



# Making the most of council meetings—a resource for local governments

**May 2018**

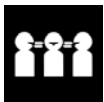
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# 1. Council meetings and local government business – an overview

## 1.1 Decision-making forums

Council meetings are the linchpin of local government democracy. They are where the key decisions are made—local governments set their policies, adopt their corporate plans, approve and adopt budgets, and make their local laws in meetings. Most decisions are taken in full local government and committee meetings.

Council meetings are the most visible activity of the work of local governments and their principal decision-making forum. They are the prime example of accountable and transparent decision-making by local governments.

## 1.2 Councillor responsibilities: attendance, participation, accountability

Councillors must attend meetings regularly and vote on matters before a meeting. As elected representatives, councillors have an equal voice in all local government decisions.

Section 12 (3) (c) of the Local Government Act 2009 (LGA09) and section 14 (3) (c) of the City of Brisbane Act 2010 (CoBA10) require councillors to ‘participate in council meetings, policy development and decision-making for the benefit of the local government area’. Moreover, section 12 (3) (d) of the LGA09 and section 14 (3) (d) of the CoBA10 require councillors to be ‘accountable to the community for the local government’s performance’. (For a full list of councillors’ responsibilities, please refer to LGA09 section 12 or, for Brisbane City councillors, CoBA10, section 14).

Importantly, the legislative requirements cited throughout this document are based on five local government principles (section 4, LGA09 / CoBA10):

- transparent and effective processes and decision-making in the public interest
- sustainable development and management of assets and infrastructure, and delivery of effective services
- democratic representation, social inclusion and meaningful community engagement
- good governance of, and by, local government
- ethical and legal behaviour of councillors and council employees.

These principles apply to anyone—including mayors, councillors, chief executive officers and all council employees—performing a responsibility under the LGA09 and the CoBA10. They allow local governments to focus on their desired outcomes and determine the exact processes in a way that suits their particular and unique situations, as long as the processes are rational, justifiable and transparent. Local governments make decisions about policies, processes and procedures to suit their size, location and administrative circumstances.

Please note: As the LGA09 applies to 76 of the state’s 77 local governments, statutory references for the remainder of these guidelines will be confined to that Act and the accompanying Local Government Regulation 2012 (LGR12).

### 1.3 Delegation of powers

Section 257 of the LGA09 provides for a wide range of local government powers to be delegated. A local government may, by resolution, delegate a power to the mayor, the CEO, a standing committee, the chair of a standing committee, or another local government (for the purpose of a joint local government activity). In such instances, the local government resolves to devolve the 'decision-making responsibility' by delegated authority.

The CEO must establish a register of delegations (section 260, LGA09) and must record all delegations by the local government, mayor or CEO in the register. Section 305 of the LGR12 prescribes the particulars to be provided in the register of delegations, which may be inspected by members of the public.

The judicious use of delegations, with appropriate policy and accountability frameworks, contributes to good governance by allowing the local government (i.e. elected councillors) to focus on strategic rather than operational issues. A local government, however, cannot delegate a power that the LGA09 states must be exercised by resolution (e.g. the adoption of its 5-year corporate plan or annual budget).

### 1.4 Effective meetings: preparation, procedures, records

Chapter 8, part 2 of the LGR12 sets out the legislative requirements for the conduct and recording of local government meetings and committees.

Well prepared agendas, orderly meetings and minutes that accurately reflect the proceedings of local government meetings contribute to an efficient, effective and accountable system of local government. Agendas, minutes and the actual decisions of council are arguably the most important records of local governments. Well prepared agendas and accurate minutes ensure that the local government has:

- acted within its authority under the LGA09
- a properly documented, transparent and accountable decision-making process.

## 2. Meetings: when, where, what and why

### 2.1 Frequency and location of meetings

Section 257 of the LGR12 prescribes the frequency and location of local government meetings. All local governments, other than Brisbane City Council (BCC), must meet at least once a month, although many larger local governments meet more frequently than this. BCC may determine how often it will meet, with some exceptions.

Local governments must publish, at least once a year, details of the days and times when both the local government (i.e. all councillors) and its standing committees meet. The details must be published on the local government's website and in a newspaper in the local government's area. The local government must immediately notify any change to the days and times of meetings in the same manner.

Meetings are generally held at one of the local government's public offices, although a local government can resolve to hold a meeting at another location.

A local government (other than BCC) may allow a councillor and another person/s to take part in a meeting by teleconferencing. Where the local government has approved the teleconferencing arrangement, the councillor must be able to hear and be heard by each other person at the same time during the meeting (section 276, LGR12).

### 2.2 Agendas and notice of meetings

Agendas, minutes and the actual decisions taken by local governments are the most important records of local governments.

Well-structured agendas assist councillors to get the most out of their meetings enabling them to make informed decisions that are derived from analysis and constructive debate. They also provide members of the public with details of the issues to be discussed by a local government or committee prior to the meeting.

Councillors must receive written notice of the meeting at least two (2) clear days before the meeting. Councillors in Indigenous regional councils must receive written notice at least four (4) days before the meeting unless this is impractical (section 258(1) and (4), LGR12).

A list of items to be discussed at a meeting must be available for inspection when the agenda for the meeting is available to councillors (section 277(5), LGR12).

A local government retains the flexibility to deal with any items arising after the agenda was circulated to councillors (section 277(7) LGR12).

### 2.3 Meeting types

Councillors may participate in four types of formal meetings:

- post-election meeting
- ordinary local government or council meeting—to conduct core business
- local government committee meeting—standing committees are established by some local governments to oversee specific functions, portfolios, programs or projects
- special local government meeting—may be called to address an urgent item of business.

### **2.3.1 Post-election meeting**

Within 14 days after the conclusion of a quadrennial election and a fresh election of councillors for the full local government, the local government must hold a post-election meeting (section 175, LGA09). The post-election meeting is of particular significance in the life of a local government as it deals with and determines matters of special importance, including:

- making the 'declaration of office' by the mayor and councillors (this can occur earlier if required)
- the times of future meetings
- the election of the deputy mayor.

### **2.3.2 Ordinary local government meeting**

Local governments (i.e. all councillors) must meet at least once a month. It is important to note that decisions taken at all local government and committee meetings are by 'majority vote' (section 260, LGR12).

The collective will and decision-making of the local government is paramount and an individual councillor's views are secondary or subservient to the majority view of council. Even the mayor, who has some additional responsibilities (see LGA09, section 12(4)), has a single vote at a local government meeting and, when presiding over the meeting as chair, has a 'casting vote' only when votes are equal or tied. Individual councillors have no personal or individual authority to act, or to make decisions, on behalf of the local government (see section 1.3 'Delegation of powers' above).

All local government and committee meetings are open to the public unless the local government has resolved that the meeting be closed (section 275, LGR12) as councillors are accountable to their local community for their decisions and actions.

### **2.3.3 Committee meeting**

Section 264 of the LGR12 empowers local governments to appoint:

- standing committees—councillors only; with continuing functions and responsibilities
- special committees—councillors only; established for a particular purpose, limited in their activities to that purpose, and probably operational for a defined period of time
- advisory committees—may include non-councillors; used to obtain formal community input on issues such as local economic development or planning; provide advice and recommendations. Decision-making power cannot be delegated to them.

As with full council or ordinary local government meetings, decisions at standing and special committee meetings are taken by the majority vote of councillors in attendance.

### **2.3.4 Special meeting**

When required, a special meeting may be called. A special meeting is a meeting at which the only business that may be conducted is stated in the notice of the meeting (section 258(3), LGR12). Normally, the mayor and CEO will agree that a special meeting is required, and the CEO will organise the agenda and notification for councillors.



### 3. Preparing for meetings

Councillors receive written notice of a meeting at least two clear days before the meeting (section 258(1), LGR12). Councillors within Indigenous regional councils receive written notice at least four clear days before the meeting unless it is impractical (section 258(4), LGR12).

In certain extraordinary circumstances less than two days' notice of a meeting may be necessary—for example, a natural disaster or local emergency.

Before attending meetings, it is important that councillors allow adequate time to read the agenda papers and accompanying reports and:

- identify matters of particular interest to them or which may be contentious
- identify any matters which need clarification or additional information to help inform their view, and contact the CEO or mayor for assistance before the meeting
- identify any agenda items where they may have a material personal interest or conflict of interest and be ready to take appropriate action
- talk to their councillor colleagues about their views and aspirations.

Setting aside sufficient time to prepare for the meeting, obtain additional information and consult with stakeholders within the community is essential. It is recommended that for ordinary local government meetings, councillors allocate and schedule specific preparation time in their diaries once meeting dates have been set.

#### 3.1 Closed meetings

Local government and standing committee meetings are open to the public, except when the local government/committee resolves that matters are inappropriate to be discussed in a public meeting.

Section 275 of the LGR12 provides that a local government or committee may resolve that a meeting be closed to the public if its councillors or members consider it necessary to discuss any of the following:

- appointment, dismissal, or discipline of employees
- industrial matters affecting employees
- the 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, including applications made to it under that Act
- 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.

The local government's resolution to close the meeting to the public must specify the nature of the matters which are to be considered while the meeting is closed (section 275(2), LGR12). If these are known in advance, the agenda should clearly identify them on the agenda as matters that will be considered while the meeting is closed to the public. At the appropriate point during the meeting, the local government must resolve to close the meeting to the public.

Political embarrassment to a local government or councillors is not in itself a justifiable reason to close a meeting.

A local government or committee must not make a resolution (other than a procedural resolution) in a closed meeting (section 275(3), LGR12).

## **3.2 Items of interest to the public**

A list of the items to be discussed at a meeting must be made open for inspection at the time the agenda for the meeting is made available to councillors (section 277(5), LGR12). It is good practice to also include a list of the local government members or committee members in the notice of meeting.

A local government is able to discuss or deal with any items arising after the agenda was issued to councillors (section 277 (7), LGR12).

Each local government can determine the order that the agenda items will be dealt with. It is recommended that local government meetings proceed with the order of business as specified in the agenda of the notice of meeting. The local government's standing orders can prescribe the order of business, which assists people to identify the issues of interest to them which are likely to be debated at the meeting.

## **3.3 Privilege**

It is important to note that, unlike Federal and State members of parliament, councillors do not enjoy 'privilege' or immunity from defamation proceedings related to statements made in council or committee meetings. Councillors should therefore be aware that they cannot claim any privilege by virtue of their elected office in the event that defamation proceedings are brought against them.

## 4. Chairing meetings

The mayor presides at meetings of the local government (section 12(4)(a), LGA09); if the mayor is absent or the position is vacant, the deputy mayor acts for the mayor (section 165, LGA09). (However, the BCC Lord Mayor does not chair proceedings; instead councillors elect a Council chair who presides over each local government meeting.) Committees are chaired by persons appointed by the local government or committee members (section 267, LGR12).

The chairing of local government and committee meetings can (but need not) be a formal process which is prescribed in the standing orders of its local law/s or in a policy adopted by council. However, the degree of formality observed in practice is largely at the discretion of the person presiding over the meeting (i.e. normally the mayor, except at BCC). An effective chair will permit considerable latitude in interpretation of the rules, so long as councillors demonstrate decorum and respect for due process and each other in the interest of making decisions which are fair and equitable with minimum loss of time.

### 4.1 Important attributes of a chair

Each councillor brings to the meeting their own individual personalities, attributes, abilities and values. An experienced chair can, through skillful use of meeting procedures, create a co-operative and conducive decision-making forum.

Important attributes of a chair include being:

- fair and reasonable
- objective and impartial
- firm but friendly
- confident but considerate
- tactful and courteous
- a proven leader
- a quick thinker
- well versed in procedure and policy.

### 4.2 Duties of the chair

It is the duty of the chair to:

- (1) preserve order and ensure proceedings are properly conducted by:
  - determining that the meeting is properly constituted and a quorum is present (i.e. the minimum number of councillors who must be present for a valid meeting to proceed). A quorum is a majority of councillors; however if the number of councillors is even, one-half of the number is a quorum (section 259, LGR12)
  - informing councillors as to the business and objectives of the meeting
  - providing a forum for the exchange of views and ideas on key issues before council
  - confining discussion to within the scope of the meeting and within reasonable limits of time
  - deciding whether proposed resolutions and amendments are in order
  - deciding 'points of order' and other incidental matters that require a decision (e.g. if a councillor considers that there has been an irregularity in the conduct of the meeting, it can be brought to the attention of the chair by calling a 'point of order')
  - preserving order at the meeting
  - ensuring that the overall public interest is maintained and going into a 'closed meeting' when necessary (see section 3.1).
- (2) ensure decisions are respected and properly handled by:

- putting relevant questions to the meeting and conducting a vote (and, where authorised, giving a casting vote)
- declaring a result
- ensuring a division is taken (i.e. the names of all persons voting on the question and how they voted must be recorded), if requested
- ensuring the record of minutes of the proceedings is kept up-to-date
- adjourning the meeting when circumstances justify that action
- declaring the meeting closed when its business is complete.

#### 4.2.1 Motions

A 'motion' is a statement of position on an issue that has been formally proposed for debate by the local government or committee. There are two types of motions:

- formal — a proposition that requires or acknowledges action that has to be carried out or has been carried out. It can also state a view or preferred position on a particular issue. A small number of formal motions are routinely presented for consideration at a council meeting e.g., 'That the minutes of the previous meeting be confirmed and adopted'.
- procedural — can be employed in specific ways to control the conduct of meetings e.g. 'That the debate be adjourned'; 'That the motion lie on the table'.

#### 4.2.2 Resolutions

A 'resolution' is the formal adoption by the local government or committee of a particular 'motion' that has been considered by the local government or committee.

### 4.3 Promoting constructive and inclusive debate

Promoting constructive and inclusive debate is crucial to influencing the quality of decision making by the local government. A chair must be neutral and avoid letting their personal views, either positive or negative, influence their role and objectivity as chair.

The chair can assist in promoting diverse and balanced debate by:

- encouraging and allowing all councillors to contribute
- facilitating discussion to reduce the possibility that a small number of councillors may unreasonably dominate proceedings
- where appropriate, proposing a motion or an amendment to a motion that expresses the views of the meeting
- inviting councillors to draft relevant ideas in appropriate form as a draft resolution
- ensuring ambiguities in resolutions and amendments are clarified
- using open-ended questions to elicit more information
- focusing discussion on content rather than personalities
- terminating any background discussions between councillors while another councillor has the floor.

### 4.4 Maintaining order

It is the duty of the chair to preserve the rights of all councillors to participate in the meeting. Early intervention, in the event of disruptive or inappropriate behaviour by councillors, usually reduces and minimises the likelihood of disorder. If the chair maintains a calm tone and demeanour and directs the meeting to the objective of an item and what council is seeking to achieve, many potentially disruptive incidents can be contained.

Offensive or disorderly conduct by a councillor in a local government or committee meeting is deemed to be inappropriate conduct (section 176(4), LGA09). Such matters are dealt with by the chair of the meeting (usually the mayor). If the mayor engages in offensive or disorderly behaviour,

then the matter is referred to the Director-General of the Department of Local Government, Racing and Multicultural Affairs (DLGRMA) for assessment. If a councillor's behaviour is subsequently deemed to constitute 'inappropriate conduct', the mayor or the Director-General of DLGRMA can impose either of the following:

- an order reprimanding the councillor for the inappropriate conduct
- an order that any repeat of the inappropriate conduct be referred to the regional conduct review panel as 'misconduct' (section 181, LGA09).

For those local governments which have adopted Model Local Law No. 1 (Administration) 2010, please also see Section 34 'Maintenance of good order at meetings' relating to persons who are not a member of a local government.

#### **4.4.1 Taking a break**

If disorder occurs at either a meeting of the local government, a committee meeting or a public meeting called by the local government, a useful approach to defuse the situation is to have a brief adjournment.

Most standing orders make provision for the chair to adjourn the meeting for a period of not more than 15 minutes if disorder occurs. This is achieved by making the declaration and physically vacating the chair.

Upon re-convening, the council or committee must then determine whether to proceed with business

### **4.5 Order of business**

At times it may be necessary to consider altering the order to ensure important and urgent matters can be adequately dealt with.

In such cases, changing the agenda to alter the order of business is usually a decision of the chair.

A council's standing orders may allow for a 'mayoral minute', which provides the opportunity for the mayor to raise an urgent matter. A mayoral minute takes precedence over other items of business for discussion and decision.

## 5. Conflicts of interest and material personal interests

### 5.1 The primacy of the public interest

All councillors are responsible for complying with the local government principles and making decisions in the public interest. In particular, councillors need to be mindful of representing the overall public interest when making decisions for the benefit of their communities. In the event of a conflict between the public and private interests of a councillor and/or their associates, the public interest must prevail. Two principles which specifically relate to councillors managing their interests are:

- transparent and effective processes in the public interest
- ethical and legal behaviour of councillors and local government employees (section 4 of the LGA09).

Councillors have a particular responsibility to ensure they maintain accurate registers of interest and take particular action where questions of conflict of interest or material personal interest arise in council deliberations or decisions. The public interest must always take precedence over the private interests of councillors.

### 5.2 Conflict of interest at a meeting

A conflict of interest (COI) is a conflict that:

- is between a councillor's personal interests and the public interest
- might lead to a decision that is contrary to the public interest (section 175D, LGA09).

A councillor, therefore, has a conflict of interest if their decisions are, or may be seen to be, influenced by personal interests.

However, a councillor does not have a conflict of interest if the:

- council meeting is considering an 'ordinary business matter' (such as setting rates and charges or adopting the council budget) (section 175E, LGA09)
- councillor's interest is no greater than that of other persons in the local government area.

A councillor also does not have a COI if he or she:

- is a member of, or has a personal connection with, a community group, club, school, church or political party. However, if the councillor is an office holder in any of these, they must declare a conflict of interest
- is nominated by the local government to be a member of a board or a corporation or other association merely because of the nomination or appointment as a member.

Councillors must inform a council of a personal interest (real or perceived conflict of interest) in a matter to be considered at a council meeting (for example, that relates to a personal or family relationship or because of an election gift).

When informing of a personal interest in the matter, the councillor must clearly identify the nature of the personal interest and, if the personal interest arises because of a relationship with, or receipt of a gift from another person:

- the name of the other person
- the nature of their relationship or value and date of receipt of the gift
- the nature of the other person's interests in the matter (section 175E, LGA09).

A councillor who has informed the meeting of a personal interest may decide to leave the meeting room. If the councillor does not leave the meeting, the other councillors at the meeting must vote to decide whether the councillor has a real or perceived COI and whether the councillor must leave the meeting or may stay and participate in the meeting. This decision must be taken by resolution of the council.

If the subject councillor has not voluntarily left the meeting and the council resolves that the councillor has a real or perceived COI in the matter, the councillor must comply with the decision of the other councillors to leave the meeting and stay away from the chamber or meeting place, including any area set aside for the public.

A councillor who fails to inform a meeting of a COI or does not comply with a decision to leave the meeting room may be guilty of an offence which carries a maximum penalty of 100 penalty units or one year's imprisonment, and disqualification from being a councillor for four years.

Where a majority of councillors inform the meeting they have a personal interest in a particular matter, the councillors must delegate the decision-making process (unless an Act requires that the decision must be made by resolution of the local government).

In instances where the matter must be decided by resolution, approval must be sought from the Minister for Local Government before councillors affected by a COI can take part in any associated discussions and decision-making processes.

The Minister may, by signed notice given to a councillor, approve the councillor participating in the meeting, or being present while a matter is being discussed and voted on, if:

- the matter could not otherwise be decided at the meeting because the majority of councillors have an interest in the matter; and
- deciding the matter cannot be delegated under section 257 (section 175E(6) and 175F, LGA09).

### **5.3 Material personal interest at a meeting**

A councillor has a material personal interest (MPI) in a matter if a decision or action taken by the council meeting on that matter may result in a direct or indirect benefit or loss to any of the following:

- the councillor
- a close relative (spouse, parent, child or sibling)
- a person who is in a partnership with the councillor
- an employer of the councillor (other than a government entity)
- a body or organisation of which the councillor is a member, and
- another entity prescribed by regulation (section 175B, LGA09).

However, a councillor does not have a material personal interest if the:

- council meeting is considering an 'ordinary business matter' (such as setting rates and charges or adopting the council budget)
- councillor's interest is no greater than that of other person's in the local government area.

Each councillor will need to assess whether he or she has a MPI and, if so, how it compares to the interests of other persons in the local government area. As always, councillors must be mindful of complying with the local government principles (section 4 (2), LGA09).

Section 175B (3) acknowledges that a councillor may not be aware of all the interests of his or her immediate family (e.g. parents, children and siblings). As such, section 175C (1) (c) applies to a councillor only if the councillor knows, or ought reasonably to know, that their parent, child or sibling stands to gain a benefit or suffer a loss related to the matter before council.

A councillor with a material personal interest must tell the meeting about the interest and leave the chamber or meeting place, including any area set aside for the public, while the matter is discussed and a decision is made. When informing of a MPI, the councillor must clearly identify:

- the name of the person or entity who stands to gain a benefit, or suffer a loss, depending on the outcome of the consideration of the matter
- how the person or entity stands to gain the benefit or suffer the loss
- the nature of the councillor's relationship to the person or entity (if not the councillor) (section 175C, LGA09).

A councillor who fails to inform a meeting of a MPI or does not leave the meeting while the matter is discussed, and votes on the matter with an intention to gain a benefit, or avoid the loss, for the councillor or another person, may be guilty of an offence which carries a maximum penalty of 200 penalty units or two years imprisonment, and disqualification from being a councillor for four years (section 175C LGA09).

Where a majority of councillors have a material personal interest in a particular matter, councillors must delegate the decision-making process under section 257 of the LGA09 (unless and Act requires that the decision must be made by resolution of the local government).

In instances where the matter must be decided by resolution, approval must be sought from the Minister for Local Government before councillors affected by the MPI can take part in any associated discussions and decision-making processes.

The Minister may, by signed notice given to a councillor, approve the councillor participating in a meeting, or being present while a matter is being discussed and voted on, if:

- the matter could not be otherwise decided at the meeting because of the number of councillors subject to obligation under section 175C (2) (b), LGA09
- deciding the matter can not be delegated under section 257 (section 175F, LGA09).

## **What if a councillor attempts to influence others?**

If a councillor has a COI or MPI in a matter they must not influence or attempt to influence or attempt to influence any vote by another councillor or any decision by a council employee or contractor in relation to the matter.

A councillor who influences or attempts to influence others as described above may be guilty of an offence which carries a maximum penalty of 200 units or two years imprisonment, and disqualification from being a councillor for four years (section 175I, LGA09).

## **What if a councillor suspects another councillor has a conflict of interest or material personal interest?**



Any councillor at a meeting who believes or suspects on reasonable grounds that another councillor at the meeting has a COI or MPI must report to the Chairperson their belief, if the other councillor has not informed the meeting of the personal interest. This provision applies if:

- a matter is to be discussed at a meeting of the local government or any of its ~~standing~~ committees
- the matter is not an ordinary business matter; and
- a councillor reasonably believes, or reasonably suspects, that another councillor has a MPI, real or perceived COI in the matter, and
- the other councillor has not informed the meeting about the interest in the matter.

The councillor who has the belief or suspicion must, as soon as practicable, inform the chairperson of the meeting about:

- the belief or suspicion; and
- the facts and circumstances that form the basis of the belief or suspicion (section 175G, LGA09).

A councillor who takes any retaliatory action against another councillor for complying with their obligation to report another councillor's COI or MPI at a meeting may be guilty of an offence which carries a maximum penalty of 167 penalty units or two years imprisonment, and disqualification from being a councillor for four years (section 175H, LGA09).

## 5.4 Records about conflicts of interests and material personal interests at meetings

If a councillor has a COI which applies to a matter to be discussed at a meeting of the local government or any of its committees (section 175E, LGA09), the following information must be recorded in the minutes of the meeting and on the council's website (section 175J, LGA09):

- the name of the councillor who has a real or perceived COI in the matter
- the councillor's personal interests in the matter, including the particulars (section 175E (2), LGA09) as described by the councillor
- the decisions made and the reasons for decisions
- whether the councillor participated in the meeting, or was present during the meeting, under approval from section 175F, LGA09
- if the councillor voted on the matter – how the councillor voted on the matter
- how the majority of councillors who were entitled to vote at the meeting voted on the matter (section 175J, LGA09).

If a councillor has a MPI which applies to a matter to be discussed of the local government or any of its committees (section 175C), the following information must be recorded in the minutes of the meeting and on the local government's website:

- the name of the councillor who has a MPI in the matter
- the material person interest, including the particulars (section 175C (2), LGA09) as mentioned by the councillor

- whether the councillor participated in the meeting, or was present during the meeting, under approval under section 175F, LGA09 (section 175J, LGA09).

## 6. Meeting procedures

Councillors need to observe meeting procedures. Decisions made in local government meetings can be legally binding. For this reason decisions must be made in accordance with the correct meeting procedures. Failure to follow the correct procedure could provide the opportunity for the decision to be challenged.

### 6.1 Quorum

A quorum is the minimum number of councillors who must be present for a meeting to proceed and be considered valid.

A quorum of a local government is a majority of councillors. However, if the number of councillors is an even number, one-half of the number is a quorum (section 259, LGR12). For example, if there are six elected councillors (including the mayor) the quorum would be three.

If a quorum is not present within 15 minutes after the time scheduled for a meeting, the meeting may be adjourned to a later hour or another day within 14 days of the adjournment (section 261 (2) of the LGR12).

It is important to note that:

- at all stages of a meeting there must be a quorum present
- any member of the local government can, as a point of order, draw attention to the lack of a quorum
- a call for a check on the quorum should be addressed to the chair
- the call for a quorum check takes precedence over any other business as it is not possible to continue a meeting without a quorum.

A councillor who has made a declaration of a MPI on a matter before the local government cannot be counted in the quorum as they must be absent from the meeting.

If the absence of a councillor who has declared an MPI or COI means that there is no longer a quorum, the chair should adjourn that particular matter to later in the day or to another day, recall the absent councillor, and continue the meeting and discuss the next agenda item. The matter relating to the declaration of an interest should be considered at a later meeting when a quorum is present.

### 6.2 Procedures at meetings

Section 260 of the LGR12 provides that at meetings of a local government:

- voting must be open
- a question is decided by the majority of the votes of the councillors present
- each councillor present has one vote on each question to be decided and, if the votes are equal, the chair also has a casting vote
- if a councillor present fails to vote, the councillor is taken to have voted in the negative.

### 6.3 Formality at meetings

Other than the requirements of section 260 of the LGR (see section 6.2 above), each local government may decide how its meetings will be conducted.

The degree of formality at meetings is up to each council to determine and can be considered as part of a continuum (outlined below in sections 6.4 -6.8); however how these formal rules are observed in practice is largely at the discretion of the chair of the meeting.

An effective chair will permit considerable latitude in the interpretation of the rules in the interests of making decisions which are fair and equitable with a minimum loss of time. However, the chair also needs to ensure that proper standards of behaviour and decorum are maintained (see section 4.4 above) and that the process is inclusive (i.e. that all councillors have an opportunity to contribute and the debate is not monopolised or dominated by a minority or small number of councillors). To this end, the extent to which the chair can exercise such latitude or alternatively has to strictly enforce the rules of procedure is proportional to the extent to which councillors cooperate in the efficient conduct of meetings and transaction of business.

Irrespective of whether council conducts formal or informal meetings, councillors should have a working knowledge of their local government's meeting local laws, subordinate local laws and /or standing orders (where they have been adopted).

## 6.4 Setting agendas

### Formal-style meetings

The agenda contains standing items that are dealt with at every meeting.

Councillors may give written notice of proposed motions to the CEO with a designated timeframe before the meeting.

### Informal-style meetings

The CEO develops the agenda based on matters that require decisions of Council.

Councillors may notify the CEO of issues they want included on the agenda.

## 6.5 Proposing motions

### Formal-style meetings

A councillor is required to 'propose' a motion and then another councillor is required to 'second' the motion.

Other Councillors can propose amendments to the motion which must be voted on before voting on the final motion.

### Informal-style meetings

Motions are often developed 'organically' and a consensus reached on the wording.

## 6.6 Debating motions

### Formal-style meetings

The councillor who proposed the motion is given the option of speaking first on the motion.

The chair then calls on any councillor who wishes to speak against the motion.

Councillors alternate speaking for/or against the motion until all councillors who wish to speak have the opportunity.

### **Informal-style meetings**

Motions are discussed between councillors.

The chair usually ensures that all councillors are given the opportunity to contribute to the debate.

The chair allows discussions to continue until no new issues are raised or time has elapsed.

## **6.7 Voting on motions**

### **Formal-style meetings**

The chair calls for all councillors in favour of the motion to indicate their support.

The chair then calls for all councillors against the motion to indicate their objection.

A councillor may call for a 'division' to ensure their objection to the motion is recorded in the minutes.

### **Informal-style meetings**

Consensus on a motion is generally reached through discussion among the councillors.

Voting is usually expressed by the majority of councillors indicating their support for the motion.

A councillor may call for a 'division' to ensure that their objection to the motion is recorded in the minutes.

## **6.8 Acts of disorder by councillors**

### **Formal-style meetings**

The chair asks the disorderly councillor to apologise or cease their disorderly behaviour.

The chair then formally warns the disorderly councillor that, if they do not comply, they will be sanctioned.

The chair either notes that the behaviour be recorded in the minutes and/or orders the councillor to leave the meeting.

### **Informal-style meetings**

The chair asks the disorderly councillor to apologise or cease their disorderly behaviour.

The chair then warns the disorderly councillor that, if they do not comply, they will be sanctioned.

The chair either notes that the behaviour be recorded in the minutes and/or orders the councillor to leave the meeting.

## 7. Good decision making

A decision of the local government is the result of a democratic process and debate. The final decision – the resolution of the local government – is the result of open voting by the majority of councillors at the meeting. Once a collective decision is made, all councillors must abide by the decision.

It is also important to re-iterate that all decisions made at local government meetings must be consistent with the local government principles (section 4 (2) of the LGA09), in particular ‘transparent and effective processes and decision-making in the public interest.’ The local government principles establish that the primary accountability of a local government is to its community, and that the decisions of the local government must be made with regard to the benefit of the entire local government area.

Accordingly, there are legislative requirements associated with a councillor’s capacity to participate in decision-making when there is a conflict of interest or material personal interest – as discussed in sections 5.2, 5.3, 5.4 and 5.5.

In addition, good decision making requires that:

- decisions must be those which the local government can lawfully make
- decisions must be consistent with and in accordance with legislation and the local government’s policy/ies
- councillors should have all the relevant information before them in order to make a considered and ‘informed’ decision
- councillors should be impartial, objective, free from bias and act in the public interest of their local government area
- decisions should be made on a reasonable basis.

### 7.1 Making the decision

At the conclusion of the formal debate, the chair is required to ascertain the view of the meeting by calling for a vote. Section 260 of the LGR12 (also see section 6.2 above) prescribes voting requirements, namely:

- voting must be open
- a question is decided by a majority of the votes of the councillors present
- each councillor present has one vote on each question to be decided and, if the votes are equal, the chair also has a casting vote
- if a councillor present fails to vote, the councillor is taken to have voted in the negative
- a decision which is carried by the majority of votes at a meeting of the local government – at which a quorum is present – is considered to be a decision of the local government.

### 7.2 Counting the votes

Local governments may use the ‘show of hands’ or ‘on their voices’ methods for taking the vote. It is a matter of discretion for the chair to adopt the most appropriate method in the circumstances.

An important duty of the chair is to ensure that the:

- view of the meeting is clearly articulated
- result of the voting is formally declared.

The chair can take any appropriate steps to ensure the result is clear. If any doubt exists, the chair can immediately seek a recount.

A councillor may request a formal recount via a division thereby ensuring the minutes record the vote of each individual councillor. A request for a recount must occur immediately after the chair declares the result.

### **7.3 Chair's casting vote**

The chair (which is normally the mayor) has a primary (or deliberative) vote on each question and, if the voting numbers are equally divided on a question, has a casting vote (section 260 (c) of the LGR 12). Before a 'casting vote' can be exercised, the chair must have exercised the vote (i.e. primary vote) they have in their own right.

For example, if there are three councillors plus the mayor forming the quorum of a meeting and two councillors vote for the resolution – and one councillor and the mayor are voting against – the vote would be tied. The mayor, as chair would then use their 'casting vote' to break the deadlock and bring about a resolution of the local government.

### **7.4 Repealing resolutions**

Under section 262 of the LGR12, a local government can amend or rescind a resolution only if written notice of the intention to amend or rescind the motion is given to each councillor at least five days before the meeting (at which the proposal is to be made).

When proposing a rescission resolution, it is important to ensure that action associated with the original resolution has not already been taken or the policy implemented – for example, a resolution providing for the purchase of a vehicle, where the vehicle has been purchased, cannot be repealed.

### **7.5 Ensuring the will of the majority**

The process for giving and passing a notice of repeal as outlined also provides safeguards to local governments. Decisions cannot be rescinded or altered without proper notice and councillor representation. The resolution to repeal a previous decision should reflect the genuine majority view of council.

## 8. Recording local government decisions—meeting records

Minutes are the official record of the business transacted at local government meetings and the decisions made by local governments. As a legal record and a public document, they are arguably the most important records of a local government.

Under section 272 (1) of the LGR12, it is the CEO's responsibility to ensure the minutes are taken under the supervision of the chair.

The minutes do not need to be a verbatim transcript of proceedings and there is no legal requirement to have a full transcript or even a summary of councillors' statements unless the council resolves that this should occur. The main requirement is that local government resolutions are clear.

The minutes of each meeting need to be:

- an accurate historical recording of the decisions made at the meeting in question
- concisely written in a consistent, readable format
- made available to the public.

Committees must comply with the same requirements of minute recording as ordinary local government meetings, unless the local government has by resolution exempted the committee of the requirement to keep minutes of its proceedings.

### 8.1 Transparent and accountable record of meeting

Section 272 (2) of the LGR12 requires that:

- minutes of each meeting must include:
  - the names of councillors or committee members present at the meeting
  - if a division is called on a question, the names of all persons voting on the question and how they voted.

Section 272 (3) of the LGR12 requires that:

- at each meeting the minutes of the previous meeting must be:
  - confirmed by councillors or members present
  - signed by the person presiding at the later meeting.

Section 273 of the LGR12 requires that local governments must record reasons for decisions made at a meeting that are inconsistent with a recommendation or advice given to the local government by an advisor of the local government and either or both of following apply to the decision:

- the decision is about entering into a contract the total value of which is more than the greater of the following:
  - \$200 000 exclusive of GST
  - 1% of the local government's net rate and utility charges as stated in the local government's audited financial statements included in the local government's most recently adopted annual report
- the decision is inconsistent with:
  - the policy or approach ordinarily followed by the local government for the type of decision
  - a policy previously adopted by the local government by resolution, whether or not as required by the Act, and still in force.

The CEO of the local government must ensure the minutes of the meeting include a statement of



reasons for not adopting the recommendation or advice.

## 8.2 Record of conflict of interest and material personal interest

As mentioned section 5.4 above, section 175J of the LGA09 requires that a councillor's COI must be recorded in the minutes of the meeting. Such information must include:

- the name of the councillor who has a real or perceived COI in the matter
- the councillor's personal interests in the matter, including the particulars as described by the councillor
- the decisions made and the reasons for decisions
- whether the councillor participated in the meeting, or was present during the meeting, under an approval from section 175F, LGA09
- if the councillor voted on the matter – how the councillor voted on the matter
- how the majority of councillors who were entitled to vote at the meeting voted on the matter.

A councillor's MPI must also be recorded in the minutes of the meeting and include the following information:

- the name of the councillor who has a MPI in the matter
- the material personal interest, including the particulars as mentioned by the councillor
- whether the councillor participated in the meeting, or was present during the meeting, under an approval under section 175F, LGA09

## 8.3 Accessible to the public

Section 272 (4) of the LGR12 requires that a copy of the minutes for each meeting must be available for inspection by the public office or on its website, within 10 days after the end of the meeting. Further, when the minutes have been confirmed, they must be available for purchase at the local government's public office.

## 8.4 Minutes—structure and layout

Minutes should be arranged in such a way that items and decisions are easy to find. The minutes should reflect the format and structure of the agenda, and use the same titles for business items.

Following is a recommended layout:

- table of contents (matching the order of business)
- item numbers
- subject headings
- file numbers
- author
- executive summary (optional)
- officer's recommendation (where applicable)
- local government resolution and minute number
- meeting closure.

Minutes are more readable when they are consistently formatted using clear item and subject headings, regular tabs and spacings, and font or text features to highlight decisions.

Sample minutes can be readily accessed on local government websites.

## 8.5 Adopting the minutes

Local governments are required to have the minutes of a meeting confirmed by the councillors and committee members present at the meeting and signed by the chair at the subsequent meeting of

the local government (section 272 (3) of the LGR12).

The adoption of minutes is subject to a motion, not a procedural resolution. The meeting may, until the vote on the adoption of the minutes is carried, move amendments to the minutes.

Once the minutes have been adopted, they cannot be altered. If at a later date an error is noted in the minutes, the correction may be noted in a resolution passed by the local government. The minutes are not actually changed to incorporate the resolution.

Courts have held that minutes of a meeting are prima facie evidence of local government decisions, but their accuracy can be challenged. The burden of proof is on the party questioning the accuracy of the minutes. In considering the adoption of the minutes, the test is to ask: 'are they a clear, accurate, concise and complete record of the business and the decisions of the meeting?'

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