

## Informal Gatherings: is this the age of extinction?

The 'informal gathering provisions as they currently exist at section 90(8) of the *Local Government Act 1999*, were originally introduced to codify the gatherings/workshops/training/planning sessions that councils were (and, it seemed, always had been) undertaking. The objective was not to restrict the usefulness of these forums for elected members and the administration meeting outside of formal public council meetings, but to ensure that actual or effective decisions were only being made at public meetings, usually after debate.

**"...the duty to hold formal meetings in a place open to the public does not make informal gatherings or discussions unlawful..."**

The above considerations were and are reinforced by the wording in the Act which expressly recognises that the duty to hold formal meetings in a place open to the public does not make informal gatherings or discussions unlawful - provided that the gathering is not being used to make decisions or to effectively obtaining a decision outside of a formal meeting. Therefore, the law as it currently stands regulates the decision-making issue and not the issue of public accessibility to informal gatherings. Indeed, in many instances, a mandated public informal gathering could be antithetical to the reasons for the non-public gathering!

It is, therefore, important to be aware that there are currently pressures being applied to achieve the objective of all informal gatherings being open to the public, unless the council records reasons, on a gathering-by-gathering basis, to hold the gathering without the public being present. This pressure would likely see many, if not most, informal gatherings being held in public. Where a council wished to depart from this requirement, it could then be scrutinised and held to account for the reasons it has articulated and recorded for not holding a gathering in public.

Many in local government have expressed concerns about unchartered and unnecessarily restrictive changes to these long-standing practices – in circumstances where there is no evidence of any widespread misuse or systemic breaches of the relevant requirements of the Act, the question has to be asked what justifies greater regulation?

Accordingly, it is important for our readers to be aware of the provisions at clause 17(3) of the *Local Government (Accountability and Governance) Bill 2015* which, if enacted as currently drafted, will prohibit the holding of informal gatherings/discussions unless the council has a policy in place (yes, another policy!) and the informal gathering/discussion complies with the policy. The '*sting in the tail*', however, is that such a policy will need to comply with any requirements prescribed by regulation. Clause 17(3) provides a non-exhaustive list of examples of what the regulations might achieve, including the imposition of limitations on and procedures for informal gatherings/discussions.

Therefore, what may currently appear to be a relatively innocuous provision in the Bill, has the potential to achieve fundamental and significant change, according to the final form of the provisions that are included in the regulations. So, for instance, the current methodology for and objective behind each council's use of the informal gathering provisions may be overturned. It is possible that, in the future, public informal gatherings are prescribed as the norm and confidential informal gatherings require the articulation of reasons which may, themselves, be the basis for a challenge to the council – eventually, councils may cease using this elected member/administration interactive medium because of the restrictions and the risk. If so, the substitute options are scarce!

If you have any concerns about this potential Huxlian *brave new world* for informal gatherings, it is appropriate to let the LGA know - before it is too late!

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