

Local Government Update

A review of Local Government Law in Western Australia

RULES OF CONDUCT FOR COUNCILLORS

Executive summary

Enforceable Rules of Conduct applying to councillors have now been finalised. These Rules have potentially significant implications not only for individual councillors, but also for local governments generally. Each local government is required to amend its Code of Conduct to be consistent with the new Rules as well as the changes that have been made to the Local Government Act and various Regulations.

The Rules

The Local Government (Rules of Conduct) Regulations 2007 were published in the Government Gazette on 21 August 2007. The Rules of Conduct set out in those Regulations are expected to come into force shortly after the Council elections in October this year.

The Rules of Conduct – which apply only to elected members – deal with:

- disclosure of confidential information;
- improper use of the position of councillor to gain a personal advantage or cause detriment to the local government or others;
- the misuse of local government resources;
- unauthorised involvement in administration matters;
- improperly directing, influencing or making offensive or objectionable statements about a local government employee.
- disclosure of “impartiality” interests;
- notifiable and prohibited gifts.

The final versions of the Rules of Conduct and the Regulations incorporate many of the suggestions made at the LGMA workshop held at the Town of Kwinana on 13 June 2007 and in the LGMA’s formal submissions to the Department of Local Government and Regional Development made shortly afterwards.



Enforcement

Many of these Rules of Conduct have a significantly wider application than the corresponding provisions commonly found in a local government's Code of Conduct. Perhaps the most significant change is that, for the first time, the Rules will be enforceable. A suspected breach of a Rule of Conduct may be the subject of a complaint that will be heard and determined by a Standards Panel constituted under the Local Government (Official Conduct) Amendment Act 2007.

Standing orders

One of the notable changes made to the final version of the Rules of Conduct following the LGMA's workshop and submissions was to delete the reference to the Model Local Law (Standing Orders) 1998. The effect of this is that every provision in a local government's standing orders that relates "to conduct of people at Council or Committee meetings" has the status and effect of an enforceable rule of conduct. Local governments should identify and review each of these provisions by reference to the new legislation.

Code of conduct

The new Rules of Conduct cover many areas that are commonly dealt with in a local government's Code of Conduct. In addition, amendments to the Local Government (Administration) Regulations 1996 (which are also to come into force after the October elections) contain new requirements, including requirements relating to disclosure of "impartiality" interests, and notifiable and prohibited gifts by employees, that must be included by local governments in their Codes of Conduct.

As a result, it is important that each local government review and amend its Code of Conduct to remove the inevitable inconsistencies and to ensure that the Code of Conduct complies with the amendments that have been made to the relevant provisions of the Local Government Act 1995, the Local Government (Rules of Conduct) Regulations 2007 and the Local Government (Administration) Regulations 1996.

For any advice or assistance on these matters, please contact Neil Douglas on 9383 3133 or neil.douglas@mcleods.com.au.

The information contained in this update should not be relied upon without obtaining further detailed legal advice in the circumstance of each case

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