Council Committees & Committee Members

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The Council Committee Members’ Guide has been prepared by the Local Government Association of SA (LGA) in conjunction with Wallmans Lawyers for the guidance of and use by member Councils. The LGA is the statutory peak body for Local Government in South Australia, representing all 68 Councils in the State.

Enquiries regarding this publication should be directed to [the LGA on 8224 2000].
Introduction

Council committees and committee members undertake important functions on behalf of Councils. The Local Government Act provides flexibility in respect of the role of Council committees, while regulating their activities and the conduct of committee members.

Guidance is provided in this document regarding the legislative requirements applying to:

- the formation, role, membership, functions and powers of Council committees; and
- the conduct of committee members.

This guide may also be a useful resource for Council committee members or persons interested in becoming committee members.
Role of committees

Committees can have various roles

Section 41 of the *Local Government Act 1999* enables Councils to establish committees.

Committees can assist a Council in a variety of ways. Councils may establish committees to:

- assist Council in the performance of its functions, including by:
  - carrying out a specific project or task on behalf of the Council;
  - managing or administering property, facilities or activities, on behalf of the Council; or
  - overseeing works on behalf of the Council;
- inquire into matters and report to, and if required, make recommendations to the Council on matters within the Council's responsibilities;
- provide advice to the Council; and
- exercise, perform or discharge delegated powers, functions or duties.

The role of a committee determined by the Council should be documented in ‘terms of reference’.

The roles of committees once established can evolve over time. Council committees should be periodically reviewed to ensure that they continue to be relevant to the Council's functions. Terms of reference should also be subject to review to ensure that they still adequately and appropriately provide for the role of the committee.

Particular role of audit committees

Under section 126 of the Local Government Act each Council must have an audit committee. Specific requirements apply to audit committees under the Local Government Act *Local Government (Financial Management) Regulations 2011* (SA) (*Finance Regulations*).

The functions of an audit committee are:

(a) recommending a person for appointment as the Council's auditor;
(b) reviewing annual financial statements to ensure that they present fairly the state of affairs of the Council;
(c) proposing, and providing information relevant to, a review of the Council's strategic management plans or annual business plan;
(d) proposing, and reviewing, the exercise of powers by the Council's auditor or such other person as determined by the Council to investigations and report on any matter related to financial management or the efficiency or economy with which the Council manages or uses its resources to achieve its objectives;
(e) if the Council has exempted a subsidiary from the requirement to have an audit committee, the functions that would, apart from the exemption, have been performed by the subsidiary's audit committee;
(f) liaising with the Council's auditor;
reviewing the adequacy of the accounting, internal control, reporting and other financial management systems and practices of the Council on a regular basis.

**Establishment of committees**

Once the need for a committee and its role has been determined the Council will need to decide a range of matters relevant to the formation of the committee. Determining matters such as membership, accountability, reporting and duration will all require a consideration of the role of the committee. Relevant matters are listed in the table below.

These matters could be documented within the terms of reference for the committee.

<table>
<thead>
<tr>
<th>Task</th>
<th>Key considerations</th>
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| **Title**                   | What title reflects the role of the committee?  
|                             | What titles are used for other Council committees? Will the title avoid confusion between committees? |
| **Role of committee**       | Has the role of the committee been specially identified so that it will be clear to committee members the role to be undertaken?  
|                             | Will the committee exercise delegated powers, functions or duties? |
| **Membership of the committee** | Who should be on the committee to enable the committee to fulfill its role?  
|                             | In the case of an audit committee, have specific requirements for membership been met?  
|                             | What characteristics, skills, expertise or experience do committee members need to enable the committee to fulfill its role?  
|                             | How many members should be on the committee?  
|                             | Will the principal member of the Council be an ex officio member? |
| **Presiding member**        | Who will this be?  
|                             | What characteristics, skills, expertise or experience are relevant to this role? |
| **Conduct of members**      | Should the provision of Division 2, Part 4, Chapter 5 of the Local Government Act apply to the committee members? |
| **Meetings**                | How frequently should the committee meet?  
|                             | At what time should the meetings occur?  
|                             | What meeting procedures will apply?  
|                             | What is the quorum? |
| **Reimbursement**           | Will the Council reimburse expenses of committee members who are not Council Members?  
|                             | What will be the basis of this reimbursement? |
| **Reporting**               | How will the committee report to the Council?  
|                             | How frequently will reports be made? |
Powers of committees

No separate legal identity

Council committees have no legal identity separate from the Council. Consequently, Council committees generally cannot execute contracts or enter into other legally binding arrangements. The exception to this is where a committee is acting pursuant to a delegation which enables the committee to enter into an arrangement which legally binds the Council.

Delegations

Council committees may have powers and functions delegated to them by the relevant Council under section 44 of the Local Government Act.

Aside from specific non-delegable powers listed in section 44(3) of the Local Government Act, a Council may delegate any power or function of the Council under the Local Government Act or any other South Australian Act to a Council committee by resolution.

The non-delegable powers of Councils are the powers to:

(a) make a by-law or to determine that a by-law applies only within a part or parts of the area of the Council;

(b) declare rates or a charge with the character of a rate;

(c) borrow money or to obtain other forms of financial accommodation;

(d) adopt or revise a strategic management plan of the Council;

(e) adopt or revise an annual business plan or budget of the Council;

(f) approve expenditure of money on works, services or operations of the Council not contained in a budget adopted by the Council;

(g) determine annual allowances under Chapter 5 of the Local Government Act;

(h) approve payment or reimbursement of expenses that may be paid at the discretion of the Council and for which the Council has not adopted a formal policy or made specific financial provision;

(i) establish a subsidiary, or to participate in the establishment of a regional subsidiary;

(j) make an application or recommendation, or to report or to give a notice, to the Governor or the Minister, being an application, recommendation, report or notice for which provision is made by or under the Local Government Act or another South Australian Act;

(k) fix, vary or revoke a fee under sections 188(1)(d) to 188(1)(h) of the Local Government Act;

(l) a power or function excluded from delegation by the regulations.

By delegating a power or function, a Council grants the ability to perform a function or exercise a power of the Council, subject to any conditions and limitations determined by the Council or specified by regulations.
Delegating a power or function does not preclude the Council from exercising the power or function itself. Councils should monitor the exercise of delegated powers and functions, including those exercisable by Council committees.

Functions delegated to Council committees by a Council should be recorded on the Council's delegations register in the same manner as other delegations.

A Council may revoke a delegation to a Council committee by resolution of the Council.

**Powers to expend or receive funds**

Committees have no lawful authority to expend or receive funds unless relevant powers are delegated by the Council pursuant to section 44 of the Local Government Act. If a Council delegates powers to expend and receive funds to a committee then the delegation should include conditions to ensure that the delegations are appropriately exercised (including recording money received or expended).

Possible internal controls that a Council may impose as part of such a delegation are requirements for:

- a monthly financial report to be submitted by the committee to the Chief Executive Officer that alerts the Chief Executive Officer to any over or under expenditure;
- a project report is submitted at the completion of each stage of the project that certifies each step has been completed to the satisfaction of the committee;
- any variation to the project in excess of a predetermined amount must be referred to the Council for approval.

In most cases when a committee is delegated powers to expend or receive funds the Council administration would provide the “book keeping” services.

A committee is not a legal entity in its own right so it is unable to operate a bank account. Council will need to arrange the most appropriate process for the committee to handle payments and receipts. Part of this arrangement should include the regular provision of financial information, by the Council administration, to allow the committee to review the financial position of its activities.

The Council is required to keep records for the purposes of auditing revenues, expenses, assets and liabilities of the Council. This would include records of revenues and expenses of committees.

**Committee members**

**Appointment of committee members**

Committee members are appointed by the Council. Committee members may be members of Council, employees of the Council or other persons. Depending on the role committee members may be chosen because they bring particular attributes, skills, experience or expertise to the committee.

Council may appoint a person to be a committee member on the basis of them being a representative of a local community group, regional organisation, school Council or any other relevant body.
Audit committees

The membership of audit committees is prescribed by the Local Government Act and the Finance Regulations. An audit committee must:

(a) have between three and five members (inclusive);
(b) include at least one person who is not a member of the Council and who is determined by the Council to have financial experience relevant to the functions of an audit committee; and
(c) not include, as a member, the Council's auditor under section 128 of the Local Government Act.

Employees of a Council may not be a member of that Council's audit committee.

Removal of committee members

The Local Government Act provides that committee members hold office at the pleasure of the Council. Although this is suggestive of being able to summarily dismiss committee members Councils should accord procedural fairness to committee members prior to removing them from a committee. The Council should inform the committee member of its intention to remove him or her from the committee and the grounds for this proposal. The Council should take into account any submissions made by the committee member before deciding to remove that member.

Conduct of committee members

Application of Local Government Act provisions

The general duties applying to Council Members under section 62 of the Local Government Act apply equally to members of committees. These obligations are:

(a) to act honestly in the performance and discharge of official functions and duties;
(b) at all times to act with reasonable care and diligence in the performance of discharge of official functions and duties;
(c) not to make improper use of information acquired by virtue of his or her position as a committee member or former committee member to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council;
(d) not to, whether in or outside the State, make improper use of his or her position as a member of a committee to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the Council.

The conduct described in paragraphs (c) and (d) are offences. If a person is convicted of an offence under section 62, the court may impose a monetary penalty of up to $10,000 or imprisonment for two years. The court may also do one or more of the following:

(a) require the committee member to attend a specified course of training or instruction or to take other steps;
(b) suspend the person from being a committee member for a period of not exceeding two months;
(c) disqualify the person from any office under the Local Government Act; and

(d) disqualify the person from becoming a member of a Council, a committee of Council or a subsidiary of the Council for a period not exceeding five years.

Committee members who are employees of the Council or Council Members must comply with the relevant code of conduct gazetted under the Local Government Act. There is no prescribed code of conduct for independent committee members under the Local Government Act. A model code of conduct for volunteers has been prepared by the LGA which may provide guidance to Councils wanting to establish a code of conduct for independent committee members.¹

**Conflict of interest**

A member of a committee must not make improper use of their position to gain, directly or indirectly, an advantage for themselves or for another person with whom they are closely associated. They must make sure there is no conflict between their private interest and their role as a public decision maker.

A member of a committee must comply with the obligations in sections 73 and 74 in respect of conflicts of interest in the same manner as a member of a Council.

**Having an interest in a matter**

A committee member will have an interest in a matter before the committee, if the member or a person with whom the member is closely associated would, if the matter was decided in a particular manner, receive or have a reasonable expectation of receiving a direct or indirect pecuniary or non-pecuniary benefit or suffer or have a reasonable expectation of suffering a direct or indirect pecuniary or non-pecuniary detriment.

A benefit or detriment that would be enjoyed or suffered in common with all or a substantial proportion of the ratepayers, electors or residents of an area or some other substantial class of persons is excluded for the purposes of determining whether a member of a committee has an interest in the matter before the committee.

**A person closely associated with a member**

The Local Government Act specifies that a person is closely associated with a member of a committee if that person is:

(a) a body corporate of which the member is a director or a member of the governing body;

(b) a proprietary company in which the member is a shareholder;

(c) a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee;

(d) a partner of the member;

(e) the employer or an employee of the member;

(f) a person from whom the member has received or might reasonably be expected to receive a fee, commission or other reward for providing professional or other services; or

(g) a relative of the member.

The term 'relative' is defined in the Local Government Act to mean a spouse or domestic partner, parent or remoter lineal ancestor, a son, daughter or remoter descendant or a brother or sister.

A member of a committee who is a member, officer or employee of an agency or instrumentality of the Crown, will be regarded as having an interest in the matter before the committee if the matter directly concerns that agency or instrumentality, but otherwise will not be regarded as having an interest in the matter by virtue of his or her role in the agency or instrumentality. For the purposes of section 73 of the Local Government Act the term 'agency or instrumentality of the Crown' includes an administrative unit of the public service and a body corporate comprised of, or including or having a governing body comprised of or including, a Minister or Ministers of the Crown or a person or persons appointed by the Governor or a Minister or other agency or instrumentality of the Crown.

Consequences of having an interest in a matter

Where a member of a committee has an interest in a matter before the committee, that interest must be disclosed to the committee. The disclosure must include full and accurate details of the relevant interest and must be recorded in the minutes of the committee.

A member of a committee who has an interest in the matter before the committee must not:

(a) propose or second a motion relating to the matter;

(b) take part in discussion by the committee relating to that matter;

(c) while such discussion is taking place, be in, or in the close vicinity of, the room in which or other place at which the matter is being discussed; or

(d) the vote in relation to that matter.

These restrictions do not apply where the member (or a person closely associated with the member) is a member of, or director or member of the governing body of, a non-profit association or the member (or a person closely associated with the member) is a member of a body (whether incorporated or unincorporated) comprised of or including, or having a governing body comprised of or including, a person or persons appointed or nominated by the Council. A definition of 'non-profit association' is set out in section 74 of the Local Government Act.

There are some matters which are excluded from these requirements. They are:

(a) questions relating to allowances or benefits of a Council as empowered to pay to, or confer on, members, their spouses, domestic partners or members of their families;

(b) matters of a class exempted by regulation from the provision of those sub-sections; or

(c) matters in relation to which the Minister has granted an exemption from the provisions of the sub-sections.

Where a member of a committee has disclosed an interest the member may, by permission of the committee, attend during proceedings of the committee on the relevant matter in order
to ask or answer questions, provided that the meeting is open to the public, the member withdraws from the room after asking or answering the questions and the member does not in any other way take part in the debate or vote on the matter.

Consequences of not declaring an interest

If a member fails to declare an interest in a matter upon which a resolution is passed, that resolution is not necessarily invalid. If it appears that the failure to disclose an interest may have had a decisive influence on the passing of a resolution or making of a decision, the Minister, the Council or a person affected may apply to the District Court to have it annulled or to make a relevant order.

Register of interests

A Council may resolve that the register of interest provisions set out in Division 2, Part 4, Chapter 5 of the Local Government Act will apply to members of committees.

Where these provisions apply, a member of a committee must comply with the provisions as if the member was a member of Council. A primary return must be lodged by the member within six weeks of appointment to the committee. A further ordinary return must be lodged by each member on or within 60 days after 30 June in each year. The returns are submitted to the Chief Executive Office for the Council.

The information contained in the returns is recorded on the Register of Interests for the Council. A member who has lodged a return may notify the Chief Executive Officer of a change or variation in the information appearing on the Register of Interests.

The provision of information which the member knows is misleading or false in material particular (whether by reasons of information included or omitted from a return) is guilty of an offence.

A failure to lodge a return within one month of and from the end of the statutory period allowed for submission means that the office of the committee member will become vacant.

Independent Commissioner Against Corruption

The Independent Commissioner Against Corruption Act (ICAC Act) is concerned with the investigation of corruption, misconduct and maladministration in public administration.

Whether Council committee members are 'public officers' under the ICAC Act depends in part on their roles outside of the committee. Committee members who are Council Members or Council employees will be public officers. Whether or not independent members of committees are 'public officers' differs depending on whether or not the committee holds a delegation from the Council or subsidiary (as relevant).

Where a Council committee holds a delegation from the relevant Council then the independent members of the committee should be assumed to be public officers for the purposes of the ICAC Act. A Council committee has no independent legal identity under law (ie is not a person). Consequently a delegation is effectively held by each member of the Council committee, notwithstanding that the delegated powers are exercised by the Council committee collectively.

Schedule 1 of the ICAC Act designates a person who holds a delegation from a Council to be a public officer.
Independent members of committees who do not hold delegations will not be ‘public officers’ under the ICAC Act. There is no ‘public officer’ category in Schedule 1 of the ICAC Act in which this category of person falls.

Ombudsman

The Ombudsman investigates matters in accordance with the Ombudsman’s Act 1972 (SA). Under that Act the Ombudsman may investigate any administrative act. The term ‘administrative act’ means:

(a) an act relating to a matter of administration on the part of an agency to which the Ombudsman Act applies or a person engaged in the work of such agency; or

(b) an act done in the performance of functions conferred under a contract for services with an agency to which that Act applies.

Committees may undertake administrative acts in fulfilling their roles. Committees and committee members are, therefore, susceptible to investigation by the Ombudsman.

The Ombudsman also has specific powers to investigate (where the Ombudsman considers it in the public interest to do so) the practices and procedures (or of any aspect of the practices or procedures) of one or more Council committees in respect of the Local Government Act requirements for public access to committee meetings, minutes and the release of documents considered by a committee.

Liability of committee members

A committee member will have the benefit of the exclusion of liability under section 41(12) of the Local Government Act. This provision indicates that:

No civil liability attaches to a member of a committee for an honest act or omission in the exercise, performance or discharge, or purported exercise, performance or discharge, of the member's or committee's powers, functions or duties.

A liability that would attach to a committee member, but for this exclusion of liability, attaches instead to the Council.

Allowances and benefits for committee members

Membership of a committee may consist of Council Members or other persons. There are allowances available to presiding members of committees who are Council Members determined by the Remuneration Tribunal of South Australia. For the purpose of determining the applicable allowances a distinction is drawn between prescribed committees and other committees.

A prescribed committee is defined for the purposes of the Remuneration Tribunal’s determination to be:

a committee that endures irrespective of whether the Council has assigned any particular work for the committee to perform and assists the Council or provides advice to the Council in any of the following areas or any combination thereof:

- Audit
- Chief Executive Officer performance review
- Corporate services
- Finance
- Governance
- Infrastructure and works
- Risk management
- Strategic planning and development.

If a Council Member is the presiding member of one or more prescribed committees of Council, then the Council Member’s annual allowance is increased to 1.25 times the normal Council Member annual allowance as determined by the South Australian Remuneration Tribunal.

If a Council Member is the presiding member of a committee which is not a prescribed committee then a sitting fee is payable to the Council Member (other than the principal member or deputy principal member, chairperson of deputy chairperson or a presiding member of a prescribed committee) at rates determined by the Remuneration Tribunal.

It is a standard practice for a Council to support a committee, for example, by providing reasonable resources to members to assist them to perform their role. Council should periodically consider the resources which are available to Council committees.

If a member of a committee is likely to incur a legitimate ‘out of pocket’ expense on behalf of the committee, then it is advisable to discuss this with the Chief Executive Officer to determine whether reimbursement is available. A committee may also resolve to request Council provide reasonable support to the committee where appropriate.

Committee meetings

Committee meetings are regulated by the Local Government Act and the Local Government (Procedures at Meetings) Regulations 2013 (Meetings Regulations). There are differences in the application of these requirements to committees performing regulatory activities (Regulatory Committees) and other committees.

Timing, notice and public access

Timing

The timing of ordinary meetings of a committee will be determined either by the Council or, subject to a decision of the Council, the committee. The Local Government Act requires that the timing must take into account the availability and convenience of the members of the committee and the nature and purpose of the committee.

A resolution of a Council determining times for committee meetings lapses at the conclusion of a general election.

Notice to committee members

Notice of committee meetings must be provided by the Chief Executive Officer to each member of the committee at least three clear days before the date of the meeting. Notice must be in writing and:

(a) set out the date, time and place of the meeting; and
contain, or be accompanied by, the agenda describing matters with reasonable particularity and accuracy.

Notice may be given:

(a) personally;
(b) by delivering the notice to the usual place of residence of the member or another place authorised in writing by the member;
(c) by leaving the notice for the member at an appropriate place at the principal offices of the Council, if authorised in writing by the member to do so; or
(d) by a means authorised in writing by the member as being an available means of giving notice.

Special meetings may be called by the Chief Executive Officer at the request of the presiding member of the Council committee or at least two members of the Council committee. At least four hours notice of a special meeting must be provided by the Chief Executive Officer to each committee member.

The Chief Executive Officer has discretion when he or she considers that it is impracticable to give notice in the manner provided for in the Local Government Act, to give notice in any manner he or she considers reasonably practicable in the circumstances.

Each member of the committee must be provided with a copy of any documents or reports that are to be considered at the meeting (so far as is practicable). The Chief Executive Officer is able to indicate on documents and reports any information or matters which the committee could determine to consider in confidence and the basis for the committee making an order to this effect.

A failure to comply with notice requirements does not invalidate a decision made by the committee in the absence of a member not notified of the meeting, however, the Minister may make an application to the District Court to have any resolution or decision passed or annulled.

The Meetings Regulations alter the application of some of these requirements for committees not undertaking regulatory functions on behalf of the Council.

**Public notice**

The Chief Executive Officer must ensure that notice is given to the public of the times and places of meetings of a Council committee by placing a copy of the notice and agenda on public display at each office of the Council and by publishing a notice and the agenda on the Council's website. The notice must remain on display until after the completion of the relevant meeting.

The Chief Executive Officer may also give notice to the public by other means which he or she considers appropriate given the work of the committee and the characteristics of the community and area. Notice must be given as soon as practicable after notice has been provided to committee members.

A reasonable number of copies of any document or report supplied to a committee member for consideration must also be made available to the public at the principal office of the Council (except in relation to documents or reports considered at a special meeting or which are the subject of an order in respect of confidentiality).
Public access

A meeting of a committee must generally be held at a place which is open to the public. However, a committee may order that the public be excluded from a meeting to the extent that the committee considers it necessary and appropriate to act in a meeting closed to the public to receive, discuss or consider in confidence any information or matter specified in section 90(3) of the Local Government Act.

Committee meetings may be held by telephone or other electronic means provided that the members of the public can hear the discussion of all of the committee members (unless the Council determines otherwise).

Meeting procedure

Section 89 of the Local Government Act deals with the proceedings of committee meetings. Proceedings for committees are:

- as prescribed in the Meeting Regulations;
- as determined by Council where the regulations do not prescribe certain matters; and
- in so far as not prescribed by regulation or determined by the Council - as determined by the Committee itself.

Part 2 of the Meetings Regulations will apply to a Regulatory Committee and to any other committee where the Council has determined by resolution that Part 2 of the Meeting Regulations should apply.

Part 3 of the Meetings Regulations will apply to the meetings of any committee which is not subject to Part 2 of the Meetings Regulations.

It is desirable for all committee members to have a copy of Chapter 6 of the Local Government Act and the Meetings Regulations.

Commencement

Meetings of Regulatory Committee will commence as soon after the time notified for commencement as a quorum is present. A quorum for a committee will be half the number of members of committee plus one (or such other number of members as is determined by the Council).

If there are sufficient apologies received for the meeting that a quorum will not be present, the Chief Executive Officer may adjourn the meeting to a specified day and time. The meeting may also be adjourned by the Chief Executive Officer if, after 30 minutes from the notified commencement time, a quorum is not present. Notice of an adjourned meeting must be provided in accordance with the Meeting Regulations.

Matters for consideration of a committee

Part 2 of the Meeting Regulations sets out specific requirements in respect of questions on notice, petitions, deputations, motions and addresses by members in the context of Regulatory Committee meetings.

Voting

A question arising for decision at a committee meeting will be decided by a majority of the votes cast by the members present at the meeting and entitled to vote on the question.
Subject to conflict of interest requirements, Council Members who are committee members must vote on a question arising for decision at a committee meeting.

The presiding member has a deliberate vote on a question for decision at a committee meeting, but no casting vote.

Part 2 of the Meeting Regulations has requirements in respect of voting and divisions which apply to Regulatory Committees.

Minutes

The Chief Executive Officer must ensure that minutes are kept of committee meetings. These minutes must be supplied to each committee member within five days of the relevant meeting. A copy of the minutes must also be placed on public display at the principal offices of the Council.

Reports and documents considered by committee members must also be made available to the public (subject to any confidentiality order made by the committee under section 91 of the Local Government Act).

Parts 2 and 3 of the Meeting Regulations set out specific requirements in respect of minutes.

Behaviour

The presiding member may call a member who is in breach of the Local Government Act or the Meeting Regulations to order.

Members of committees are prohibited by the Meeting Regulations from behaving in an improper or disorderly manner or interrupting another member or causing an interruption. Objecting to words used by a member who is speaking, calling attention to a point of order or calling attention to want of a quorum will not be an interruption to which the prohibition applies.

If the presiding member considers that a member has acted contrary to these requirements then the member must be allowed to make a personal explanation. The member must leave the room while the remaining members consider the matter. The remaining members may resolve to censure the member or suspend the member for part or the remainder of the meeting.