

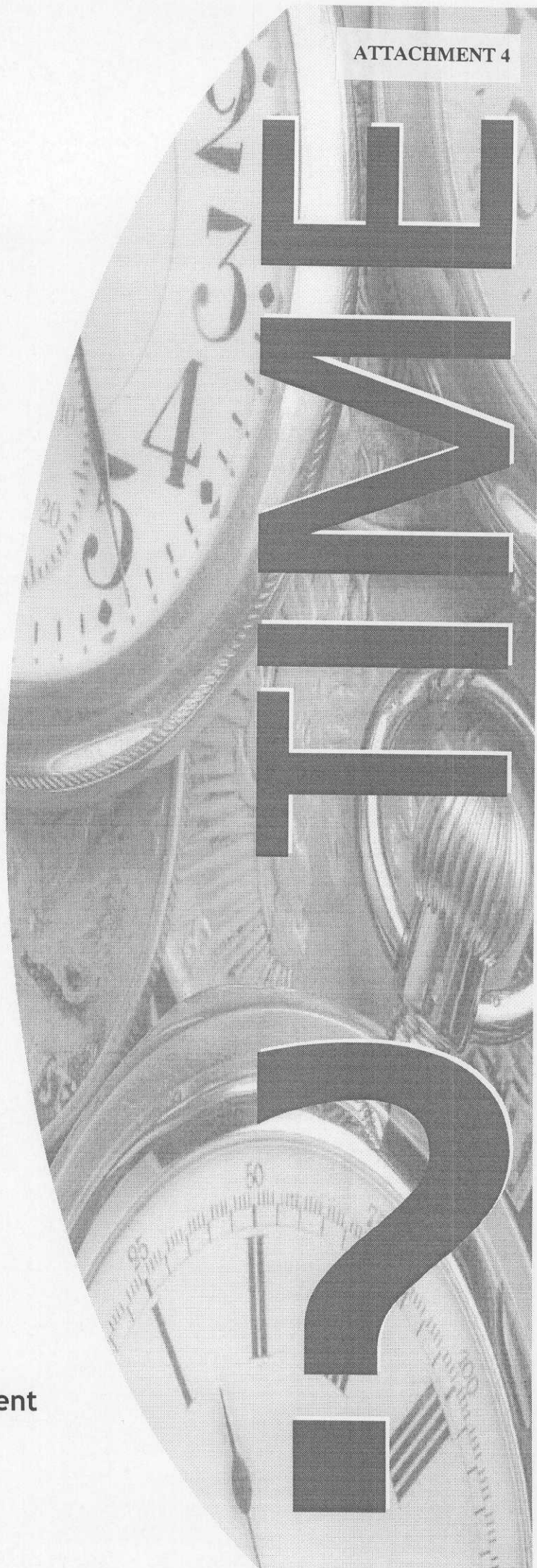
Managing Public Question Time

LOCAL GOVERNMENT
OPERATIONAL GUIDELINES
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Local Government Operational Guidelines No. 3

1. Introduction

- 1 Public Question Time is a means by which the public can seek responses from their council about issues affecting the local government that are of concern to them. It assists the public to be better informed about the governing of their district and it provides the local government with a mechanism to identify issues of importance in their community.
- 2 Public question time can present many challenges for presiding members in trying to ensure that available time is used efficiently and effectively and members of the public are given a fair and equal opportunity to participate.
- 3 Some of the problems experienced during public question time include:
 - time management;
 - people wanting to make statements rather than ask questions;
 - people asking repetitive questions;
 - people asking inappropriate questions; and
 - people asking a large number of questions.
- 4 These guidelines are intended to assist in the proper management and operation of public question time and to promote efficient and effective use of this time. However, the suggestions and comments provided here are not intended to be the only method of managing public question time. It is for each local government to determine the procedures that best meet its requirements.
- 5 It is recognised that many small local governments have few if any questions asked. These guidelines apply primarily to the larger local governments where public question time is now a major feature of each council meeting. Nevertheless, it is recommended that each local government should adopt a set of procedures that will enable them to manage public question time when a controversial issue becomes of such interest that it is well attended.

2. Legislation

- 6 Under section 5.24 of the *Local Government Act 1995* (the Act) and the *Local Government (Administration) Regulations 1996* (the Regulations) time must be made available at every council meeting (whether ordinary or special) and every meeting of a committee with delegated powers or duties, for members of the public to ask questions and have them responded to.
- 7 The intention of the legislation is for a local government to respond by providing answers. Although a local government must respond to a question, it was not intended that a local government provide an answer to every question where the question is outside the legislation or deemed unreasonable. There are many circumstances where this may occur and these are discussed in paragraphs 38-52 of these guidelines.
- 8 The Regulations (5, 6 & 7) require public question time to precede discussion on any matter that requires a decision of the council. They also prescribe, among other things, the minimum duration of public question time, the right of members of the public to an "equal and fair" opportunity to ask questions and the rights to regulate proceedings.
- 9 A copy of regulations 5, 6 and 7 are attached at Appendix A, which provides details about public question time.

3. Determining Suitable Procedures

- 10 To assist presiding members to meet the challenges of public question time, presiding members in conjunction with their councils should consider adopting a set of standard procedures for question time in the same manner procedures are adopted to assist presiding members to manage other parts of council and committee proceedings.
- 11 The procedures should address the arrangements for asking and responding to questions and other issues that occur regularly during public question time. Many of the procedures are discussed in these guidelines. There should be sufficient flexibility for the presiding member to make determinations in situations where some degree of discretion is needed (for example, where there are an unusually large number of people who want to ask questions and time is limited).
- 12 To assist management of proceedings, copies of the procedures should be provided to members of the council and council committees. Copies of the adopted procedures, or summaries of these, should also be made available to people who wish to ask questions. This could be done by leaving copies on chairs in the public gallery of the meeting chamber and/or posting them on boards prominently placed outside and within the chamber.

3.1 Length and Frequency of Public Question Time

- 13 As part of the management procedures, the council should consider the length and frequency of public question time. The regulations prescribe a minimum of 15 minutes at the start of the meeting (prior to any discussions requiring a decision). In some circumstances, this may not be long enough or at a time convenient to members of the public (for example, where meetings begin during the day when people are at work).
- 14 Where there is a demonstrated need, councils could consider extending question time beyond the prescribed minimum. This would be in keeping with the spirit of the legislation and avoid complaints from the public about a lack of opportunity for their questions to be asked. However, councils also need to be mindful that members of the public may be at the meeting to observe discussion of an agenda item in which they have an interest. The convenience of these people should be considered when making decisions to extend question time.
- 15 Some councils provide for a second public question time later in the meeting. One problem experienced with this is that it has been used as a forum for further debating/discussing items previously considered during the meeting. It is suggested that questions of this nature not be accepted as not only has the meeting not finished (the subject could still be re-considered) but there may be inadequate time to consider the ramifications of the decision, including the steps which would need to be taken to implement the decision.
- 16 Should a second public question time be held later in a meeting, standing orders should be suspended if the normal order of business is being interrupted. The question and answer would still be recorded in the minutes of the meeting under an agenda item e.g. Additional Public Question Time.
- 17 Obviously in local governments where there is no demand for additional time, the council could reasonably set a minimum time for public questions. Councils are reminded that under the regulations they do not have to wait 15 minutes to close public question time if there are insufficient questions to occupy question time.

4. The Structure of a Good Practice Public Question Time

18 In the Department's view, the following sets out an appropriate procedure for public question time.

4.1 Prior to the meeting

19 Council should set up a register for people who wish to ask a question and provide a form for them to write out their questions. Some councils provide an employee to assist people in registering and drafting their questions. The register should open at least 30 minutes prior to commencement of the meeting.

4.2 During the meeting

20 The procedure during the meeting should be as follows-

a) The presiding person opens question time with a brief statement on the rules including-

- (i) the period of time set aside for public question time;
- (ii) the availability of the written rules in the chamber;
- (iii) the council policy that people will be called to ask their question in the order they have registered;

(iv) any person who has not registered will be given an opportunity to ask a question after those who have registered;

(v) the council policy that each person is allowed a certain number of questions or a set amount of time;

(vi) the right of each person, if they have further questions, to return to the end of the queue;

b) persons are requested to come forward in the order they registered;

c) give their name;

d) read out their question;

e) before or during the meeting each person is requested to provide a written form of their question to a designated council employee;

f) the presiding member determines who is to respond to the question;

g) the question is responded to, taken on notice or not accepted;

h) the person having used up their allowed number of questions or time is asked by the presiding member if they have more questions; if they do then the presiding member notes the request and places them at the end of the queue; the person resumes their seat in the gallery;

i) the next person on the registration list is called;

j) the original registration list is worked through until exhausted; after that the presiding member calls upon any other persons who did not register if they have a question (people may have arrived after the meeting opened);

k) when such people have asked their questions the presiding member may, if time permits, provide an opportunity for those who have already asked a question to ask further questions;

l) public question time is declared closed following the expiration of the allocated time period or where there are no further questions.

4.3 Following the meeting

21 It is a requirement that the minutes of the meeting contain a summary of each question asked and the response given. Questions taken on notice should be researched and a written response

provided to the questioner, assuming they have provided a name and contact details. Responses to questions taken on notice must be included in the minutes of the following meeting.

5. Explanatory Comments on the Structure of a Good Practice Public Question Time

5.1 Determining who can ask questions

22 The Act provides that time is to be allocated for the asking of and responding to questions raised by '*members of the public*'. This means any member of the public. It should not be interpreted as applying only to members of the public who reside in the district or are electors.

23 It is recognised that elected members are also members of the public but elected members should be encouraged to use other opportunities to obtain information and be reminded that question time is provided for members of the public who do not have these opportunities available to them.

5.2 Breadth of questions

24 It was the intention of the original legislation that questions affecting the local government's operations could be asked at ordinary meetings and, committee meetings which have delegated authority. Allowing such a wide brief means that the information to adequately respond to some questions may not be readily available. In such cases questions can be taken on notice.

25 Some councils only permit the asking of questions which relate to an item on the agenda. It is the Department's view that such a policy is of doubtful validity, as the restriction denies peoples' rights under the legislation to ask questions on any local government matter.

26 Questions asked at special council meetings must relate to the purpose of the meeting.

5.3 Determining the order of questions

27 To establish the order for asking questions, provide a register so that people can indicate their interest prior to the opening of the meeting. People can then ask their questions in the order they registered. People who have not registered should be given the opportunity to ask their question/s when the list is exhausted.

5.4 Placing limits on the number and duration of individual questions

28 There are circumstances where it may be necessary to place limits on the asking of questions to ensure that people are given a fair opportunity and time is used efficiently. For example, if there are a large number of people who want to ask questions or there is a person with a large number of questions to ask.

29 There are a number of ways this could be done. For example, the established procedures should:

- limit the number of questions a person can ask (e.g. 1, 2 or 3 questions); or
- limit the time for persons to ask questions (e.g. 2 minutes).

30 Any limits should be applied fairly and consistently but in a manner appropriate to the circumstances. For example, placing a 2 minute limit on questions where there are only 2 questioners may not be appropriate to the circumstances or in keeping with the spirit of the legislation. Similarly, selecting at random questioners from a large number of people may not be regarded as fair to people who arrived at the meeting before those that have been selected.

- 31 Reasonable efforts should be made to accommodate people who, because of the application of limits, cannot ask the questions they want. The presiding member could for example, offer to take on notice unasked questions and provide a written response. People with a large number of questions should be encouraged to write separately to the Council. Public question time should not be dominated by the questions of one person to the exclusion of others.

5.5 Identification of the person asking the question

- 32 The good practice model only refers to a person giving their name. Some councils require an address to be provided but people may object to this on privacy grounds. It is suggested that an address not be required unless the person is to be written to or otherwise contacted. In such cases the address can be sought through a confidential process.

5.6 Determining how questions may be asked

5.6.1 Questions in the written form

- 33 The model outlined above provides for a register and a form for people to write out their question. This procedure facilitates the management of question time and accurate keeping of records. It certainly assists in the preparation of summaries of questions for inclusion in the minutes.
- 34 Some local governments have made it mandatory that questions must be submitted in writing prior to the meeting. A person not prepared to submit a question in writing is denied the opportunity to ask a question. Regulation 7(3) states that 'each member of the public...is to be given an equal and fair opportunity' to ask a question.
- 35 While the regulations do not specifically preclude the requirement that questions be submitted in writing, any procedures adopted to manage question time in this way should not prevent a person verbally asking a question. Requiring people who are incapable (because of physical or other causes) of submitting questions in writing denies their rights under the legislation.
- 36 The model outlined above provides for a register and a form for people to write out their question. Councils should not go beyond providing a form for written submission of questions.

5.6.2 Asking the question

- 37 The good practice model provides for an individual to personally ask the question.
- 38 Some local governments require the person to submit the question in writing and the CEO or another designated employee then reads out the question. If it is standard procedure for the question to be read out by an employee then the opportunity for a question to be put in context is lost. Such an approach is not favoured unless the person posing the question has requested that course of action.

5.7 Managing repetitive questions and statements

- 39 Public question time is optimised by the presiding member ensuring that the time is used efficiently and for the intended purpose. If a person attempts to ask a question that in the presiding member's opinion, has been satisfactorily responded to at that or an earlier meeting, the person should be advised accordingly. If necessary, they should be referred to the minutes of the relevant meeting.
- 40 It is the Department's view that there is no obligation to respond to questions for which an answer has already been provided to the person asking the question. However, care needs to be taken to ensure a question is not rejected unless the presiding member is completely satisfied that the question is substantially the same as a previous question for which council has provided a full response.

- 41 If a person attempts to use question time to make statements rather than asking questions, they should be asked to state their question or assisted in phrasing their question. For example, 'Sir, may I ask what your question is?' or 'Madam, I understand that you wish to know ... Is that correct?'

- 42 Discerning a statement from a question requires a degree of judgement by the presiding member but it should be recognised that it is not unusual for a person to preface a question with a statement or two as this can clearly establish the basis for the question. It is up to the presiding member to ensure that opening statements are brief.

- 43 *Tip – If a local government is regularly receiving lots of members of the public at meetings to ask questions on a particular issue, the local government may need to acknowledge that there is a strong interest in that issue within the community and that it needs to consider other means of addressing this e.g. holding a special meeting on that issue.*

5.8 Managing questions that require considerable research

- 44 It is not intended that question time should be used as a means to obtain information that would not be made available if it was sought from council records under s 5.94 of the Act or the *Freedom of Information Act 1992*. Thus, while councils are expected to respond to questions asked during public question time with a few exceptions (see 5.10 *Managing questions that do not relate to a local government's affairs*) a presiding member is at liberty to point out when a response to a question would require a substantial commitment of the local government's resources.
- 45 The presiding member could invite the person seeking the information to reconsider their request. If the person insists that the information is needed, the matter should be referred to the CEO for action following the meeting. The CEO can then arrange for the information to be provided or can determine under s. 5.95 of the Act that provision of the information would be an unreasonable impost upon the local government and refuse to provide it.

5.9 Managing inappropriate questions

- 46 While the regulations require that members of the public be given an equal and fair opportunity to ask a question and receive a response, it is a matter of judgement how this will be managed.
- 47 If a member of the public provides a written question or attempts to verbally ask a question which is considered to be offensive or defamatory in nature, that person should be advised that the question will not be considered. To do so would expose the local government to possible legal action for republishing defamatory remarks. In these circumstances, but depending on the question, the person could be invited to rephrase their question.
- 48 People should be discouraged from asking inappropriate questions, such as those containing defamatory remarks, offensive language or questioning the competency of staff or council members. Instead, people should be encouraged to concentrate their questions on issues rather than individuals. For example, asking if the project is on time rather than questioning whether a person is competent to manage the project and ensure it is completed on time.
- 49 If a person does attempt to ask a question considered inappropriate or not in good faith, the presiding member could also rule the question inappropriate.
- 50 In addition, a presiding member may refuse to accept questions that relate to the personal affairs or actions of council members or employees.
- 51 This would also apply to questions relating to confidential matters, legal advice, legal proceedings or other legal processes; or have been answered by earlier questions or questions at a previous meeting.

- 52 In this regard a council's response should be consistent with the release of information permitted under the *Local Government Act 1995*, the *Freedom of Information Act* and other legislation.

5.10 Managing questions that do not relate to the local government's affairs

- 53 Under regulation 7(4) a response does not have to be given to questions that do not relate to a matter affecting the local government; at special council meetings that do not relate to the purpose of the meeting; and at committee meetings that do not relate to the functions of the committee.
- 54 Where a council has decided that it will not entertain such questions people attending the meeting should be advised accordingly.

5.11 Questions asked in absentia

- 55 Where a person submits a question in writing for public question time but fails to attend the meeting, the presiding member may decide that the question is not to be put to the meeting. In which case, the CEO may reply in writing at a time other than at the meeting.

6. Providing Responses

- 56 Where the presiding member has determined that a question will be responded to, a decision needs to be made as to who will respond and when and how they should do so.

6.1 Determining who can respond

- 57 In the interest of public question time being conducted in an orderly manner, the public should be advised that all questions must be directed to the presiding member, who can then decide the appropriate person to respond to the question.

- 58 *Note – Local Government (Administration) Regulation 7(5) states, If, during the time allocated for questions to be raised by members of the public and responded to, a question relating to a matter in which a relevant person has an interest, as referred to in section 5.60, is directed to the relevant person, the relevant person is to –*

- (a) declare that he or she has an interest in the matter; and
- (b) allow another person to respond to the question.

- 59 While the above regulation prohibits a person responding to a question relating to a matter in which they have an interest, the Act does not require that person to leave the meeting or comply with any other requirements for disclosing interests.

6.2 Ensuring timely replies

- 60 Wherever possible, questions asked during public question time should be responded to at the meeting. People expect an immediate response. Where this is not possible, the person should be advised the question will be taken 'on notice', the question recorded and a written response provided to the questioner as soon as possible.
- 61 A summary of the response must be recorded in the minutes of the next meeting of the council or committee. It is a good idea to include a notation in the minutes to the effect that a response has been given to the questioner.
- 62 Where a question is taken on notice, the question must be included in the minutes of the meeting at which the question was asked. For reasons of clarity, the question should be repeated in the minutes of the meeting in which the response is recorded.

7. Recording Questions and Responses

- 63 There is a statutory requirement for a summary of both the question and the response given during public question time to be recorded in the minutes. The name of the person who asked the question should also be included in the summary.

8. Other Options for Public Participation

- 64 A statutory public question time is not the only way that members of the public can participate in meetings of councils and committees. In response to community demands, a growing number of local governments are introducing other opportunities for members of the public to participate in their decision-making processes. A few of these are discussed below.

8.1 Deputation session

- 65 Some local governments set aside time prior to or during the council meeting to receive small deputations from the community. These sessions can take pressure off public question time and provide another avenue for members of the public to alert council to issues of concern.
- 66 Council is not obliged to provide a formal response to the deputation, but it is important that procedures are established. These might include:
- requiring prior written requests from those groups wishing to be heard;
 - limiting the number of people that may speak;
 - limiting the time they speak; and
 - keeping a record of proceedings.
- 67 *Some councils limit deputations to items on the agenda. Such an approach needs to be carefully assessed because often members of the public will have concerns about an issue that council is not aware of.*

8.2 Public statement session

- 68 Some local governments set aside time during a meeting for people to make statements on any issue without an expectation of the local government responding and call this a 'public statement session'. These can be a great opportunity for community members to feel they have a chance to communicate with their council.
- 69 While there are no regulations governing public statements the principles of accountability and transparency would indicate local governments should give consideration to including a brief summary of the statements in the minutes. In most cases it would be difficult to provide a realistic response and so a comment of "noted" should be sufficient.
- 70 If a local government considers introducing a public statement session it is important to separate it from public question time, as public question time is for the purpose of asking questions and not for making statements. The two periods should not be confused.
- 71 As with deputation sessions, procedures should be put in place.

Further information

These guidelines have been prepared in consultation with local governments and will be further refined as the need arises. Your comments or suggestions would be appreciated.

For more information about these guidelines, contact the Local Government Support and Development Branch of the Department of Local Government and Regional Development on 9222 0511 or

e-mail lgd@dlgrd.wa.gov.au

These guidelines are also available on our website at <http://www.dlgrd.wa.gov.au/guidanceandassistance.html>

Appendix A

Extract from Local Government (Administration) Regulations 1996

5. Question time for the public at certain meetings [s. 5.24 (1) (b)]

For the purposes of section 5.24 (1) (b), the meetings at which time is to be allocated for questions to be raised by members of the public and responded to are —

- (a) every special meeting of a council;
- (b) every meeting of a committee to which the local government has delegated a power or duty.

6. Minimum question time for the public[s. 5.24 (2)]

- (1) The minimum time to be allocated for the asking of and responding to questions raised by members of the public at ordinary meetings of councils and meetings referred to in regulation is 15 minutes.
- (2) Once all the questions raised by members of the public have been asked and responded to at a meeting referred to in subregulation (1), nothing in these regulations prevents the unused part of the minimum question time period from being used for other matters.

7. Procedures for question time for the public [s. 5.24 (2)]

- (1) Procedures for the asking of and responding to questions raised by members of the public at a meeting referred to in regulation 6 (1) are to be determined —
 - (a) by the person presiding at the meeting; or
 - (b) in the case where the majority of members of the council or committee present at the meeting disagree with the person presiding, by the majority of those members, having regard to the requirements of subregulations (2), (3) and (5).
- (2) The time allocated to the asking of and responding to questions raised by members of the public at a meeting referred to in regulation 6 (1) is to precede the discussion of any matter that requires a decision to be made by the council or the committee, as the case may be.
- (3) Each member of the public who wishes to ask a question at a meeting referred to in regulation 6 (1) is to be given an equal and fair opportunity to ask the question and receive a response.
- (4) Nothing in subregulation (3) requires —
 - (a) a council to answer a question that does not relate to a matter affecting the local government;
 - (b) a council at a special meeting to answer a question that does not relate to the purpose of the meeting; or
 - (c) a committee to answer a question that does not relate to a function of the committee.
- (5) If, during the time allocated for the public's questions, a question relating to a matter in which a relevant person has an interest is directed to that person then that person is to —
 - (a) declare that he or she has an interest in the matter; and
 - (b) allow another council member or employee to respond to the question on behalf of the local government.