

## The requirement to keep Council and Committee meetings open to the public

Consistent with our commitment to remain at the forefront of critically important developments for our clients at this time and to provide timely, accurate and practical advice, we now raise the impact of the most recent Federal Government directives regarding indoor gatherings as part of Australia's response to the COVID-19 pandemic.

Our readers will be aware that, over the weekend, the Federal Government announced all non-essential indoor gatherings are required to be limited to one (1) person per four (4) square metres of space, while it is recommended that essential gatherings try and observe these limits where possible as well.

The practical effect of this is that in a council chamber or committee meeting room of 100 square metres, only 25 persons should be present in that room – and when in the chamber for persons to continue to observe the 1.0/1.5m distancing recommendations.

The Prime Minister has advised that within this space:

*.... you should continue to practice wherever possible, a metre/a metre and a half of healthy distance between each of us, to ensure we are limiting the contact, and the potential of the spread of the virus.*

This will, of course, have an immediate and direct impact on the management of most, if not all, council and committee meetings and brings into sharp focus the requirement under the *Local Government Act 1999* to have those meetings open to the public.

It has been and remains, our view that in these unprecedented and uncertain times, with information and advice from the Federal and State Governments changing at such a rapid pace, a council's overriding obligation is for the health, safety and welfare of the employees, elected members and members of the community under the *Work, Health and Safety Act 2012*.

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*'.

These most recent measures dictate that councils which **cannot** ensure the appropriate number of persons per square metre in a council or committee room, as well as meeting the social distancing requirements, **should immediately** move to consider alternative arrangements for the participation of members of the community at those meetings.

This could include a number of measures such as, relocating members of the public to another room at the principal office (whilst still meeting the above requirements), where they can view and hear the meeting by video camera and television. Otherwise, those councils that already live stream council and committee meetings can, in our view, reasonably and justifiably, decline to permit members of the public from entering the meeting room.

It is also to be recalled that members of the public do not enjoy any right to participate in a council or committee meeting (outside of a deputation, which should, by discretion, be limited at this time) but, rather, just to observe those proceedings.

Importantly, it is not that members of the public are being 'excluded' from a council or committee meeting at this time but, rather, based on the cogently, clear, directives from the Federal Government, the council is giving effect to its overriding health, safety and welfare requirements.

Accordingly, as long as councils make arrangements so that members of the public can still obtain copies of the publicly available agenda, as well as the minutes and to otherwise view and hear the meeting (either remotely or via social media), a council could not ever, reasonably or objectively, be said to be in breach of its obligations under the Act, during these difficult circumstances.

It 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 council or committee meetings.

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@kelledyjones.com.au](mailto:triddle@kelledyjones.com.au) or Michael Kelledy on 8113 7103 or [mkelledy@kelledyjones.com.au](mailto:mkelledy@kelledyjones.com.au), or Natasha Jones on 8113 7102 or [njones@kelledyjones.com.au](mailto:njones@kelledyjones.com.au).