or provided for the benefit of, the member by the council.
- (2) The chief executive officer must ensure that an appropriate record is made in the Register, in accordance with principles prescribed by the regulations, in respect of—
- (a) changes in the allowance or a benefit payable to, or provided for the benefit of, members; or



- (b) the provision of a reimbursement (other than a reimbursement under section 77(1)(a)) or benefit not previously recorded in the Register.
- (3) A person is entitled to inspect (without charge) the Register at the principal office of the council during ordinary office hours.
- (4) A person is entitled, on payment of a fee fixed by the council, to an extract from the Register.

## **80—Insurance of members**

A council must take out a policy of insurance insuring every member of the council, and a spouse, domestic partner or another person who may be accompanying a member of the council, against risks associated with the performance or discharge of official functions or duties by members.

## **Part 6—Training and development**

### **80A—Training and development**

- (1) A council must prepare and adopt a training and development policy for its members.
- (2) The policy must—
  - (a) be aimed at assisting members in the performance and discharge of their functions and duties; and
  - (b) comply with any requirements prescribed by the regulations.
- (3) A council may from time to time alter its policy, or substitute a new policy.
- (4) A person is entitled to inspect (without charge) a policy under this section at the principal office of the council during ordinary office hours.
- (5) A person is entitled, on payment of a fee fixed by the council, to a copy of a policy under this section.

## Chapter 6—Meetings

### Part 1—Council meetings

#### 81—Frequency and timing of ordinary meetings

- (1) Subject to this section, ordinary meetings of a council will be held at times and places appointed by a resolution of the council.
- (2) There must be at least one ordinary meeting in each month.
- (3) If a time and place has not been appointed for the holding of an ordinary meeting during a month, the chief executive officer must appoint the time and place at which the ordinary meeting for the month is to be held.
- (3a) If a place has been appointed for the holding of an ordinary meeting but the council is unable to meet at the designated place as a result of the public health emergency, the chief executive officer may appoint a different place at which the ordinary meeting is to be held.
- (4) The chief executive officer must also appoint the time and place at which the first ordinary meeting of a council will be held—
  - (a) after the council is constituted under Chapter 3; or
  - (b) after a general election of the council.
- (5) Ordinary meetings of a council may not be held on Sundays, or on public holidays.
- (6) In the case of a municipal council, ordinary meetings of the council may not be held before 5 p.m. unless the council resolves otherwise by a resolution supported unanimously by all members of the council.
- (7) A resolution under subsection (6) does not operate in relation to a meeting held after the conclusion of the general election next held following the making of the resolution.
- (8) In this section—  
place includes an electronic location (such as a virtual meeting room).

#### 82—Calling of special meetings

- (1) The chief executive officer must, at the request of—
  - (a) the principal member of the council; or
  - (b) at least three members of the council; or
  - (c) a council committee at which at least three members of the council vote in favour of the making of the request,call a special meeting of the council.
- (2) The chief executive officer must be provided with an agenda for the special meeting at the time that a request is made under subsection (1) (and if an agenda is not provided then the request has no effect).
- (3) Special meetings may be held at any time.

### 83—Notice of ordinary or special meetings

- (1) In the case of an ordinary meeting, the chief executive officer must give each member of the council notice of the meeting at least three clear days before the date of the meeting.
- (2) In the case of a special meeting, the chief executive officer must give each member of the council notice of the meeting at least four hours before the commencement of the meeting.
- (3) Notice of a meeting of the council must—
  - (a) be in writing; and
  - (b) set out the date, time and place of the meeting; and
  - (c) be signed by the chief executive officer; and
  - (d) contain, or be accompanied by, the agenda for the meeting.
- (3a) For the purposes of subsection (3)(c), the chief executive officer may sign the notice in hardcopy or electronically.
- (4) The chief executive officer must, insofar as is reasonably practicable—
  - (a) ensure that items on an agenda given to members of the council under this section are described with reasonable particularity and accuracy; and
  - (b) supply to each member of the council at the time that notice of a meeting is given a copy of any documents or reports that are to be considered at the meeting (so far as this is practicable).
- (5) The chief executive officer may indicate on a document or report provided to members of the council under subsection (4) (or on a separate notice) any information or matter contained in or arising from a document or report that may, if the council so determines, be considered in confidence under Part 3, provided that the chief executive officer at the same time specifies the basis on which an order could be made under that Part.
- (6) Notice may be given to a member of a council under this section—
  - (a) personally; or
  - (b) by delivering the notice (whether by post or otherwise) to the usual place of residence of the member or to another place authorised in writing by the member; or
  - (c) by leaving the notice for the member at an appropriate place at the principal office of the council, if authorised in writing by the member to do so; or
  - (d) by a means authorised in writing by the member as being an available means of giving notice (eg facsimile transmission).
- (7) A notice that is not given in accordance with subsection (6) is taken to have been validly given if the chief executive officer considers it impracticable to give the notice in accordance with that subsection and takes action the chief executive officer considers reasonably practicable in the circumstances to bring the notice to the attention of the member.

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- (8) The chief executive officer must maintain a record of all notices of meetings given under this section to members of the council.
  - (9) The fact that a notice of a meeting has not been given to a member of a council in accordance with this section does not, of itself, invalidate the holding of the meeting or a resolution or decision passed or made at the meeting but SACAT may, on the application of the Minister, annul a resolution or decision passed or made at the meeting and make such ancillary or consequential orders as it thinks fit if satisfied that such action is warranted in the circumstances of the particular case.

(10) In subsection (3)—

place includes an electronic location (such as a virtual meeting room).

## **84—Public notice of council meetings**

- (1) The chief executive officer must give notice to the public of the times and places of meetings of the council.
- (1a) The chief executive officer must give the notice required under subsection (1) in the following manner:
  - ~~—(a) by causing a copy of the notice and the agenda for the meeting to be placed on public display at each office of the council that is open to the public for the general administration of council business within its area; and~~
  - (b) by publishing the notice and the agenda for the meeting on a website determined by the chief executive officer.
- (2) The notice required under subsection (1) must be given—
  - (a) in the case of an ordinary meeting—at least three clear days before the date of the meeting; or
  - (b) in the case of a special meeting—as soon as practicable after the time that notice of the meeting is given to members of the council.
- (2a) Without derogating from subsection (1a), the chief executive officer may also give notice to the public of the time and place of a meeting of the council in such other manner as the chief executive officer considers appropriate after taking into account—
  - (a) the characteristics of the council's community and area; and
  - (b) the best ways to bring notice of a meeting of the council to the public's attention; and
  - (c) such other matters as the chief executive officer thinks fit.
- ~~(3) A person is entitled, on payment of a fee fixed by the council, to obtain a copy of a notice and agenda on display under subsection (1a)(a).~~
- ~~(3) A person is entitled, on payment of a fee fixed by the council, to obtain a copy of a notice and agenda published under subsection (1a) (b) on request.~~
- ~~(4) The notice and agenda must be kept on public display, and continue to be published on the website, under subsection (1a) until the completion of the relevant meeting.~~
- ~~(4) The notice and agenda must continue to be published on the website under subsection (1a) until the completion of the relevant meeting.~~

- ~~(5) The chief executive officer must also ensure that a reasonable number of copies of any document or report supplied to members of the council for consideration at a meeting of the council are available for inspection by members of the public—~~
- ~~(a) in the case of a document or report supplied to members of the council before the meeting—at the principal office of the council as soon as practicable after the time when the document or report is supplied to members of the council; or~~
- ~~—(b)—in the case of a document or report supplied to members of the council at the meeting—at the meeting as soon as practicable after the time when the document or report is supplied to members of the council.~~
- (5) The chief executive officer (or a person nominated in writing by the chief executive officer) must also ensure that any document or report supplied to members of the council for consideration at a meeting of the council is available for inspection by members of the public—
- (a) in the case of a document or report supplied to members of the council before the meeting—on a website determined by the chief executive officer as soon as practicable after the time when the document or report is supplied to members of the council; or
- (b) in the case of a document or report supplied to members of the council at the meeting—on a website determined by the chief executive officer as soon as practicable after the time when the document or report is supplied to members of the council.
- (6) However, subsection (5) does not apply to a document or report—
- (a) that is subject to the operation of section 83(5); or
- (b) that relates to a matter dealt with by the council on a confidential basis under Part 3.

(7) In this section—

place includes an electronic location (such as a virtual meeting room).

## 85—Quorum

- (1) The prescribed number of members of a council constitutes a quorum of the council and no business can be transacted at a meeting unless a quorum is present.
- The **prescribed number** of members of a council is a number ascertained by dividing the total number of members of the council for the time being in office by 2, ignoring any fraction resulting from the division, and adding one.
- (2) For the purposes of this section—
- (a) a member of the council participating in a council meeting by electronic means is taken to be present at the meeting provided that the member—
- (i) can hear all other members present at the meeting;
- (ii) can be heard by all other members present at the meeting; and
- (iii) can be heard by the person recording the minutes of the meeting.
- ~~(a)~~(b) A quorum is taken to be present even if 1 or more council members constituting the quorum is present by electronic means.

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**86—Procedure at meetings**

- (1) The principal member of a council will preside at a meeting of the council.
- (2) If the principal member is absent from a meeting of a council and there is a deputy, the deputy will preside but if there is no deputy or the deputy is not available to preside, a member of the council chosen by those present will preside.
- (3) If—
  - (a) a person is to be chosen to be the principal member of a council at a meeting of the council; or
  - (b) a member of the council must be chosen by those present at a meeting of the council to preside at the meeting,the chief executive officer will preside until the matter is decided.
- (4) Subject to this Act, a question arising for decision at a meeting of a council will be decided by a majority of the votes cast by the members present at the meeting and entitled to vote on the question.
- (5) Each member present at a meeting of a council must, subject to a provision of this Act to the contrary, vote on a question arising for decision at that meeting.
- (6) The mayor of a council, or other member presiding in the absence of the mayor, at a meeting of the council, does not have a deliberative vote on a question arising for decision at the meeting but has, in the event of an equality of votes, a casting vote.
- (7) The chairperson of a council, or other member presiding in the absence of the chairperson, at a meeting of the council, has a deliberative vote on a question arising for decision at the meeting but does not, in the event of an equality of votes, have a casting vote.
- (8) Subject to this Act, the procedure to be observed at a meeting of a council will be—
  - (a) as prescribed by regulation;
  - (b) insofar as the procedure is not prescribed by regulation—as determined by the council.
- (8a) For the purposes of subsection (8)(b), council members may meet by electronic means to alter a procedure determined by the council to be observed at a meeting of a council, even if the existing procedure prevents or inhibits the council members from meeting by electronic means.
- (9) A meeting of a council may be adjourned from time to time and from place to place.
- (10) For the purposes of this section—
  - (a) a member of the council participating in a council meeting is taken to be present at the meeting provided that the member -
    - (i) can hear all other members present at the meeting;
    - (ii) can be heard by all other members present at the meeting; and
    - (iii) can be heard by the person recording the minutes of the meeting.

## Part 2—Committee meetings

### 87—Calling and timing of committee meetings

- (1) Ordinary meetings of a council committee will be held at times and places appointed by the council or, subject to a decision of the council, the council committee.
- (2) A council or council committee must, in appointing a time for the holding of an ordinary meeting of a council committee, take into account—
  - (a) the availability and convenience of members of the committee; and
  - (b) the nature and purpose of the committee.
- (3) A resolution appointing a time for the holding of an ordinary meeting of a council committee does not operate after the conclusion of the general election next following the making of the resolution.
- (4) The chief executive officer must ensure that each member of a council committee is given notice of an ordinary meeting of the committee at least three clear days before the date of the meeting.
- (5) The chief executive officer must, at the request of—
  - (a) the presiding member of a council committee; or
  - (b) at least two members of a council committee,call a special meeting of a council committee.
- (6) Special meetings of a council committee may be held at any time.
- (7) The chief executive officer must ensure that each member of a council committee is given notice of a special meeting of the committee at least four hours before the commencement of the meeting.
- (8) Notice of a meeting of a council committee must—
  - (a) be in writing; and
  - (b) set out the date, time and place of the meeting; and
  - (c) contain, or be accompanied by, the agenda for the meeting.
- (9) The chief executive officer must, insofar as is reasonably practicable—
  - (a) ensure that items on an agenda given to members of a council committee under this section are described with reasonable particularity and accuracy; and
  - (b) ensure that each member of the committee at the time that notice of a meeting is given is supplied with a copy of any documents or reports that are to be considered at the meeting (so far as this is practicable).
- (10) The chief executive officer may indicate on a document or report provided to members of the committee under subsection (9) (or on a separate notice) any information or matter contained in or arising from a document or report that may, if the committee so determines, be considered in confidence under Part 3, provided that the chief executive officer at the same time specifies the basis on which an order could be made under that Part.

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- (11) Notice may be given to a member of a committee under this section—
- (a) personally; or
  - (b) by delivering the notice (whether by post or otherwise) to the usual place of residence of the member or to another place authorised in writing by the member; or
  - (c) by leaving the notice for the member at an appropriate place at the principal office of the council, if authorised in writing by the member to do so; or
  - (d) by a means authorised in writing by the member as being an available means of giving notice (eg facsimile transmission).
- (12) A notice that is not given in accordance with subsection (11) is taken to have been validly given if the chief executive officer considers it impracticable to give the notice in accordance with that subsection and takes action the chief executive officer considers reasonably practicable in the circumstances to bring the notice to the attention of the member of the committee.
- (13) The chief executive officer must ensure that a record of all notices of meetings given under this section is maintained.
- (14) The fact that a notice of a meeting has not been given to a member of a committee in accordance with this section does not, of itself, invalidate the holding of the meeting or a resolution or decision passed or made at the meeting but SACAT may, on the application of the Minister, annul a resolution or decision passed or made at the meeting and make such ancillary or consequential orders as it thinks fit if satisfied that such action is warranted in the circumstances of the particular case.
- (15) The regulations may modify the application of this section for council committees that are not performing regulatory activities of councils.

## **88—Public notice of committee meetings**

- (1) The chief executive officer must ensure that notice is given to the public of the times and places of meetings of a council committee.
- (1a) The chief executive officer must give the notice required under subsection (1) in the following manner:
- (a) by causing a copy of the notice and the agenda for the meeting to be placed on public display at each office of the council that is open to the public for the general administration of council business within its area; and
  - (b) by publishing the notice and the agenda for the meeting on a website determined by the chief executive officer.
- (2) The notice required under subsection (1) must be given as soon as practicable after the time that notice of the meeting is given to members of the committee.
- (2a) Without derogating from subsection (1a), the chief executive officer may also give notice to the public of the time and place of a meeting of a council committee in such other manner as the chief executive officer considers appropriate after taking into account—
- (a) the work of the committee and the characteristics of the council's community and area; and



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- (b) the best ways to bring notice of a meeting of the committee to the public's attention; and
    - (c) such other matters as the chief executive officer thinks fit.
  - (3) A person is entitled, on payment of a fee fixed by the council, to obtain a copy of a notice and agenda on display under subsection (1a)(a).
  - (4) The notice and agenda must be kept on public display, and continue to be published on the website, under subsection (1a) until the completion of the relevant meeting.
  - (5) The chief executive officer must also ensure that a reasonable number of copies of any document or report supplied to members of a council committee for consideration at a meeting of the committee are available for inspection by members of the public at the principal office of the council as soon as practicable after the time when the document or report is supplied to members of the committee.
  - (6) However, subsection (5) does not apply to a document or record—
    - (a) that is subject to the operation of section 87(10); or
    - (b) that relates to a matter dealt with by the council or council committee on a confidential basis under Part 3.
  - (7) The regulations may modify the application of this section for council committees that are not performing regulatory activities of councils.

## 89—Proceedings of council committees

- (1) Subject to this Act, the procedure to be observed in relation to the conduct of meetings of a council committee will be—
  - (a) as prescribed by regulation;
  - (b) insofar as the procedure is not prescribed by regulation—as determined by the council;
  - (c) insofar as the procedure is not prescribed by regulation or determined by the council—as determined by the council committee itself.
- (2) A meeting of a council committee may be adjourned from time to time and from place to place.

## Part 3—Public access to council and committee meetings

### 90—Meetings to be held in public except in special circumstances

- (1) Subject to this section, a meeting of a council or council committee must be conducted in a place open to the public.

(1a) A council meeting will be taken to be conducted in a place open to the public for the purposes of this section even if 1 or more council members participate in the meeting by electronic means provided that—

- (a) the chief executive officer (or a person nominated in writing by the chief executive officer) makes available to the public a live stream of the meeting on a website determined by the chief executive officer and ensures that members of the public can hear the discussion between all council members present at the meeting via the live stream; or

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- (b) if the chief executive officer (or a person nominated in writing by the chief executive officer) has taken reasonable steps to make available a live stream of the meeting but is unable to make available a live stream of the meeting, the chief executive officer (or a person nominated in writing by the chief executive officer) makes available to the public a recording of the meeting as soon as practicable after the meeting on a website determined by the chief executive officer and ensures that members of the public can hear the discussion between all council members present at the meeting via the recording.
- (1b) If the chief executive officer (or a person nominated in writing by the chief executive officer) has taken reasonable steps to comply with subsection (1) but is unable to comply—
- (a) the chief executive officer (or a person nominated in writing by the chief executive officer) must publish on a website determined by the chief executive officer the steps taken to comply with subsection (1); and
- ~~(a)~~(b) subsection (1) is suspended.
- (2) A council or council committee may order that the public be excluded from attendance at a meeting to the extent (and only to the extent) that the council or council committee considers it to be necessary and appropriate to act in a meeting closed to the public in order to receive, discuss or consider in confidence any information or matter listed in subsection (3) (after taking into account any relevant consideration under that subsection).
- (2a) A council or council committee must disconnect any live stream or recording of a meeting for the period that the meeting is closed to the public pursuant to an order made under subsection (2).
- (3) The following information and matters are listed for the purposes of subsection (2):
- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
  - (b) information the disclosure of which—
    - (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
    - (ii) would, on balance, be contrary to the public interest;
  - (c) information the disclosure of which would reveal a trade secret;
  - (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
    - (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
    - (ii) would, on balance, be contrary to the public interest;
  - (e) matters affecting the security of the council, members or employees of the council, or council property, or the safety of any person;

- (f) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
  - (g) matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
  - (h) legal advice;
  - (i) information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council;
  - (j) information the disclosure of which—
    - (i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council); and
    - (ii) would, on balance, be contrary to the public interest;
  - (k) tenders for the supply of goods, the provision of services or the carrying out of works;
  - (m) information relating to a proposed amendment to a Development Plan under the *Development Act 1993* before a Development Plan Amendment proposal relating to the amendment is released for public consultation under that Act;
  - (n) information relevant to the review of a determination of a council under the *Freedom of Information Act 1991*.
- (4) In considering whether an order should be made under subsection (2), it is irrelevant that discussion of a matter in public may—
- (a) cause embarrassment to the council or council committee concerned, or to members or employees of the council; or
  - (b) cause a loss of confidence in the council or council committee; or
  - (c) involve discussion of a matter that is controversial within the council area; or
  - (d) make the council susceptible to adverse criticism.

~~(5) A person who, knowing that an order is in force under subsection (2), enters or remains in a room in which a meeting of the council or council committee is being held is guilty of an offence and liable to a penalty not exceeding \$500 and if such a person fails to leave the room on request it is lawful for an employee of the council or a member of the police force to use reasonable force to remove him or her from the room.~~

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(5) A person who, knowing that an order is in force under subsection (2), enters or remains in a room in which a meeting of the council or council committee is being held, or connects to a meeting of the council or a council committee by electronic means, or fails to disconnect from a meeting of the council or council committee, is guilty of an offence and liable to a penalty not exceeding \$500 and if such a person fails to leave the room on request it is lawful for an employee of the council or a member of the police force to use reasonable force to remove him or her from the room.

(6) Subsection (5) does not apply to—

- (a) a member of the council or the council committee; or
- (b) any other person permitted to be in the room by the council or the council committee.

(7) If an order is made under subsection (2), a note must be made in the minutes of the making of the order and specifying—

- (a) the grounds on which the order was made; and
- (b) the basis on which the information or matter to which the order relates falls within the ambit of each ground on which the order was made; and
- (c) if relevant, the reasons that receipt, consideration or discussion of the information or matter in a meeting open to the public would be contrary to the public interest.

(7a) A council committee meeting will be taken to be conducted in a place open to the public for the purposes of this section even if 1 or more committee members participate in the meeting by telephone or other electronic means in accordance with any procedures prescribed by the regulations or determined by the council under section 89 (provided that members of the public can hear the discussion between all committee members and subject to the qualification that a council may direct a committee not to use telephone or other electronic means for the purposes of its meetings).

(8) The duty to hold a meeting of a council or council committee at a place open to the public does not in itself make unlawful informal gatherings or discussion involving—

- (a) members of the council or council committee; or
- (b) members of the council or council committee and staff,

provided that a matter which would ordinarily form part of the agenda for a formal meeting of a council or council committee is not dealt with in such a way as to obtain, or effectively obtain, a decision on the matter outside a formally constituted meeting of the council or council committee.

**Examples—**

The following are examples of informal gatherings or discussions that might be held under subsection (8):

- (a) planning sessions associated with the development of policies or strategies;
- (b) briefing or training sessions;
- (c) workshops;
- (d) social gatherings to encourage informal communication between members or between members and staff.

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- (8a) In addition, an informal gathering or discussion under subsection (8) may only be held if—
- (a) the council has adopted a policy on the holding of informal gatherings or discussions; and
  - (b) the informal gathering or discussion complies with the policy.
- (8b) A policy adopted under subsection (8a) must comply with any requirements prescribed by the regulations, and the regulations may (for example) include requirements that the policy provide for—
- (a) the imposition of limitations on the holding of informal gatherings or discussions; and
  - (b) procedures for approval of informal gatherings or discussions; and
  - (c) the capacity of the council to impose conditions on an approval.
- (8c) A council may from time to time alter its policy, or substitute a new policy.
- (8d) The council must ensure that a copy of the policy under subsection (8a) is available for inspection (without charge) at the principal office of the council during ordinary office hours and on a website determined by the chief executive officer.
- (8e) A person is entitled, on payment of a fee fixed by the council, to a copy of a policy under subsection (8a).

- (9) In this section—

*connect* means able to hear and/or see the meeting, including via a live stream or recording of the meeting;

*disconnect* means remove the connection so as to be unable to hear and see the meeting;

*live stream* means the transmission of audio and/or video from a meeting at the time that the meeting is occurring;

*personal affairs* of a person includes—

- (a) that person's—
  - (i) financial affairs;
  - (ii) criminal records;
  - (iii) marital or other personal relationships;
  - (iv) personal qualities, attributes or health status;
- (b) that person's employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person,

but does not include the personal affairs of a body corporate.

## Part 4—Minutes of council and committee meetings and release of documents

### 91—Minutes and release of documents

- (1) The chief executive officer must ensure that minutes are kept of the proceedings at every meeting of the council or a council committee.

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- (2) If the chief executive officer is excluded from a meeting pursuant to Part 3, the person presiding at the meeting must ensure that minutes are kept.
- (3) Each member of the council must, within five days after a meeting of the council or a council committee, be supplied with a copy of all minutes of the proceedings of the meeting kept under this section.
- ~~(4) A copy of the minutes of a meeting of the council must be placed on public display in the principal office of the council within five days after the meeting and kept on display for a period of one month.~~
- (4) A copy of the minutes of a meeting of the council must be placed on public display on a website determined by the chief executive officer within five days after the meeting and kept on display for a period of one month.
- (5) A person is entitled to inspect, without payment of a fee, at the principal office of the council—
- (a) minutes kept under this section; and
  - (b) reports to the council or a council committee received at a meeting of the council or committee; and
  - (c) recommendations presented to the council in writing and adopted by resolution of the council; and
  - (d) budgetary or other financial statements adopted by the council.
- (6) A person is entitled, on payment of a fee fixed by the council, to a copy of any documents available for inspection under subsection (5).
- (7) However, subsections (4), (5) and (6) do not apply to a document or part of a document if—
- (a) the document or part relates to a matter dealt with by the council or council committee on a confidential basis under Part 3; and
  - (b) the council or council committee orders that the document or part be kept confidential.
- (8) A council must not make an order under subsection (7)—
- (a) to prevent the disclosure of the remuneration or conditions of service of an employee of the council after the remuneration or conditions have been set or determined; or
  - (b) to prevent the disclosure of the identity of a successful tenderer for the supply of goods or the provision of services (including the carrying out of works), or of any reasons adopted by the council as to why a successful tenderer has been selected; or
  - (ba) to prevent the disclosure of the amount or amounts payable by the council under a contract for the supply of goods or the provision of services (including the carrying out of works) to, or for the benefit of, the council after the contract has been entered into by all parties to the contract; or
  - (c) to prevent the disclosure of the identity of land that has been acquired or disposed of by the council, or of any reasons adopted by the council as to why land has been acquired or disposed of by the council.

- (9) If an order is made under subsection (7)—
- (a) the council or council committee must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed, and, in any event, any order that operates for a period exceeding 12 months must be reviewed at least once in every year; and
  - (ab) in the case of an order of specified duration—
    - (i) the duration of the order cannot be extended after the order has ceased to apply (as a result of the expiry of the period for which the order was specified to apply); and
    - (ii) an order extending the duration of such an order cannot be delegated by the relevant council or council committee; and
  - (b) the council or council committee must ensure that a note is made in the minutes recording the making of the order, the grounds on which it was made, and the decision of the council or council committee under paragraph (a); and
  - (c) the council or council committee may delegate to an employee of the council the power to revoke the order.
- (10) No action for defamation lies against the council in respect of—
- (a) the accurate publication under this section of any information, statement or document (in whatever form); or
  - (b) the accurate publication under this section of a transcript, recording or other record of a meeting of a council or a council committee.
- (11) A document purporting to be minutes of proceedings at a meeting of a council, or a council committee, or to be a copy of or extract from such minutes, and to be signed by the chief executive officer, will be accepted as proof, in the absence of proof to the contrary, of the matters contained in the document.

## **Part 5—Code of practice**

### **92—Access to meetings and documents—code of practice**

- ~~(1) A council must prepare and adopt a code of practice relating to the principles, policies, procedures and practices that the council will apply for the purposes of the operation of Parts 3 and 4.~~
- (1) Subject to subsection (1a), a council must prepare and adopt a code of practice relating to the principles, policies, procedures and practices that the council will apply for the purposes of the operation of Parts 3 and 4.
- (1a) A council is not required to adopt any provision in a code of practice that would prevent or inhibit members from participating in council meetings or council committee meetings by electronic means.
- (2) A council must, within 12 months after the conclusion of each periodic election, review the operation of its code of practice under this section.
- (3) A council may at any time alter its code of practice, or substitute a new code of practice.



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- ~~(3a) For the purposes of subsection (3), council members may meet by electronic means in a place taken to be open to the public pursuant to section 90(1a) to alter the code of practice of the council, or substitute a new code of practice of the council, even if the existing code of practice prevents or inhibits public access to the meeting by electronic means.~~
- (4) A code of practice must include any mandatory provision prescribed by the regulations.
- ~~(5) Before a council adopts, alters or substitutes a code of practice under this section it must—~~
- ~~—(a) make copies of the proposed code, alterations or substitute code (as the case may be) available for inspection or purchase at the council's principal office and available for inspection on a website determined by the chief executive officer; and~~
- ~~—(b) follow the relevant steps set out in its public consultation policy.~~
- (6) A person is entitled to inspect (without charge) the code of practice of a council at the principal office of the council during ordinary office hours.
- (7) A person is entitled, on payment of a fee fixed by the council, to a copy of the code of practice.

## Part 6—Meetings of electors

### 93—Meetings of electors

- (1) A council may convene a meeting of electors of the area or a part of the area.
- (2) The chief executive officer must, by advertisement in a newspaper circulating in the area, give notice of the time and place of a meeting of electors, and of the nature of the business to be transacted at the meeting, at least 14 days and not more than 28 days before the date of the meeting.
- (3) The following persons are entitled to attend and vote at a meeting convened under this section:
- (a) in the case of a meeting of electors of an area—
- (i) any person who is enrolled on the voters roll for the area as an elector; and
- (ii) a nominee of a body corporate or group which has its name on the voters roll for the area;
- (b) in the case of a meeting of electors of a part of an area—
- (i) any person who is enrolled on the voters roll for the area as an elector—
- (A) in respect of a place of residence within that part of the area; or
- (B) in respect of rateable property within that part of the area; or
- (ii) a nominee of a body corporate which is a ratepayer, or of a group of persons who are ratepayers, in respect of rateable property within that part of the area.