

TOWN OF COTTESLOE



Works and Corporate Services
Committee

ATTACHMENT 10.1.3

Meeting Date: 18 September 2012



JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Your Ref: CLL/5. Matt Humphrey
Our Ref: 3896/20

Mayor Kevin Morgan
Town of Cottesloe
P O Box 526
Cottesloe WA 6911

By facsimile: 9285 5001

11 September 2012

Dear Mayor

Town of Cottesloe Standing Orders Local Law 2012

The Joint Standing Committee on Delegated Legislation considered the *Town of Cottesloe Standing Orders Local Law 2012* at its meeting on 10 September 2012.

The Committee resolved to write to you and express its preliminary views regarding clause 11.13 (Other Persons to Disclose Impartiality Interests) of the local law.

Clause 11.13 prescribes the disclosure requirements where a person who is an employee or member of a committee (who is not the Mayor or a Councillor) has an interest affecting impartiality. Employee disclosure of interest affecting impartiality requirements are also contained (as required by law) in clause 2.3 of the *Town of Cottesloe Code of Conduct*.

The Committee's role is to determine whether, in its view, clause 11.13 is authorised or contemplated by the empowering provision, section 3.5 of the *Local Government Act 1995 (Act)* (Committee term of reference (a)) or offends any other term of reference. In making this determination, the Committee considered the legislative context in which clause 11.13 operates, including regulation 34C (Codes of Conduct about disclosing interest affecting impartiality) of the *Local Government (Administration) Regulations 1996 (Administration Regulations)*.

Section 3.5(1) of the Act, the local government general law making power, provides that a local government may make local laws prescribing all matters that are 'required or permitted' or 'necessary or convenient' to be so prescribed for it to perform any of its functions.

As you would be aware Part 5 of the Act deals with disclosure of financial interest and the *Local Government (Rules of Conduct) Regulations 2007* include provisions relating to Council Members conduct and disclosure of interest affecting impartiality requirements.

In this context, it is significant that regulation 34C of the *Administration Regulations* mandates that particular requirements relating to employee interests affecting impartiality *must* be contained in a local government's *code of conduct*.

Clause 2.3 of the Town of Cottesloe *Code of Conduct* prescribes the employee disclosure of interest affecting impartiality requirements required by regulation 34C and contains provisions in clause 11.13 of the local law.

The Committee understands that it may be the Town of Cottesloe's intention in legislating clause 11.13 for the Council to legislate employee interests affecting impartiality requirements contained in the *Code of Conduct* in addition to the employee provisions in the *Code of Conduct* to give legislative force and enforceability to these requirements. However, the issue for the Committee's is whether clause 11.13 is authorised or contemplated by the empowering provision.

The provisions in the Act and regulations dealing with disclosure of interest and, in particular, 34C of the Administration Regulations demonstrate that the policy decision to mandate that employee disclosure of interests affecting impartiality requirements be in a code of conduct was considered and deliberate. In the Committee's view, regulation 34C of the Administration Regulations implies an intention for employee interest affecting impartiality requirements to be in a local government code of conduct and *only* in a code of conduct. In the Committee's view, section 3.5(1) does not permit or authorise matters a regulation specifically states shall be in a code of conduct also being in a local law.

The Committee has formed the above view notwithstanding that no law, including the Administration Regulations, expressly prohibits local laws in respect of employee interest affecting impartiality. The Committee is also aware of the differences between clause 11.13 of the local law and clause 2.3 of the *Code of Conduct*.

The Committee's view is that clause 11.13 offends the Committee's term of reference (a) and therefore is inoperative under section 3.7 of the Act to the extent of the inconsistency and void under section 43(1) of the *Interpretation Act 1943* to the extent of the inconsistency.

The Committee requests that the Council of the Town of Cottesloe provide an undertaking to, within six months:

- Delete clause 11.13 of the local law.
- Make consequential amendments to the local law.
- Provide the Committee with a copy of the minutes of the meeting at which the Town of Cottesloe resolved to provide the undertakings.
- In the interim, where the local law is made publically available by the Town of Cottesloe, whether in electronic or hard copy form, it be accompanied by a copy of the undertakings.

The Committee requests your response to the above by 5pm on **Friday, 5 October 2012**.

If you have any questions, please contact Suzanne Veletta, Advisory Officer, on 9222 7250.

Yours sincerely



Mr Paul Miles MLA
Chairman

11.8 When Disclosing Members Can Participate

The procedures for allowing participation in meetings of members disclosing an interest in clause 11.5 are dealt with in the Act.

11.9 Invitation to Return to Provide Information

- (1) Where a member has disclosed an interest in clause 11.5, and has departed from the Council Chamber or meeting room, the meeting may invite the member to return to provide information in respect of the matter or in respect of the member's interest in the matter.
- (2) A member invited to return under subclause (1) must withdraw after providing the information.

11.10 Substitution of Deputy at Committee Meetings

Where a member discloses an interest on an item under clause 11.5 and withdraws from a meeting of a Committee, the Presiding Member may invite the disclosing member's deputy, if present, to participate as a member of the Committee in place of the disclosing member during the consideration of that item only.

11.11 Disclosure by Members who are Observers at Committee Meetings

The obligation to disclose an interest in clause 11.5 is to apply to all members present at Committee meetings including a member attending a Committee meeting in the capacity of an observer.

11.12 Disclosure of Impartiality Interests

The disclosure of impartiality interests at meetings by the Mayor and Councillors is dealt with in the *Local Government (Rules of Conduct) Regulations 2007*.

11.13 Other Persons to Disclose Impartiality Interests

- (1) In this clause, a reference to -
 - (a) *person* means an employee and a member of a Committee that is not either the Mayor or a Councillor; and
 - (b) *interest* means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.
- (2) A person who has an interest in any matter to be discussed at a meeting attended by the person must disclose the nature of the interest -
 - (a) in a written notice given to the CEO before the meeting; or
 - (b) at the meeting immediately before the matter is discussed.
- (3) Subclause (2) does not apply to an interest referred to in section 5.60 of the Act.
- (4) Subclause (2) does not apply if -
 - (a) a person fails to disclose an interest because the person did not know he or she had an interest in the matter; or

- (b) a person fails to disclose an interest because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person disclosed the interest as soon as possible after the discussion began.
- (5) If, under subclause (2) (a), a person discloses an interest in a written notice given to the CEO before a meeting then -
 - (a) before the meeting the CEO is to cause the notice to be given to the Presiding Member of the meeting; and
 - (b) at the meeting the Presiding Member is to bring the notice and its contents to the attention of the persons present immediately before a matter to which the disclosure relates is discussed.
- (6) If -
 - (a) under subclause (2)(b) or (4)(b), a person's interest in a matter is disclosed at a meeting; or
 - (b) under subclause (5)(b) notice of a person's interest in a matter is brought to the attention of the persons present at a meeting,the nature of the interest is to be recorded in the minutes of the meeting.

11.14 On-going Disclosure Required

The obligation to disclose an interest under this Part applies in regard to each meeting at which the matter the subject of the interest arises.

11.15 Approval by Minister to be Recorded

If the Minister approves of the participation in a meeting of a disclosing member, the conditions of the approval are to be recorded in the minutes of the meeting and the register of financial interests.

PART 12. CONDUCT OF MEMBERS DURING DEBATE

12.1 Members to Address the Presiding Member

Every member of the council wishing to speak shall indicate by show of hands or other method agreed upon by the council. When invited by the presiding member to speak, members shall address the meeting through the presiding member.

12.2 Priority

In the event of two or more members wishing to speak at the same time, the presiding member shall decide which member is entitled to be heard. The decision shall not be open to discussion or dissent.

12.3 Relevance

Every member shall restrict their remarks to the motion or amendment under discussion, or to an explanation or point of order.