

5.11. SUBMISSION TO DEPARTMENT OF LOCAL GOVERNMENT, RACING AND MULTICULTURAL AFFAIRS

REPORT AUTHOR(S) Darryl Crees, Acting Chief Executive Officer
DEPARTMENT Corporate Services

RECOMMENDATION

That Council delegates authority in accordance with section 257 of the *Local Government Act 2009* to the Chief Executive Officer to lodge a submission to the Department of Local Government Racing and Multicultural Affairs as outlined in this report.

EXECUTIVE SUMMARY

This report outlines the basis of the submission to be lodged with the Department of Local Government, Racing and Multicultural Affairs on the draft suite of documents prepared by the Local Government Liaison Group. This submission has to be lodged by 29 June 2018.

BACKGROUND

On 20 July 2017 the Councillor Complaints Review Report was tabled in Parliament and the State Government supported 50 of the 60 recommendations contained within that report. A key recommendation was the establishment of a new consultative group, the Local Government Liaison Group (LGLG). This group comprises of representatives from:

- the Crime and Corruption Commission
- the Office of the Queensland Ombudsman
- the Auditor-General
- the Local Government Association of Queensland
- the Local Government Managers Association
- the Department of Local Government, Racing and Multicultural Affairs

One of the first functions charged to this group was to develop a suite of documents to provide local governments and councillors with assistance in understanding requirements around declaration of interests, including material personal interest, conflict of interests and behaviours while participating in Council meetings and standing committee meetings.

The suite of documents provided are:

- Example Investigation Policy
- Model Meeting Procedures and supporting Standing Orders for Council Meetings including Standing Committees 'Best Practice Guide'
- Code of Conduct for Councillors in Queensland and supporting Councillor Conduct Examples

In addition, the Department of Local Government, Racing and Multicultural Affairs (DLGRMA) will conduct a capacity building program to assist Councils with the introduction of these new documents and the recently amended legislation.

The DLGRMA has sought feedback from councils by 29 June 2018 to enable enough time for consideration of any comments before seeking endorsement of the final suite of documents.

COMMENT

The suite of documents have been reviewed by Councillors and the Executive Leadership Team and Douglas' submission back to the DLGRMA will concentrate on the following items:

Example Investigation Policy

Whilst this draft policy, in the main, provides good guidance to dealing with complaints around inappropriate conduct there are a number of areas that require clarification or refining.

6. Natural Justice

Contained within this section is the following:

"A fair hearing means the Councillor who is the subject of the suspected inappropriate conduct matter must be told of the case against them including any evidence and be provided, with an opportunity to put their case in writing at least two business days before the investigation report is provided to the Councillors as part of the meeting agenda."

For the investigation report to be listed on the Council agenda that would mean the investigation has been completed as per clause 14 of this policy. To uphold natural justice there are a number of components which include but are not limited to:

- To be provided with all relevant information to prepare a reply
- To be given a reasonable chance to reply
- To be afforded an opportunity to reply in a way that is appropriate in the circumstances
- That their reply be given genuine consideration
- For their reply to be considered before a decision is made

If the investigation is completed and on the agenda, it would appear, after considering the dot points above, that natural justice has not been afforded to the subject councillor. Furthermore in upholding the principles of transparency and accountability, it would be appropriate that the completed investigation report, unless detrimental to a third party, would be listed in the open agenda. Therefore members of the public would have an opportunity to view the complaint and recommendations of the investigator prior to the subject councillor being afforded natural justice or their reply becoming a public document. This approach is not acceptable.

8. Receipt of Assessor's referral

It states in this section that upon receipt of a referral notice that the CEO will forward a copy of the referral notice to the Mayor and all councillors. Again, it is the report author's view that the subject councillor is being denied natural justice in that their peers are being provided with allegations prior to the subject councillor being provided with an opportunity to present their case against the allegations.

Further in this section it states that the Mayor or a councillor, other than the subject councillor, can request this matter be placed on a meeting agenda to decide an appropriate

process for the investigation. The local government industry has been advocating for independence in the role of assessing councillor complaints and this proposed process appears to remove this independence.

12. Assistance for investigator

Part of this section refers to engaging contractors "from the Council's preferred supplier list". It would be appropriate to amend this to "engage contractors under Council's Procurement Policy" as councils may not have investigators on their preferred supplier list.

Model Meeting Procedures

2. Meeting process for dealing with suspected Inappropriate Conduct.....

If the process described above in the Investigation Policy (6. Natural Justice) is not addressed then clause 2.1 has to be amended as the subject councillor will not be afforded natural justice.

3. Material Personal Interest

Clauses 3.3.1 and 3.3.2 refer to section 238 of the Local Government Act (LGA). Section 238 of the LGA refers to "Service of documents on local governments". It is understood that this reference should be to section 238 of the *Local Government Regulation 2012*.

5. Closed Meetings

It states in this clause that "A Local Government cannot go into closed session if any person is to take part in the meeting by teleconferencing."

Some years ago this Council sought advice on this very matter and was informed that as long as the Chairperson of the meeting sought and obtained from the councillor, attending by teleconferencing, that no one else was present or could hear the discussions then Council could still go into closed session as per normal procedure. Can clarification on this matter be provided.

Code of Conduct for Councillors in Queensland

Standards of behaviour

Clause 1.1 in part states "prior leave is given by Council to not attend the event". The interpretation of "given by Council" is that a Council resolution is required. As the "event" covers Council meetings, briefings, relevant workshops and training opportunities, the suggestion that a Council resolution is required to grant prior leave to a councillor is not workable. Councillors in smaller councils have other commitments which can prevent them from attending relevant events and as such this should not be considered a breach of the Code of Conduct.

Misconduct

In describing misconduct it states "a release of confidential information to the Local Government". this could be misinterpreted and it would best to amend to "a release of confidential information held by the Local Government".

Capacity Building Program Conducted by the Department

This Council would like this program to include a comprehensive refresher training for all councillors and senior staff on Meeting Procedures.

PROPOSAL

That Council delegates authority to the Chief Executive Officer to lodge a submission to the DLGRMA detailing the points as outlined above.

FINANCIAL/RESOURCE IMPLICATIONS

There are no financial or resource implications with providing this submission to DLGRMA.

RISK MANAGEMENT IMPLICATIONS

It is important to provide feedback for consideration in conjunction with other Queensland Councils, to ensure that the local government industry obtains a final suite of documents that are practical and workable for councils of all sizes.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2014-2019 Initiatives:

Theme 5 – Governance

5.2.1 - Provide Councillors and community with accurate, unbiased and factual reporting to enable accountable and transparent decision-making.

5.2.2 - Implement adopted policies and guidelines to ensure consistency in administrative management which also encourages innovation in Council operations.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

Regulator	Meeting the responsibilities associated with regulating activities through legislation or local law.
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CONSULTATION

Internal: Councillors and Executive Leadership Team

External: Nil

ATTACHMENTS

Nil