

COVID-19: Potential impact upon Council and Committee meetings

We have received a number of enquiries from councils about the available options in the event that the Coronavirus pandemic results in an inability to convene council and council committee meetings. Our advice is –

- section 81(2) of the *Local Government Act 1999* ('the LG Act') requires that each council hold at least one ordinary council meeting in each calendar month;
- the LG Act (or regulations) do not have any provisions which allow for council meetings to be held less frequently and/or, other than 'in person' – that is, at a time and place as determined by the council where members are physically present. In addition, there are no provisions which provide for telephone or electronic options for the holding of council meetings;
- whilst Chapter 3 of the LG Act sets out various powers which provide for the Governor to make proclamations, one effect of which can be to vary a provision of the LG Act, none of these powers support the making of a proclamation, in isolation, to alter the means by which council meetings must be held;
- however, section 303 of the LG Act provides for the Governor (read 'Minister') to make such regulations as are contemplated by or expedient for the purposes of the LG Act. Regulations may operate subject to prescribed conditions and may be of general or limited application. In our view, there is sufficient flexibility within the regulation-making powers to enable the Minister, particularly in times of urgency and for purposes of expediency (as is likely to be the situation as the Coronavirus concerns continue to impact many aspects of our lives) to introduce regulations that would allow for council meetings (similar to committee and subsidiary board meetings) to be held by telephone or other electronic means – even if it is just for a limited period of time, to ensure compliance with the LG Act during the period of controls pertaining to the Coronavirus;
- by contrast, section 90(7a) of the LG Act, provides for council committee meetings to be taken to be conducted in a place open to the public even if 1 or more committee members participate in the meeting by telephone or other electronic means. This must occur in accordance with procedures prescribed by regulation (noting that there are currently none) or as determined by the council;
- accordingly, councils have discretionary powers available to them to alter meeting dates for council committees and/or to adopt procedures for the holding of committee meetings where 1 or more (i.e. even all) members of the committee may participate by 'remote connection' to the meeting, in accordance with procedures determined by the council.

A copy of this Alert has been provided directly to the Minister, Stephan Knoll MP, so that there is opportunity for the Government to contemplate suitable assistance measures for councils before the need for such becomes urgent.

If you require further information, please contact Michael Kelly on 8113 7103 or mkelly@kellyjones.com.au or Natasha Jones on 8113 7102 or njones@kellyjones.com.au