

## **The requirement for councils to keep principal offices and public facilities open to the public during the COVID-19 pandemic**

Many councils are currently considering, in a risk and health/safety context, their legal obligations to keep open their principal office and other public facilities during the COVID-19 pandemic.

Over the past 24 hours alone, a number of councils have not only considered but, indeed, implemented, the 'closure' of Civic Centres and 'non-essential' facilities to the public.

The associated question we have now been asked on a number of occasions is; under what lawful authority may the council take such action?

In these unprecedented, and unchartered, times, we provide this LG Alert to all of our readers on this important health, safety and welfare issue.

The starting position is that the *Local Government Act 1999* ('the Act') does not provide any express answer to this question. Relevantly, section 45 of the Act provides, amongst other things, that the principal office of the Council '**must be**' open to the public for the '*transaction of business during hours determined by the council*'.

The same section of the Act, provides that the nominated place of the council's principal office, as well as the hours that it is to be open, are determined by resolution of the council, as the governing body.

Of course, the reality in our current society is that the '*transaction of business*' can and is, readily achieved through the provision of a range of online services, as well as ensuring that employees are contactable by telephone and email. Further, most, if not all of, the statutorily required policies, procedures and registers are also readily accessible online.

In our view, there is a fundamental difference between a place being open to transact business and it being open for public attendance. It is not necessary or, otherwise, required that the principal office to be physically open to members of the public, for a council to meet its obligations under the Act to provide for the '*transaction of business*'.

Further, section 45(3) of the Act provides that a council '**should consult**' with the community in accordance with its public consultation policy about the manner, places and times at which its offices will be '*open to the public for the transaction of business, and about any significant changes*' (our emphasis). In these unprecedented and uncertain times, with information and advice from the Federal and State Governments moving and changing at such rapid pace, the overriding

obligation is for the health, safety and welfare of the employees, elected members and members of the community as 'other persons at the workplace' who attend at the council offices. Under the *Work, Health and Safety Act 2012* ('WHS Act') this objective must take precedence, rendering the '*should consult*' requirement a secondary consideration in these times, in particular where the attendant delay might operate to adversely impact the interests and expectations of these persons.

This position is further supported by the functions of each council as a local public health authority under section 37(2) of the *South Australian Public Health Act 2011* ('SAPH Act') which requires, amongst other things, that the council '*take action to preserve, protect and promote public health within its area*'.

However, it has been, and remains our advice that a council is not required to take specific action (or specific emergency action) in its area through the issuing of notices under section 92 of the SAPH Act to close or restrict access to the principal office or to cease or limit the provision of 'non-essential' public facilities.

Rather, when the council's obligations as a local public health authority are considered in conjunction with those to provide a safe workplace, free from risk for employees, elected members and those who attend at council premises, these are over-riding considerations at this time. This position renders any council decision to close or to restrict services from a principal office and to regulate or to prevent access to other public facilities for a period of time, not only lawful, but reasonable and measured in the current health crisis.

For the avoidance of doubt, it is also our position that if such action is administratively taken by the CEO, with statutory responsibilities for the day-to-day operations and affairs of the council under section 99 of the Act, this constitutes an action that is not only lawful in the circumstances, but is also justifiable, reasonable and responsible. This is particularly so in light of the speed within which information is currently being provided to the public by public health professionals.

However, in these circumstances, unless there is a specific delegation to the CEO under section 44 of the Act, we recommend that after taking such health and safety measures, the CEO prepare a report for the council's consideration at its next meeting, for the purpose of obtaining endorsement of the action.

If you have any questions, or if we can assist you further, please do not hesitate to contact Tracy Riddle on 8113 7106 or [triddle@kellyjones.com.au](mailto:triddle@kellyjones.com.au) or Michael Kelly on 8113 7103 or [mkelly@kellyjones.com.au](mailto:mkelly@kellyjones.com.au), or Natasha Jones on 8113 7102 or [njones@kellyjones.com.au](mailto:njones@kellyjones.com.au) or