

The future of technology in Council meetings

By Jennifer Long

In the past few years, many local governments have been keen to explore new technologies to record and facilitate Council and committee meetings using video conferencing technology (such as video streaming and live streaming), to provide greater accessibility and transparency to their residents and ratepayers.

The greatest change occurred with the onset of the Covid-19 pandemic, when the *Local Government (Administration) Regulations 1996* (**Administration Regulations**) were amended to facilitate electronic meetings where there is a public health emergency or a state of emergency. This forced local governments to adapt quickly to implement technology to enable electronic meetings and attendance (of members of the Council, committee and the public) while social distancing restrictions have been in place.

This increased accessibility, has stirred an interest for these facilities to continue past the pandemic measures and has raised the proposition of hybrid Council and committee meetings (to allow both in person and remote attendance and participation at meetings).

This leads to the question, what is possible for the future of Council and committee meetings under the current legislation and what should local governments be aware of in considering proposals for the implementation of these technological facilities.

What is permitted under the current legislation?

Council and committee members attending remotely

Currently in Western Australia, there are limited circumstances where a member of the Council or a committee could attend a Council or committee meeting remotely under the *Local Government Act 1995* and Administration Regulations.

These limited circumstances include those set out in (the Administration Regulations) –

- regulation 14A (which provides, subject to various requirements and qualifications, for attendance of ‘a person’ at a meeting of a Council or committee by telephone or other means of instantaneous communication);
- regulation 14B (which provides, subject to various requirements and qualifications, for the attendance of a Council member at a meeting by telephone or other instantaneous communication after a natural disaster); and
- regulation 14C (which provides, subject to various requirements and qualifications, for a member of a Council to attend a Council or committee meeting by electronic means in a public health emergency or state of emergency).

Electronic meetings

A Council or committee meeting may only be held by electronic means under regulation 14D, which provides that an ordinary or special Council meeting, or a meeting of a committee of the Council or a meeting of an audit committee of a local government, may be held by electronic means if –

- a public health emergency or a state of emergency exists in the whole or a part of the area of the district of the local government and because of the public health emergency or state of emergency, the Mayor, the President or the Council considers it appropriate for the meeting to be held by electronic means; or
- a direction is issued under the *Public Health Act 2016* or the *Emergency Management Act 2005* that prevents the meeting from being held in person and the Mayor, the President or the Council authorises the meeting to be held by electronic means).

Public participation in electronic meetings

Where a meeting is held electronically under regulation 14D of the Administration Regulations, the requirements and procedures for public question time under regulation 14E(4) apply.

Whether a member of the public may participate remotely where a meeting is held at Council chambers (or at another physical location), is less clear.

There is no requirement under the *Local Government Act* or the Administration Regulations for a person who wishes to ask a question or present a deputation at a meeting, to be present at the meeting. However, in some cases the standing orders of a local government may include a requirement.

On the basis of the underlying principles on which regulations 14A, 14B and 14C have been drafted (and in the absence of a specific legislative provision allowing remote participation), there is a reasonable basis for the proposition that, if a Council meeting is held in person, a person who wishes to make a deputation or ask a question must be present at that meeting.

Streaming of meetings

The *Local Government Act* and Administration Regulations do not expressly regulate the streaming or live streaming of Council or committee meetings. The only limitation would be where the meeting, or part of the meeting, was closed to deal with a matter specified under section 5.23(2) of the *Local Government Act*.

Can electronic and/or hybrid meetings be held post Covid?

In the limited circumstances set out in regulations 14A, 14B and 14C of the Administration Regulations, a local government could hold a hybrid Council or committee meeting (where the meeting was held in person, with some Council or committee members attending the meeting remotely by electronic means).

However, if neither a public health emergency or a state of emergency were to be in force –

- there would be no power for a Council or committee meeting to be held electronically; and

- there would be only very limited circumstances in which a Council member (under regulation 14A or regulation 14B) or any other person (under regulation 14A) could participate in a Council or committee meeting electronically.

Other things to consider

The implementation of technology to video stream, live stream or conduct a hybrid meeting has obvious benefits, as the proceedings of a local government are likely to reach a larger audience and enhance (or at least may be perceived to enhance) a local government's transparency and accessibility to the public.

However, there are also a number of potential risks that local governments should be aware of, including the following –

- Potential legal consequences as a result of derogatory or offensive comments being made by a Council or committee member at a Council or committee meeting that is live streamed or recorded and published on a local government's website.

Although the *Local Government Act* contains certain protections (in section 9.57A and section 9.56), to limit the circumstances where comments or statements of a defamatory nature made at a Council or committee meeting could be the subject of a successful defamation proceeding, this would not prevent other legal consequences arising.

For example, where a comment constituted a breach of the Rules of Conduct (including a 'local law as to conduct' within the terms of regulation 34D of the Administration Regulations), the live streaming/recording of the comments or statements would provide strong evidence of what was said and the context in which it was said. The publication of this, is likely to increase the prospect of a complaint being made.

The live streaming of a Council meeting would not provide a local government with the same ability, opportunity and power to restrict public access, or edit out potentially offensive or defamatory statements. Instead, these statements –

- would be 'published' in real time to a far larger potential audience;
- would be publicly accessible, at any time; and
- could be recorded by members of the public and re-shared on social media to a far larger audience (measures to limit the potential for re-publication may not entirely eliminate this risk).

This could increase the risk of a defamation claim or complaints being made against an individual Council member or a member of the public.

Where a local government opted to live stream or record a Council or committee meeting, it should ensure that attending or participating members of the public were made aware in advance of what was to occur, and that by attending or participating in the meeting they are taken to have given their consent to the proceedings being live streamed and/or uploaded to the local government's website in accordance with the procedures adopted by the local government.

Final thoughts

The changes facilitated by the pandemic measures have proven how quickly and successfully local governments can implement new technologies and adjust to ensure the continuation of Council and committee meetings. Through this



process, the interest into what is possible for the future of Council and committee meetings has increased.

There are a number of considerations that local governments will need to consider and weigh up in considering the use of new technologies and determining what options would be most suitable.

It is uncertain whether the planned reforms to the *Local Government Act* will include provisions to extend the power to hold electronic or hybrid meetings. It will be interesting to see how the legislation in Western Australia evolves in this space.

For further information, please contact Jennifer Long at jlong@mcleods.com.au. The information contained in this update should not be relied on without obtaining further detailed legal advice in the circumstances of each case.

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