

New Meeting Regulations: a long anticipated anti- climax!

The Minister has released the *Local Government (Procedures at Meetings) Regulations 2013* being the successor regulations to the Meeting Regulations 2000. The 2013 regulations will come into operation on 1 September 2013.

The purpose of this LG Alert is to highlight the key changes between the 2000 and the 2013 Regulations. The changes are, in the main, insignificant and it is probably fair to describe the Meeting Regulations 2013 as a "tidy up" of the Meeting Regulations 2000 and clarification of a couple of issues that have long been identified for such. The key changes, in summary, are:

the question of leave of the meeting has been given some clarification.

- Regulation 3 of the 2000 Regulations has been repealed resulting in the balance of Part 2 of the Regulations being renumbered. For instance, the former regulation 10 dealing with questions is now regulation 9 and the former regulation 13 dealing with motions is now regulation 12;
- the definition of *clear days* has been further clarified by providing that in calculating the number of clear days, a notice given after 5.00pm on any day will be taken to be given on the next business day. This is a clarification that has long been sought in recognition that 5.00pm is ordinarily the close of business for council offices and to avoid the mischief of, for instance, a question on notice or a notice of motion being given at 11.59pm;
- the question of *leave of the meeting* has been given some clarification. When leave of the meeting is sought the practice appears to vary from council to council. Some councils deal with leave as a motion moved, seconded and voted upon whereas other councils treat leave of the meeting as simply a consensus issue indicated by a show of hands. In our opinion the latter approach is the correct approach, not least because of the impropriety in dealing with the issue as a motion moved and seconded whilst another substantive motion is before the meeting. In our view, the only type of motion which may be moved and seconded whilst there is an outstanding substantive motion is a motion in the nature of a formal motion. In any event, the Meeting Regulations 2013 clarify that a vote on whether leave of the meeting is granted may be conducted by a show of hands. It is also clarified

that a division may be called in relation to the vote on the question of whether leave of the meeting is granted;

- the matters which are stipulated as mandatory inclusions in the minutes of a meeting have been extended to require the inclusion of any request for documents to be tabled, a description of any oral briefing given at a meeting and points of order raised at the meeting;
- Regulation 10, dealing with petitions, now clarifies that a petition must include the name and address of each person who signed or endorsed the petition;
- the rescission motion provisions which have, to date, referred to 'periodic elections' have been amended to refer, the next general election of the council. As readers will be aware, a periodic election occurs every four years. A general election of the whole council may, of course, occur more frequently than that according to the circumstances prescribed in the Act for a general election;
- in relation to formal motions, the long standing issue of what happens to questions lying on the table subsequent to a general election has been addressed. Any question lying on the table will lapse at the next general election. Further, the CEO must report on each question that lapses to the council at its first ordinary meeting after the general election;
- the provisions dealing with voting recognise the power to hold committee meetings by telephone or electronic means and hence the requirement that a person be in his or her seat for the purpose of being permitted to vote, does not apply in those circumstances;
- a new but long awaited regulation 21 is included to provide that a report of the CEO recommending the revocation or amendment of any resolution passed since the last general election is sufficient to achieve that rescission outcome without the need for a member to give notice of motion in the same terms as the recommendation;
- the power to vary those regulations which are expressed as being capable of variation at the discretion of the council and included in the council's code of practice for meeting procedures is amended to recognise that the two thirds member support is two thirds of the members of the council entitled to vote on the resolution. This operates to clarify that if an elected member is not entitled to vote (for example, if he/she has a conflict of interest) that member will not be included for the purpose of calculating two thirds of those members who are entitled to vote; and
- the balance of the changes to the Meeting Regulations are largely cosmetic in nature.

When the process commenced to review the Meeting Regulations 2000 a number of important and potentially significant issues were identified that could be addressed in the replacement meeting regulations. It is our view, consistent with the title to this LG Alert, that the 2013 Regulations fail to achieve a number of matters that have, for the past 13 years, been raised by members seeking clarification and/or more effective meeting regulations. It is in this sense that the changes which, in our view, are not substantial, can fairly be said to be a long anticipated anti-climax for the purposes of meeting regulations. For instance, the following matters could but have not been addressed and hence we will be left to continue to wrestle with the issues pending any further review of the Meeting Regulations:

- given the comments above, it would have been preferable for the issue of leave of the meeting to be specified as being achieved only by way of a show of hands;
- to clarify that questions on notice that are received prior to agenda distribution can be determined by the Presiding Member to be vague, irrelevant, insulting or improper such that the question which will not be answered, and not required to be included in the agenda;
- to provide a definition of *“amendment”* to clarify that an amendment, even though it is moved and seconded, is not a motion and should not be treated as and enjoy the same status as a motion and, otherwise, that it is a refinement of the substantive motion which is already under consideration;
- to provide additional clarification around the concept of a rescission motion encapsulating both revocation or amendment of a decision passed since the last council election;
- given that a division may be called upon a vote (by way of a show of hands) on the question of leave of the meeting, that a division might also be called upon a vote upon an amendment;

...a report of the CEO recommending the revocation or amendment of any resolution passed since the last general election is sufficient...

- to provide greater clarity around deputations. To recognise that a council which establishes a policy position not to entertain a deputation request for a meeting which is received within a certain number of days or hours of that meeting, will be considered for the next ordinary meeting of the council and to provide protection for a council relying upon that policy position;
- whilst a rescission may now occur through a notice of motion or a report and recommendation of the CEO, to provide further opportunity for a

rescission motion to be entertained without notice where it is in relation to the receipt of and dealing with a section 270 review of decisions report;

- to review and update the formal motion provisions, in particular, clarification of *“question”* as it is used and which has long caused confusion for elected members;
- to clarify the purpose, intent and circumstances when regulation 18 (tabling of information) can reasonably be relied upon and the circumstances where the Presiding Member may exercise powers to avoid the misuse of the provision by an elected member;
- to provide clarification around *“deferred business”* as distinct from *“adjourned business”*;
- clarification of the procedure to be followed by council when an elected member who has provided a notice of motion is unable to attend the meeting at which his/her notice of motion is to be considered;
- clarification of the circumstances when a motion fails and the ability of an elected member to move the same motion at the same meeting and a public policy objective that the same motion may only be moved again at a subsequent meeting;
- to allow for and provide recognition of a model code of practice for meeting procedures;
- to provide some clarification and governance support around the role of the Mayor in moving/seconding motions and debate; and
- to provide clarification about the circumstances where the Presiding Member may make a ruling which is absolute and without opportunity for challenge at the meeting.

As readers will be aware from our regular attendance at LGA Residential Seminars to discuss ‘tips and traps’ of meeting procedures and at councils for specific meeting regulation training, if any further clarification is required upon any of the changes by the Meeting Regulations 2013 and/or to provide “refresher” training for elected members, please contact either Michael Kelledy on 8113 7103, 0417 653 417 or mkelledy@kelledyjones.com.au or Natasha Jones on 8113 7102, 0419 864 531 or njones@kelledyjones.com.au