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Model Meeting Procedures

October 2018





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Contents

Purpose of the Meeting Procedures	4
Background	4
Application	4
Processes	5
1. Process for dealing with unsuitable meeting conduct by a Councillor in a meeting	5
2. Meeting process for dealing with suspected Inappropriate Conduct which has been referred to a Local Government	6
3. Material Personal Interest	7
4. Conflict of Interest.....	8
5. Closed Meetings.....	10

Commences 3 December 2018



Purpose of the Meeting Procedures

The purpose of the Model Meeting Procedures is to set out certain procedures to ensure the Local Government principles are reflected in the conduct of Local Government meetings and Local Government committee meetings.

It is not intended that the Model Meeting Procedures would deal with all aspects of meeting conduct but only those required to strengthen public confidence in Local Government to deal with the conduct of Councillors in meetings.

Background

In particular, as required under section 150F of the *Local Government Act 2009* (LGA) this document sets out:

- the process for how a Chairperson of a Local Government meeting may deal with instances of unsuitable meeting conduct by Councillors.
- the process for how suspected inappropriate conduct of a Councillor referred to the local government by the Independent Assessor (the Assessor) is to be dealt with at a Local Government meeting.

Application

A Local Government must either adopt the Model Meeting Procedures or prepare and adopt other procedures for the conduct of its meetings and meetings of its committees that are consistent with the Model Meeting Procedures.

If a Local Government chooses to continue using existing standing orders, the Council must review the existing standing orders to ensure that they are consistent with the requirements of the Model Meeting Procedures. To assist Local Governments, the Department of Local Government, Racing and Multicultural Affairs (the Department) has published best practice standing orders that Councils can choose to adopt¹.

A Local Government must conduct its meetings in a manner that is consistent with either the Model Meeting Procedures or its own procedures.

¹ Section 150G of the LGA



Processes

1. Process for dealing with unsuitable meeting conduct by a Councillor in a meeting

When dealing with an instance of unsuitable conduct by a Councillor in a meeting, the following procedures must be followed:

- 1.1 The Chairperson must decide whether or not unsuitable meeting conduct has been displayed by a Councillor.
- 1.2 If the Chairperson decides the unsuitable meeting conduct has occurred, the Chairperson must consider the severity of the conduct and whether the Councillor has had any previous warnings for unsuitable meeting conduct issued. If the Chairperson decides the conduct is of a serious nature, refer to 1.7 for the steps to be taken.
- 1.3 If the Chairperson decides unsuitable meeting conduct has occurred but is of a less serious nature, the Chairperson may request the Councillor take remedial actions such as:
 - 1.3.1 Ceasing the unsuitable meeting conduct and refraining from exhibiting the conduct
 - 1.3.2 Apologising for their conduct
 - 1.3.3 Withdrawing their comments.
- 1.4 If the Councillor complies with the Chairperson's request for remedial action, no further action is required.
- 1.5 If the Councillor fails to comply with the Chairperson's request for remedial action, the Chairperson may warn the Councillor that failing to comply with the request may result in an order being issued.
- 1.6 If the Councillor complies with the Chairperson's warning and request for remedial action, no further action is required.
- 1.7 If the Councillor still continues to fail to comply with the Chairperson's request for remedial actions, the Chairperson may make one or more of the orders below:
 - 1.7.1 an order reprimanding the Councillor for the conduct
 - 1.7.2 an order requiring the Councillor to leave the meeting, including any area set aside for the public and stay out for the duration of the meeting.²
- 1.8 If the Councillor fails to comply with an order to leave and stay away from the meeting, the Chairperson can issue an order that the Councillor be removed from the meeting by an appropriate officer. The meeting must be adjourned whilst the Councillor is being removed.³
- 1.9 Following the completion of the meeting, the Chairperson must ensure:
 - 1.9.1 details of any order issued is recorded in the minutes of the meeting⁴
 - 1.9.2 if it is the third (3rd) or more order within a 12-month period made against a Councillor or the Councillor has refused to leave following an order issued to leave the meeting,

² Section 150I(2) of the LGA.

³ Section 150I(2)(c) of the LGA.

⁴ Section 150I(3) of the LGA.



these matters are to be dealt with at the next meeting of the Local Government and treated as inappropriate conduct pursuant to the LGA⁵

- 1.9.3 the Local Government's Chief Executive Officer is advised to ensure details of any order made must be updated in the Local Governments Councillor Conduct Register pursuant to the LGA.

Any Councillor aggrieved with an order issued by the Chairperson can move a motion of dissent for parts 1.1, 1.7 and 1.8 above.

2. Meeting process for dealing with suspected Inappropriate Conduct which has been referred to a Local Government

Pursuant to section 150AF of the LGA, after receiving a referral by the Independent Assessor or under paragraph 1.9.2 of this document of an instance of suspected inappropriate conduct, the Local Government must complete an investigation into the alleged conduct.

After the completion of the investigation, the Local Government must decide whether the Councillor has engaged in inappropriate conduct in a Council meeting, unless it has delegated responsibility for this decision under section 257 of the LGA.

When dealing with an instance of suspected inappropriate conduct which has been referred to a Local Government by the Independent Assessor, the Local Government must:

- 2.1 Be consistent with the Local Government principle of transparent and accountable decision making in the public interest, by dealing with suspected inappropriate conduct in an open meeting of the Council. Where the complainant or other parties may be adversely affected due to the nature of the complaint, the Council may resolve to go into closed session under section 275 of the *Local Government Regulation 2012* (the LGR).
- 2.2 When deliberating on the issue the subject Councillor must leave the place where the meeting is being held, including any area set aside for the public. Should the complainant be a Councillor, that Councillor must inform the meeting of a personal interest and follow the conflict of interest procedures in Section 4.
- 2.3 The Local Government should then debate the issue and decide whether the accused Councillor engaged in inappropriate conduct.
- 2.4 If the Local Government decides that the subject Councillor has engaged in inappropriate conduct, the Local Government is then required to decide what penalty or penalties from the following orders, if any, to impose on the subject Councillor:
 - 2.4.1 an order that the Councillor make a public admission that the Councillor has engaged in inappropriate conduct
 - 2.4.2 an order reprimanding the Councillor for the conduct
 - 2.4.3 an order that the Councillor attend training or counselling to address the Councillor's conduct, including at the Councillor's expense
 - 2.4.4 an order that the Councillor be excluded from a stated Local Government meeting
 - 2.4.5 an order that the Councillor is removed, or must resign, from a position representing

⁵ Section 150J of the LGA.



the Local Government, other than the office of Councillor, for example, the Councillor is ordered to resign from an appointment representing the Local Government on a State board or committee

- 2.4.6 an order that if the Councillor engages in the same type of conduct again, it will be treated as misconduct
- 2.4.7 an order that the Councillor reimburse the Local Government for all or some of the costs arising from the Councillor's inappropriate conduct.
- 2.5 When making an order, the Local Government can take into consideration any previous inappropriate conduct of the Councillor, and any allegation made in the investigation that was admitted, or not challenged and that the Local Government is reasonably satisfied is true.
- 2.6 The subject Councillor and where relevant the complainant Councillor, must be invited back into the place where the meeting is being held once a decision has been made.
- 2.7 The Local Government must ensure the meeting minutes reflect the resolution made.

3. Material Personal Interest

Councillors are ultimately responsible for informing of a material personal interest on matters to be discussed at a Council or committee meeting. When dealing with a material personal interest, Councillors must abide by the following procedures:

- 3.1 A Councillor with a material personal interest must inform the meeting of the Local Government of their material personal interest and set out the nature of the interest, including:
 - 3.1.1 The name of the person or other entity who stands to gain a benefit, or suffer a loss, depending on the outcome of the consideration of the matter at the meeting
 - 3.1.2 How a person or other entity stands to gain the benefit or suffer the loss
 - 3.1.3 If the person or other entity who stands to gain the benefit or suffer the loss is not the Councillor – the nature of the Councillor's relationship to the person or entity.
- 3.2 The Councillor must then leave the place of the meeting and stay away while the matter is being discussed and voted on unless the subject Councillor has Ministerial approval to participate in the matter. The Councillor must not influence or attempt to influence the remaining Councillors to vote on the matter in a particular way.
- 3.3 Once the Councillor has left the area where the meeting is being conducted, the Local Government can continue discussing and deciding on the matter at hand.
- 3.4 If a Councillor at a meeting reasonably believes, or reasonably suspects that another Councillor has a material personal interest in a matter to be discussed at the meeting and has not informed the meeting about the interest, the Councillor must advise the Chairperson of the meeting, as soon as practicable, about their belief or suspicion, and the facts and circumstances that form the basis of the belief or suspicion.
- 3.5 The Chairperson then should ask the Councillor with the suspected material personal interest whether they do in fact have a material personal interest. If that is the case, the Councillor must follow the above procedures from item 3.1.
- 3.6 In the event the majority of Councillors inform a meeting of a material personal interest regarding a matter:



- 3.6.1 the Local Government must resolve to delegate the consideration and decision on the matter, pursuant to section 257 of the LGA; or
- 3.6.2 if the matter cannot be delegated under section 257 of the LGA, the Local Government should seek Ministerial approval for the Councillors to be able to consider and vote on the matter, subject to any conditions the Minister for Local Government may impose.
- 3.7 Where a Councillor informs a meeting of a material personal interest in a matter, the Chairperson must ensure the minutes of the meeting (to be posted on the Council's website) record:
 - 3.7.1 The name of the Councillor who has a material personal interest in the matter
 - 3.7.2 The material personal interest, including the particulars mentioned by the Councillor regarding the material personal interest
 - 3.7.3 Whether the Councillor participated in the meeting, or was present during the meeting, under an approval granted by the Minister for Local Government.

4. Conflict of Interest

Councillors are ultimately responsible for informing of any personal interest where they have a real or perceived conflict of interest on matters to be discussed at Council or committee meetings (other than ordinary business matters). When dealing with a conflict of interest, Councillors must abide by the following procedures:

- 4.1 A Councillor with a real or perceived conflict of interest must inform the meeting of the Local Government of their personal interest and set out the nature of the interest, including:
 - 4.1.1 The nature of the interest
 - 4.1.2 If the Councillor's personal interest arises because of the Councillor's relationship with, or receipt of a gift or benefit from, another person:
 - 4.1.2.i the name of the other person
 - 4.1.2.ii the nature of the relationship or value and date of receipt of the gift or benefit received, and
 - 4.1.2.iii the nature of the other person's interests in the matter.
- 4.2 The subject Councillor may themselves elect to leave the meeting while the matter is being discussed and voted on due to a perceived conflict of interest or conflict of interest. If the Councillor does not leave the meeting, they may advise the other Councillors why they believe they are able to act in the public interest while remaining in the meeting. This could include prior advice from the Integrity Commissioner on the personal interest.
- 4.3 The other Councillors entitled to vote at the meeting must then decide whether the subject Councillor has a conflict of interest (including a perceived conflict of interest) in the matter due to their personal interest. A Councillor who has declared a personal interest in relation to a matter, must not vote under section 175E(4) as to whether another Councillor may stay in the meeting.
- 4.4 If the other Councillors decide there is no conflict of interest or a perceived conflict of interest, the subject Councillor may remain in the meeting and the meeting may continue.
- 4.5 If the other Councillors decide there is a conflict of interest they must then decide whether



the subject Councillor must leave the meeting while the matter is being discussed and voted on or can participate in the meeting in relation to the matter including voting on the matter. If the Councillor must leave the place of the meeting the Councillor must not influence or attempt to influence the remaining Councillors to vote on the matter in a particular way

- 4.6 When deciding whether a Councillor may stay in a meeting and vote following the decision of a conflict of interest, the other Councillors must consider significant variables including, but not limited to:
 - 4.6.1 The size or significance of the benefit the subject Councillor stands to receive or benefit
 - 4.6.2 The benefit the subject Councillor stands to receive versus the benefit the community stands to receive from the potential decision
 - 4.6.3 The closeness of any relationship the subject Councillor may have with a given person or group.
- 4.7 In making the decision under 4.6, it is irrelevant how the subject Councillor intended to vote on the issue or any other issue (if known or suspected).
- 4.8 If a Councillor at a meeting reasonably believes, or reasonably suspects that another Councillor has a real or perceived conflict of interest in a matter to be discussed at the meeting and has not informed the meeting about the interest, the Councillor must advise the Chairperson of the meeting, as soon as practicable, about their belief or suspicion, and the facts and circumstances that form the basis of the belief or suspicion.
- 4.9 The Chairperson then should ask the Councillor with the suspected conflict of interest to inform the meeting of any personal interest they have in the matter and follow the above procedures from item 4.1.
- 4.10 In the event the majority of Councillors inform of a personal interest in a matter:
 - 4.10.1 the Local Government must resolve to delegate the consideration and decision on the matter, pursuant to section 257 of the LGA, or
 - 4.10.2 if the matter cannot be delegated under the section 257 of the LGA, the Local Government should seek Ministerial approval for the Councillors to be able to consider and vote on the matter, subject to any conditions the Minister for Local Government may impose.
- 4.11 Where a Councillor informs a meeting of a personal interest in a matter, the Chairperson must ensure the minutes of the meeting (to be posted on the Council's website) record:
 - 4.11.1 The name of the Councillor who has declared the conflict of interest
 - 4.11.2 The nature of the personal interest, as described by the Councillor
 - 4.11.3 The decisions made under 4.3 and 4.5 above
 - 4.11.4 Whether the Councillor participated in the meeting under an approval by the Minister
 - 4.11.5 If the Councillor voted on the matter, how they voted
 - 4.11.6 How the majority of Councillors voted on the matter.



5. Closed Meetings

Local Government and standing committees may resolve that a meeting be closed to the public if its Councillors or members consider it necessary to discuss any of the following matters:

- Appointment, dismissal or discipline of employees
- Industrial matters affecting employees
- Local Government's budget
- Rating concessions or contracts proposed to be made by the Local Government or starting or defending legal proceedings involving the Local Government
- Any action to be taken by the Local Government under the *Planning Act 2016* (PA), including applications made to it under the PA
- Business for which a public discussion would be likely to prejudice the interests of the Local Government or someone else or enable a person to gain a financial advantage.

A Local Government or committee must not make a resolution (other than procedural) in a closed session meeting. If a closed session includes attendance by teleconference, the Councillor/s attending by teleconference must maintain confidentiality by ensuring no other person can hear their conversation.

- 5.1 To take an issue into a closed session, the Local Government must first pass a resolution to do so.
- 5.2 In the interests of accountability and transparency, the Local Government must specify the nature of the matter to be discussed and the reasoning of the Councillors for going into closed session.
- 5.3 If the matter is known in advance, the agenda should clearly identify that the matter will be considered in closed session and name the topic to be discussed and a brief explanation of why it is deemed necessary to take the issue into closed session.
- 5.4 The minutes of a Local Government must detail the matter discussed and reasoning for discussing the matter in closed session. The Local Government must also ensure that it complies with the statutory obligations associated with recording of passed resolutions.

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