

# Code of Practice for Public Access to Meetings and to Associated Meeting Documents



## 1. Policy Statement

In fulfilling the role of an effective Council that is responsive to the needs of the community and which operates within the legal framework prescribed by the Local Government Act 1999, the City of Playford is fully committed to the principle of open and accountable government.

Council also recognises that on a limited number of occasions it may be necessary, in the broader community interest, to restrict public access to discussion/decision and/or documents.

This Code sets out the commitment of City of Playford to provide public access to Council and Committee meetings and documents and outlines the policies and procedures contained within the Local Government Act 1999, to restrict public access. The Code includes:

- information on the relevant provisions of the Act;
- Council's policy on public access and participation;
- the process that will be adopted where public access to a meeting or a document is restricted;
- grievance procedures to be followed if a member of the public believes that the Council has unreasonably restricted public access on a particular matter.

This Code sets out the policy of Council for access to meetings and documents and includes information relating to:

- access to the agenda for meetings;
- public access to meetings;
- the process to exclude the public from meetings;
- matters for which the Council, or a Council committee, can order that the public be excluded;
- how the Council will approach the use of the confidentiality provisions in the Act;
- public access to documents, including minutes;
- review of confidentiality orders;
- accountability and reporting to the community, and the availability of the code; and
- grievances about the use of the code by Council.

## 2. Scope

This Policy applies to the Mayor and Councillors, Independent Members, City of Playford staff and the general public.

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	ECM Document Set No.:	2244543	Initial Date of Adoption:	28/06/2011
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The City of Playford will commit to the following:

- Act in the best interest of the community, with honesty, integrity, and transparency
- Represent the interests of the community through responsible, open and accessible government
- Ensure confidentiality provisions will only be utilised when considered absolutely necessary
- Ensure that in all cases the information be made publicly available at the earliest opportunity.

### 3. Definitions

**Councillor** is a person appointed or elected by the electors of a particular ward, as a representative of the ward in the City of Playford.

**Independent Members** are members on a committee or panel who are not elected but have been appointed by the Council to undertake a similar role as Councillors on Council's Section 41 Committees or the Council Development Assessment Panel. They are external appointees.

**Mayor** is the person appointed or elected as the principle member of the City of Playford to represent the local government area as a whole.

**Staff** includes Council staff, contractors, volunteers and all others who perform work on behalf of Council.

**Freedom of Information Request:** The Freedom of Information Act promotes government accountability and transparency by providing a legal framework for individuals to **request** access to government documents.

**The Act:** For the purpose of this Policy the Act is the Local Government Act 1999.

### 4. Legislation and References

The following legislation applies to this Policy:

- Development Act 1993
- Freedom of Information Act 1991
- Local Government Act 1999

Specifically, Council utilise this policy in accordance with the Local Government Act 1999 as follows:

- Chapter 6 of the Local Government Act 1999 (Appendix A) which includes arrangements for Council, Special Council and Committee meetings and the preparation and distribution of agenda and minute documents.

*N.B. specific provisions in Chapter 6, relating to this Code of Practice are in Bold and Italic Font to enable easy recognition.*

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- Section 92(1) of the Local Government Act 1999 requires the City of Playford to have a Code of Practice relating to the principles, policies, procedures and practices that Council will apply in relation to public access to Council meetings and to the associated Council meeting documents.

## 5. Policy

The City of Playford will conduct all Council and Committee meetings in public and will provide public access to all documents considered at these meetings, except where it is clear that public disclosure of a particular matter would be in breach of Section 90 of the Local Government Act 1999 which relates to “Meetings to be held in public except in special circumstances.”

This Code of Practice seeks to minimise any cause for a Freedom of Information request to be made to access Council documents considered at a Council and or Committee meeting.

### 5.1 Public Access to Council and Committee Meeting Agenda

- 5.1.1 At least three clear days before the Council or Committee meeting (unless it is a special meeting) the Chief Executive Officer (CEO) must give written notice of the meeting to all Council/Committee members setting out the date, time and place of the meeting. The notice must contain or be accompanied by the agenda for the meeting.
- 5.1.2 The notice of meeting and agenda will be placed on public display at each office of the Council that is open to the public for the general administration of Council business within its area at Playford Civic Centre, 10 Playford Boulevard, Elizabeth and on Council's website [www.playford.sa.gov.au/agendasandminutes](http://www.playford.sa.gov.au/agendasandminutes)
- 5.1.3 Items listed on the agenda will be described accurately and in reasonable detail.
- 5.1.4 The notice and agenda will be kept on public display and continue to be published on the website until the completion of the relevant Council or Committee meeting.
- 5.1.5 Copies of the agenda documents and non-confidential reports that are to be considered at the meeting will be made available to members of the public in attendance. A reasonable number of copies will also be available for public inspection as soon as practicable after they are supplied to the Members of Council.
- 5.1.6 Members of the public may obtain a copy of the agenda and any particular reports for a fee to cover the costs of photocopying, in accordance with a Council's schedule of fees and charges.
- 5.1.7 Where the CEO (after consultation with the principal member of the Council, or in the case of a Committee - the presiding member) believes that a document or report on a particular matter should be considered in confidence with the public to be excluded, the basis under which the order could be made in accordance with section 90(3) of the Act will be specified. [see sections 83(5) (Council) and 87(10) (Committee) of the Act.]

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## 5.2 Public Access to Council and Committee Meetings

Council and Committee meetings are open to the public and attendance is encouraged, except where the Council and or Committee believes it is necessary in the broader community interest to exclude the public from the discussion (and, if necessary, decision) of a particular matter.

The public will only be excluded when considered proper and necessary i.e. the need for confidentiality outweighs the principle of open decision-making.

Council encourages public attendance at meetings of the Council and Committees through public notification of meetings by displaying meeting dates and times at Customer Care Locations, on the public website and in Council's quarterly community newspaper publication "North Is Up".

In accordance with section 90 of the Act, it is not unlawful for Members of Council, Committee members and staff to participate in **informal gatherings** or discussion provided that a matter which would ordinarily form part of the agenda for a formal meeting is not dealt with in such a way as to obtain, or effectively obtain, a decision outside of a formally constituted meeting of Council or Committee. The Council is not bound to hold an informal gathering open to the public in accordance with section 90(1) of the Act as openness to the public only applies to Council and Committee meetings.

The following are examples of informal gatherings or discussions that may be held in accordance with section 90(8):

- planning sessions associated with the development of policies and strategies;
- briefing or training sessions;
- workshops; or
- gatherings to encourage informal communication between members or between members and staff.

## 5.3 Process to Exclude the Public from a Meeting

The practice of the City of Playford is to deal with the agenda items in the order listed in the agenda.

Before a meeting orders that the public be excluded to enable the receipt, discussion and consideration of a particular matter, the meeting must, in public, formally determine if this is necessary and appropriate, and then pass a resolution to exclude the public while dealing with that particular matter. If this occurs then the public must leave the room.

This means that all members of the public (including staff), unless exempted by being named in the resolution as entitled to remain, are required to leave the room. For the operation of section 90(2) a member of the public does not include a member of Council.

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Once Council, or a Committee has made the order, it is an offence for a person, who knowing that an order is in force, enters or remains in a room in which such a meeting is being held. It is lawful for a member of the police to use reasonable force to remove the person from the room if he or she fails to leave on request.

Once discussion on that particular matter is concluded, the public are then permitted to re-enter the meeting. If there is a further matter that needs to be considered in confidence it is necessary to again undertake the formal determination process and to resolve to exclude the public as above.

The Council or the Committee can by inclusion within the resolution permit a particular person or persons to remain in the meeting. An example would be allowing a ratepayer who is suffering personal hardship to remain in the meeting when their circumstances concerning the payment of rates are being discussed.

#### 5.4 Matters from which the Public can be Excluded

In accordance with the requirements of section 90(3) of the Act, Council or a Committee, may order that the public be excluded in the following circumstances:

- (a) *information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);*
- (b) *information the disclosure of which—*
  - (i) *could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the Council; and*
  - (ii) *would, on balance, be contrary to the public interest;*
- (c) *information the disclosure of which would reveal a trade secret;*
- (d) *commercial information of a confidential nature (not being a trade secret) the disclosure of which—*
  - (i) *could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and*
  - (ii) *would, on balance, be contrary to the public interest;*
- (e) *matters affecting the security of the Council, members or employees of the Council, or Council property, or the safety of any person;*

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- (f) *information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;*
- (g) *matters that must be considered in confidence in order to ensure that the Council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;*
- (h) *legal advice;*
- (i) *information relating to actual litigation, or litigation that the Council or Council committee believes on reasonable grounds will take place, involving the Council or an employee of the Council;*
- (j) *information the disclosure of which—*
  - (i) *would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the Council, or a person engaged by the Council); and*
  - (ii) *would, on balance, be contrary to the public interest;*
- (k) *tenders for the supply of goods, the provision of services or the carrying out of works;*
- (l) *information relating to a proposed amendment to a Development Plan under the Development Act 1993 before a Plan Amendment Report relating to the amendment is released for public consultation under that Act; or*
- (m) *information relating to a proposed amendment to a Development Plan under the Development Act 1993 before a Development Plan Amendment proposal relating to the amendment is released for public consultation under that Act;*
- (n) *information relevant to the review of a determination of a Council under the Freedom of Information Act 1991.*

The Act provides for a definition of “personal affairs”, being a person’s financial affairs, criminal records, marital or other personal relationships, personal qualities, attributes or health status, or that person’s employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person, but does not include the personal affairs of a body corporate.

The above list is not an exhaustive list of per personal affairs matters and can always, relevantly, be added to by the Council.

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In considering whether an order should be made under section 90(2), it is irrelevant that discussion of a matter in public may:

- cause embarrassment to the Council or Committee concerned, or to members or employees of the Council; or
- cause a loss of confidence in the Council or Committee. [s.90(4)]

If a decision to exclude the public is taken, the Council or the Council committee is required to make a note in the minutes of the making of the order and the grounds on which it was made. Sufficient detail of the grounds on which the order was made will be included in the minutes.

## 5.5 Public Access to Minutes

Minutes of a meeting of Council or a Committee will be publicly available, including on the public website, within 5 days after the meeting.

## 5.6 Use of Confidentiality Provisions

Any consideration of the use of the confidentiality provisions to exclude the public from the discussion of a particular matter at a meeting will require the identification of one or more of the grounds listed within section 90(3) of the Act and the factual reasons for the relevance and application of the ground(s) in the circumstances. These are listed in section 5.4 of this Code.

The policy approach of the City of Playford is that:

- 5.6.1 The principle of open and accountable government is strongly supported;
- 5.6.2 Information of the grounds on which an order to exclude the public is made will be conveyed to the public at the time of them being ordered to leave the meeting – the public will not be excluded until after a confidentiality motion has been debated and passed and sufficient reasons for the need to exclude the public given;
- 5.6.3 Once discussion of the matter is concluded, the meeting will then consider if it is necessary to make an order that a document associated with this agenda item (including minutes) remain confidential.

In determining this, the meeting will have regard to the provisions of section 91 and in particular section 91(8) which details when a Council must not order that a document remain confidential;

- 5.6.4 If the meeting determines that it is necessary to keep a document confidential, then a resolution for an order to this effect is required to be resolved by the meeting in accordance with section 91(7) of the Act;

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- 5.6.5 The Council will not consider a number of agenda items “in confidence” together i.e. en bloc. It will determine each item separately and consider the exemptions relevant to each item.
- 5.6.6 Once discussion of the matter is concluded and the public have returned, the decision of the meeting in relation to this matter will be made publicly known unless the Council has resolved to order that some information remain confidential. Details relating to any order to keep information or a document confidential in accordance with section 91(7) are also to be made known. When making an order the meeting must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. If the section 91(7) order is to apply for a period exceeding 12 months, then this order must be reviewed every 12 months from the date it was made.
- This along with the making of the order pursuant to section 90(2) and the grounds pursuant to section 90(3) on which it was made are also to be recorded in the minutes.
- 5.6.7 In all cases the objective is that the information be made publicly available at the earliest possible opportunity and that the community is informed of any Council order and the associated implications; and
- 5.6.8 Where a person provides information to the Council and requests that it be kept confidential, Council is not able to even consider this request unless the matter is one that falls within section 90(3). If this is the case, Council will then be in a position to consider the request on its merits.
- 5.6.9 The public should be invited to re-enter the meeting when consideration of the relevant Agenda Item has concluded. The public are also entitled to be present for the debate on whether any subsequent item should be considered in confidence.

## 5.7 Public Access to Documents

Various documents can be available for inspection and purchase (for a fee) by the public. Council may also make a document available in electronic form and place it on the Internet for public access.

The Council or the Committee will only order that a document associated with a discussion from which the public are excluded is to remain confidential if it is considered necessary in the broader community interest.

The Council or the Committee can only resolve to keep minutes and/or documents confidential under section 91(7) if they were considered in confidence pursuant to sections 90(2) and 90(3).

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In accordance with section 91(8) the Council or the Committee must not make an order to prevent:

- the disclosure of the remuneration or conditions of service of an employee of the Council after the remuneration or conditions have been set or determined; or
- the disclosure of the identity of a successful tenderer for the supply of goods or the provision of services (including the carrying out of works), or of any reasons adopted by the Council as to why a successful tenderer has been selected; or
- the disclosure of the amount or amounts payable by the Council under a contract for the supply of goods or the provision of services (including the carrying out of works) to, or for the benefit of, the Council after the contract has been entered into by all parties to the contract; or
- the disclosure of the identity of land that has been acquired or disposed of by the Council, or of any reasons adopted by the Council as to why land has been acquired or disposed of by the Council.

Where keeping a document confidential is considered proper and necessary, a resolution to this effect is required which shall include:

- the grounds for confidentiality; and
- the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed – if the order has a duration of more than 12 months, the order must be reviewed at least once in every year;
- (if applicable) whether the power to revoke the order will be delegated to an employee of the Council. [s.91(9)]

Requests to access Council and Committee documents can be made under the Freedom of Information Act 1991. Inquiries in relation to the process for seeking access to documents held by Council should be directed to Council's accredited Freedom of Information Officer.

### 5.8 Example of Confidentiality Provisions

The City of Playford will record in the minutes of any Council and Committee meetings the making of an order in accordance with sections 90(2) and (3) and section 91(7).

The City of Playford has a three step process to determine confidential matters as follows:

- Step A Council /Committee to Move Motion to go into Confidence
- Step B Council/Committee to Discuss the Business Matter
- Step C Council/Committee to Decide how long item is to remain in confidence

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Examples of these steps and orders are below:

**A. COUNCIL/COMMITTEE TO MOVE MOTION TO GO INTO CONFIDENCE**

**STAFF RECOMMENDATION**

Under Section 90 (2) of the Local Government Act 1999 an order is made that the public, with the exception of those staff members present, *Delete if staff should not be present and add any relevant stakeholder* be excluded from attendance at the meeting in order to consider in confidence agenda item number X under Section X on the basis that:

**B. COUNCIL/COMMITTEE TO DISCUSS THE BUSINESS MATTER**

**C. COUNCIL/COMMITTEE TO DECIDE HOW LONG ITEM X IS TO BE KEPT IN CONFIDENCE**

**Purpose**

To resolve how long agenda item X is to be kept confidential.

**STAFF RECOMMENDATION**

That pursuant to Section 90(2) (x) and Section 91(7) of the Local Government Act 1999 the Council orders that the following aspects of Item be kept confidential:

- Report for Item until xx
- Attachment(s) for Item X until xx
- Discussion for Item X until xx
- Decision for Item X until xx

**5.9 Review of Confidentiality Orders**

A confidentiality order made under section 91(7) of the Act must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed. In any event, any order that operates for a period exceeding 12 months must be reviewed at least once in every year.

An order will lapse if the time or event specified has been reached or carried out. There is no need for the Council to resolve for the confidential order to be lifted. Once the order has lapsed, the minutes and/or documents automatically become public.

A review of the reports or documents that were considered under the provision of sections 90(3) and 91(7) of the Act will be conducted every 3 months to ensure that items are released in accordance with the resolution of Council, when the confidential provision no longer applies.

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Orders that exceed 12 months must be reviewed annually and the Council must assess whether the grounds for non-disclosure are still relevant and, if so, provide the relevant grounds and reasons for the minutes and/or documents remaining confidential. The conduct of the annual review can be delegated to the Chief Executive office and sub-delegated to an employee of the Council if appropriate.

If there are any items that require a fresh confidentiality order because the original order is about to expire, then the reviewer will prepare a report to Council making recommendations with respect to each item to be retained in confidence. Each item must then be addressed separately and assessed against section 90(3) and section 91(7) of the Act. While a Council may delegate the power to undertake an annual review, the Council cannot delegate the power to apply sections 90(3) and 91(7) of the Act.

A Council may resolve to exclude the public from a meeting to discuss and undertake consideration of the recommendations arising from the annual review in confidence, subject to the application of the relevant ground under section 90(3) of the Act. Section 90(3) of the Act must be applied separately to each item and not en bloc.

If there is no longer any need for the confidentiality order then the Council or Committee may delegate to an employee of the Council the power to revoke an order made in accordance with section 91(7) of the Act. The Council or Committee may also include in the resolution whether any delegation is given to an employee to revoke the order and if relevant, any conditions associated with the delegation.

As documents are released for public access, they will be made publically available on council's website as soon as practicable.

## 5.10 Accountability and Reporting to the Community

A report on the use of sections 90(2) and 91(7) by the Council and Committees must be included in the annual report of a Council as required by Schedule 4 of the Act. This supports commitment to the principle of accountability to the community. The reporting should include the following information, separately identified for both Council and Committees:

1. Number of occasions each of the provisions of sections 90(2) and 90(3) were utilised;
2. Number of occasions each of the provisions of sections 90(2) and 90(3) and section 91(7) were utilised, expressed as a percentage of total agenda items considered;
3. An indication of any particular issues that contributed to the use of confidentiality provisions on more than one occasion e.g. a proposal to acquire a parcel of land was considered on 3 separate occasions;
4. Number of occasions that information originally declared confidential has subsequently been made publicly available; and
5. Number of occasions that information declared confidential has not been made publicly available and the reason for this in each case.

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## 5.11 Availability of the Code

The public may inspect a copy of the Code, without charge, at the offices of Council during office hours, and may obtain a copy for a fee fixed by Council. The Code is also available on the website at [www.playford.sa.gov.au/policies](http://www.playford.sa.gov.au/policies)

## 5.12 Grievance

Council has established procedures for the review of decisions under section 270 of the Act for:

- Council, and its Committees;
- employees of the Council; and
- other persons acting on behalf of the Council.

Should a person be aggrieved about public access to either a meeting or a document then they can lodge an application for review of that decision under the procedures established by Council. Council's Grievance Handling Policy is available on the website at [www.playford.sa.gov.au/policies](http://www.playford.sa.gov.au/policies)

## 6. Responsibilities

- 6.1 The Governance Team, Corporate Consulting are responsible to communicate and implement this Policy.
- 6.2 The Council is required to review this code within 12 months after the conclusion of each periodic election.

## 7. Relevance to Strategic Plan

This policy relates to "Strategy 5 - Building our capabilities" as follows:

- 5.1 Highly performing organisation
- 5.2 Delivering value for money services
- 5.3 Effective government and private sector partnerships.

## 8. Supporting Documentation

The following documents support this Code of Practice:

- Code of Practice for Council, Special Council and Committee Meetings
- Council and Committee Member Access and Use of Council Information Policy
- Grievance Handling Policy
- Public Consultation Policy

These documents can be accessed at [www.playford.sa.gov.au/policies](http://www.playford.sa.gov.au/policies)

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## 9. Approval and Change History

Version	Approval Date	Approval by	Change
1.0	28/06/2011	Council	<ul style="list-style-type: none"> <li>• New Document</li> </ul>
2.0	31/01/2012	Council	<ul style="list-style-type: none"> <li>• Scheduled Review</li> </ul>
3.0	25/08/2015	Council	<ul style="list-style-type: none"> <li>• Code of Practice transferred into Corporate Template</li> <li>• Policy Statement Updated</li> <li>• Legislation Section Updated</li> <li>• Sections Re-numbered</li> <li>• Confidential Provision Information updated</li> <li>• Examples of Confidential Steps updated</li> <li>• Removed section 2.3 – “Consultation” which has a requirement to consult with the public prior to adoption of the Code of Practice for Public access to Meetings and Associated Documents</li> </ul>

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# Local Government Act 1999

## Chapter 6—Meetings

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#### **90 Meetings to be held in public except in special circumstances**

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# Chapter 6—Meetings

## Part 1—Council meetings

### 81—Frequency and timing of ordinary meetings

- (1) Subject to this section, ordinary meetings of a council will be held at times and places appointed by a resolution of the council.
- (2) There must be at least one ordinary meeting in each month.
- (3) If a time and place has not been appointed for the holding of an ordinary meeting during a month, the chief executive officer must appoint the time and place at which the ordinary meeting for the month is to be held.
- (4) The chief executive officer must also appoint the time and place at which the first ordinary meeting of a council will be held—
  - (a) after the council is constituted under Chapter 3; or
  - (b) after a general election of the council.
- (5) Ordinary meetings of a council may not be held on Sundays, or on public holidays.
- (6) In the case of a municipal council, ordinary meetings of the council may not be held before 5 p.m. unless the council resolves otherwise by a resolution supported unanimously by all members of the council.
- (7) A resolution under subsection (6) does not operate in relation to a meeting held after the conclusion of the general election next held following the making of the resolution.

### 82—Calling of special meetings

- (1) The chief executive officer must, at the request of—
  - (a) the principal member of the council; or
  - (b) at least three members of the council; or
  - (c) a council committee at which at least three members of the council vote in favour of the making of the request,call a special meeting of the council.
- (2) The chief executive officer must be provided with an agenda for the special meeting at the time that a request is made under subsection (1) (and if an agenda is not provided then the request has no effect).
- (3) Special meetings may be held at any time.

### 83—Notice of ordinary or special meetings

- (1) In the case of an ordinary meeting, the chief executive officer must give each member of the council notice of the meeting at least three clear days before the date of the meeting.

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- (2) In the case of a special meeting, the chief executive officer must give each member of the council notice of the meeting at least four hours before the commencement of the meeting.
- (3) Notice of a meeting of the council must— (a) be in writing; and
- (b) set out the date, time and place of the meeting; and
- (c) be signed by the chief executive officer; and
- (d) contain, or be accompanied by, the agenda for the meeting.
- (4) The chief executive officer must, insofar as is reasonably practicable—
- (a) ensure that items on an agenda given to members of the council under this section are described with reasonable particularity and accuracy; and
- (b) supply to each member of the council at the time that notice of a meeting is given a copy of any documents or reports that are to be considered at the meeting (so far as this is practicable).
- (5) The chief executive officer may indicate on a document or report provided to members of the council under subsection (4) (or on a separate notice) any information or matter contained in or arising from a document or report that may, if the council so determines, be considered in confidence under Part 3, provided that the chief executive officer at the same time specifies the basis on which an order could be made under that Part.**
- (6) Notice may be given to a member of a council under this section— (a) personally; or
- (b) by delivering the notice (whether by post or otherwise) to the usual place of residence of the member or to another place authorised in writing by the member; or
- (c) by leaving the notice for the member at an appropriate place at the principal office 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 (eg facsimile transmission).
- (7) A notice that is not given in accordance with subsection (6) is taken to have been validly given if the chief executive officer considers it impracticable to give the notice in accordance with that subsection and takes action the chief executive officer considers reasonable in the circumstances to bring the notice to the attention of the member.
- (8) The chief executive officer must maintain a record of all notices of meetings given under this section to members of the council.

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- (9) The fact that a notice of a meeting has not been given to a member of a council in accordance with this section does not, of itself, invalidate the holding of the meeting or a resolution or decision passed or made at the meeting but the District Court may, on the application of the Minister, annul a resolution or decision passed or made at the meeting and make such ancillary or consequential orders as it thinks fit if satisfied that such action is warranted in the circumstances of the particular case.

#### 84—Public notice of council meetings

- (1) The chief executive officer must give notice to the public of the times and places of meetings of the council.
- (2) Notice under subsection (1) is given by causing a copy of the notice and agenda for a meeting to be placed on public display at the principal office of the council—
- (a) in the case of an ordinary meeting—at least three clear days before the date of the meeting; or
  - (b) in the case of a special meeting—as soon as practicable after the time that notice of the meeting is given to members of the council.
- (2a) The chief executive officer may also give notice to the public of the time and place of a meeting of the council in such other manner as the chief executive officer considers appropriate after taking into account—
- (a) the characteristics of the council's community and area; and
  - (b) the best ways to bring notice of a meeting of the council to the public's attention;  
and
  - (c) such other matters as the chief executive officer thinks fit.
- (3) A person is entitled, on payment of a fee fixed by the council, to obtain a copy of a notice and agenda on display under subsection (2).
- (4) The notice and agenda must be kept on public display under subsection (2) until the completion of the relevant meeting.
- (5) The chief executive officer must also ensure that a reasonable number of copies of any document or report supplied to members of the council for consideration at a meeting of the council are available for inspection by members of the public—
- (a) in the case of a document or report supplied to members of the council before the meeting—at the principal office of the council as soon as practicable after the time when the document or report is supplied to members of the council; or
  - (b) in the case of a document or report supplied to members of the council at the meeting—at the meeting as soon as practicable after the time when the document or report is supplied to members of the council.

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- (6) However, subsection (5) does not apply to a document or report— (a) that is subject to the operation of section 83(5); or (b) that relates to a matter dealt with by the council on a confidential basis under Part 3.

#### 85—Quorum

- (1) The prescribed number of members of a council constitutes a quorum of the council and no business can be transacted at a meeting unless a quorum is present.

The **prescribed number** of members of a council is a number ascertained by dividing the total number of members of the council for the time being in office by 2, ignoring any fraction resulting from the division, and adding one.

- (2) If a quorum is lost because a member cannot participate in a particular matter pursuant to Chapter 5 Part 4 Division 3, the matter must be adjourned (so that the remainder of the meeting may proceed).
- (3) If a quorum cannot be obtained for consideration of a particular matter because of the operation of Chapter 5 Part 4 Division 3, the council may proceed to consider the matter without a quorum with the approval of the Minister.

#### 86—Procedure at meetings

- (1) The principal member of a council will preside at a meeting of the council.
- (2) If the principal member is absent from a meeting of a council and there is a deputy, the deputy will preside but if there is no deputy or the deputy is not available to preside, a member of the council chosen by those present will preside.
- (3) If—
- (a) a person is to be chosen to be the principal member of a council at a meeting of the council; or
  - (b) a member of the council must be chosen by those present at a meeting of the council to preside at the meeting,
- the chief executive officer will preside until the matter is decided.
- (4) Subject to this Act, a question arising for decision at a meeting of a council will be decided by a majority of the votes cast by the members present at the meeting and entitled to vote on the question.
- (5) Each member present at a meeting of a council must, subject to a provision of this Act to the contrary, vote on a question arising for decision at that meeting.
- (6) The mayor of a council, or other member presiding in the absence of the mayor, at a meeting of the council, does not have a deliberative vote on a question arising for decision at the meeting but has, in the event of an equality of votes, a casting vote.

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- (7) The chairperson of a council, or other member presiding in the absence of the chairperson, at a meeting of the council, has a deliberative vote on a question arising for decision at the meeting but does not, in the event of an equality of votes, have a casting vote.
- (8) Subject to this Act, the procedure to be observed at a meeting of a council will be—
  - (a) as prescribed by regulation;
  - (b) insofar as the procedure is not prescribed by regulation—as determined by the council.
- (9) A meeting of a council may be adjourned from time to time and from place to place.

## Part 2—Committee meetings

### 87—Calling and timing of committee meetings

- (1) Ordinary meetings of a council committee will be held at times and places appointed by the council or, subject to a decision of the council, the council committee.
- (2) A council or council committee must, in appointing a time for the holding of an ordinary meeting of a council committee, take into account—
  - (a) the availability and convenience of members of the committee; and
  - (b) the nature and purpose of the committee.
- (3) A resolution appointing a time for the holding of an ordinary meeting of a council committee does not operate after the conclusion of the general election next following the making of the resolution.
- (4) The chief executive officer must ensure that each member of a council committee is given notice of an ordinary meeting of the committee at least three clear days before the date of the meeting.
- (5) The chief executive officer must, at the request of—
  - (a) the presiding member of a council committee; or
  - (b) at least two members of a council committee,
 call a special meeting of a council committee.
- (6) Special meetings of a council committee may be held at any time.
- (7) The chief executive officer must ensure that each member of a council committee is given notice of a special meeting of the committee at least four hours before the commencement of the meeting.
- (8) Notice of a meeting of a council committee must—
  - (a) be in writing;
  - and
  - (b) set out the date, time and place of the meeting; and
  - (c) contain, or be accompanied by, the agenda for the meeting.

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- (9) The chief executive officer must, insofar as is reasonably practicable—
- (a) ensure that items on an agenda given to members of a council committee under this section are described with reasonable particularity and accuracy; and
  - (b) ensure that each member of the committee at the time that notice of a meeting is given is supplied with a copy of any documents or reports that are to be considered at the meeting (so far as this is practicable).
- (10) The chief executive officer may indicate on a document or report provided to members of the committee under subsection (9) (or on a separate notice) any information or matter contained in or arising from a document or report that may, if the committee so determines, be considered in confidence under Part 3, provided that the chief executive officer at the same time specifies the basis on which an order could be made under that Part.**
- (11) Notice may be given to a member of a committee under this section—
- (a) personally; or
  - (b) by delivering the notice (whether by post or otherwise) to the usual place of residence of the member or to another place authorised in writing by the member; or
  - (c) by leaving the notice for the member at an appropriate place at the principal office 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 (eg facsimile transmission).
- (12) A notice that is not given in accordance with subsection (11) is taken to have been validly given if the chief executive officer considers it impracticable to give the notice in accordance with that subsection and takes action the chief executive officer considers reasonably practicable in the circumstances to bring the notice to the attention of the member of the committee.
- (13) The chief executive officer must ensure that a record of all notices of meetings given under this section is maintained.
- (14) The fact that a notice of a meeting has not been given to a member of a committee in accordance with this section does not, of itself, invalidate the holding of the meeting or a resolution or decision passed or made at the meeting but the District Court may, on the application of the Minister, annul a resolution or decision passed or made at the meeting and make such ancillary or consequential orders as it thinks fit if satisfied that such action is warranted in the circumstances of the particular case.
- (15) The regulations may modify the application of this section for council committees that are not performing regulatory activities of councils.

### 88—Public notice of committee meetings

- (1) The chief executive officer must ensure that notice is given to the public of the times and places of meetings of a council committee.

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- (2) Notice under subsection (1) is given by causing a copy of the notice and agenda for a meeting to be placed on public display at the principal office of the council as soon as practicable after the time that notice of the meeting is given to members of the committee.
- (2a) The chief executive officer may also give notice to the public of the time and place of a meeting of a council committee in such other manner as the chief executive officer considers appropriate after taking into account—
  - (a) the work of the committee and the characteristics of the council's community and area; and
  - (b) the best ways to bring notice of a meeting of the committee to the public's attention; and
  - (c) such other matters as the chief executive officer thinks fit.
- (3) A person is entitled, on payment of a fee fixed by the council, to obtain a copy of a notice and agenda on display under subsection (2).
- (4) The notice and agenda must be kept on public display under subsection (2) until the completion of the relevant meeting.
- (5) The chief executive officer must also ensure that a reasonable number of copies of any document or report supplied to members of a council committee for consideration at a meeting of the committee are available for inspection by members of the public at the principal office of the council as soon as practicable after the time when the document or report is supplied to members of the committee.
- (6) However, subsection (5) does not apply to a document or record—
  - (a) that is subject to the operation of section 87(10); or
  - (b) that relates to a matter dealt with by the council or council committee on a confidential basis under Part 3.
- (7) The regulations may modify the application of this section for council committees that are not performing regulatory activities of councils.

### 89—Proceedings of council committees

- (1) Subject to this Act, the procedure to be observed in relation to the conduct of meetings of a council committee will be—
  - (a) as prescribed by regulation;
  - (b) insofar as the procedure is not prescribed by regulation—as determined by the council;
  - (c) insofar as the procedure is not prescribed by regulation or determined by the council—as determined by the council committee itself.
- (2) A meeting of a council committee may be adjourned from time to time and from place to place.

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### Part 3—Public access to council and committee meetings

#### 90—Meetings to be held in public except in special circumstances

- (1) Subject to this section, a meeting of a council or council committee must be conducted in a place open to the public.
- (2) ***A council or council committee may order that the public be excluded from attendance at a meeting to the extent (and only to the extent) that the council or council committee considers it to be necessary and appropriate to act in a meeting closed to the public in order to receive, discuss or consider in confidence any information or matter listed in subsection (3) (after taking into account any relevant consideration under that subsection).***
- (3) ***The following information and matters are listed for the purposes of subsection (2):***
  - (a) ***information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);***
  - (b) ***information the disclosure of which—***
    - (i) ***could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and***
    - (ii) ***would, on balance, be contrary to the public interest;***
  - (c) ***information the disclosure of which would reveal a trade secret;***
  - (d) ***commercial information of a confidential nature (not being a trade secret) the disclosure of which—***
    - (i) ***could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and***
    - (ii) ***would, on balance, be contrary to the public interest;***
  - (e) ***matters affecting the security of the council, members or employees of the council, or council property, or the safety of any person;***
  - (f) ***information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;***
  - (g) ***matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;***
  - (h) ***legal advice;***

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- (i) **information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council;**
  - (j) **information the disclosure of which—**
    - (i) **would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council); and**
    - (ii) **would, on balance, be contrary to the public interest;**
  - (k) **tenders for the supply of goods, the provision of services or the carrying out of works;**
  - (m) **information relating to a proposed amendment to a Development Plan under the Development Act 1993 before a Plan Amendment Report relating to the amendment is released for public consultation under that Act;**
  - (n) **information relevant to the review of a determination of a council under the Freedom of Information Act 1991.**
- (4) **In considering whether an order should be made under subsection (2), it is irrelevant that discussion of a matter in public may—**
- (a) **cause embarrassment to the council or council committee concerned, or to members or employees of the council; or**
  - (b) **cause a loss of confidence in the council or council committee.**
- (5) A person who, knowing that an order is in force under subsection (2), enters or remains in a room in which a meeting of the council or council committee is being held is guilty of an offence and liable to a penalty not exceeding \$500 and if such a person fails to leave the room on request it is lawful for an employee of the council or a member of the police force to use reasonable force to remove him or her from the room.
- (6) Subsection (5) does not apply to—
- (a) a member of the council or the council committee; or
  - (b) any other person permitted to be in the room by the council or the council committee.
- (7) **If an order is made under subsection (2), a note must be made in the minutes of the making of the order and of the grounds on which it was made.**
- (8) **The duty to hold a meeting of a council or council committee at a place open to the public does not in itself make unlawful informal gatherings or discussion involving—**
- (a) **members of the council or council committee; or**

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**(b) members of the council or council committee and staff,**  
**provided that a matter which would ordinarily form part of the agenda for a formal meeting of a council or council committee is not dealt with in such a way as to obtain, or effectively obtain, a decision on the matter outside a formally constituted meeting of the council or council committee.**

**Examples—**

The following are examples of informal gatherings or discussions that might be held under subsection (8):

- (a) planning sessions associated with the development of policies or strategies;
- (b) briefing or training sessions;
- (c) workshops;
- (d) social gatherings to encourage informal communication between members or between members and staff.

(9) In this section—

**personal affairs** of a person

includes— (a) that person's—

- (i) financial affairs;
- (ii) criminal records;
- (iii) marital or other personal relationships;
- (iv) personal qualities, attributes or health status;

(b) that person's employment records, employment performance or suitability for a particular position, or other personnel matters relating to the person,

but does not include the personal affairs of a body corporate.

**Part 4—Minutes of council and committee meetings and release of documents**

**91—Minutes and release of documents**

- (1) The chief executive officer must ensure that minutes are kept of the proceedings at every meeting of the council or a council committee.
- (2) If the chief executive officer is excluded from a meeting pursuant to Part 3, the person presiding at the meeting must ensure that minutes are kept.

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- (3) Each member of the council must, within five days after a meeting of the council or a council committee, be supplied with a copy of all minutes of the proceedings of the meeting kept under this section.
- (4) ***A copy of the minutes of a meeting of the council must be placed on public display in the principal office of the council within five days after the meeting and kept on display for a period of one month.***
- (5) ***A person is entitled to inspect, without payment of a fee, at the principal office of the council—***
- (a) *minutes kept under this section; and*
  - (b) *reports to the council or a council committee received at a meeting of the council or committee; and*
  - (c) *recommendations presented to the council in writing and adopted by resolution of the council; and*
  - (d) *budgetary or other financial statements adopted by the council.*
- (6) ***A person is entitled, on payment of a fee fixed by the council, to a copy of any documents available for inspection under subsection (5).***
- (7) ***However, subsections (4), (5) and (6) do not apply to a document or part of a document if—***
- (a) *the document or part relates to a matter dealt with by the council or council committee on a confidential basis under Part 3; and*
  - (b) *the council or council committee orders that the document or part be kept confidential.*
- (8) ***A council must not make an order under subsection (7)—***
- (a) *to prevent the disclosure of the remuneration or conditions of service of an employee of the council after the remuneration or conditions have been set or determined; or*
  - (b) *to prevent the disclosure of the identity of a successful tenderer for the supply of goods or the provision of services (including the carrying out of works), or of any reasons adopted by the council as to why a successful tenderer has been selected; or*
  - (c) *to prevent the disclosure of the amount or amounts payable by the council under a contract for the supply of goods or the provision of services (including the carrying out of works) to, or for the benefit of, the council after the contract has been entered into by all parties to the contract; or*
  - (d) *to prevent the disclosure of the identity of land that has been acquired or disposed of by the council, or of any reasons adopted by the council as to why land has been acquired or disposed of by the council.*

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**(9) If an order is made under subsection (7)—**

- (a) the council or council committee must specify the duration of the order or the circumstances in which the order will cease to apply, or a period after which the order must be reviewed, and, in any event, any order that operates for a period exceeding 12 months must be reviewed at least once in every year; and**
- (b) the council or council committee must ensure that a note is made in the minutes recording the making of the order, the grounds on which it was made, and the decision of the council or council committee under paragraph (a); and**
- (c) the council or council committee may delegate to an employee of the council the power to revoke the order.**

**(10) No action for defamation lies against the council in respect of—**

- (a) the accurate publication under this section of any information, statement or document (in whatever form); or**
- (b) the accurate publication under this section of a transcript, recording or other record of a meeting of a council or a council committee.**

**(11) A document purporting to be minutes of proceedings at a meeting of a council, or a council committee, or to be a copy of or extract from such minutes, and to be signed by the chief executive officer, will be accepted as proof, in the absence of proof to the contrary, of the matters contained in the document.**

**Part 5—Code of practice**

**92—Access to meetings and documents—code of practice**

- (1) A council must prepare and adopt a code of practice relating to the principles, policies, procedures and practices that the council will apply for the purposes of the operation of Parts 3 and 4.**
- (2) A council must, within 12 months after the conclusion of each periodic election, review the operation of its code of practice under this section.**
- (3) A council may at any time alter its code of practice, or substitute a new code of practice.**
- (4) A code of practice must include any mandatory provision prescribed by the regulations.**
- (5) Before a council adopts, alters or substitutes a code of practice under this section it must—**
  - (a) make copies of the proposed code, alterations or substitute code (as the case may be) available for inspection or purchase at the council's principal office; and**
  - (b) follow the relevant steps set out in its public consultation policy.**
- (6) A person is entitled to inspect (without charge) the code of practice of a council at the principal office of the council during ordinary office hours.**
- (7) A person is entitled, on payment of a fee fixed by the council, to a copy of the code of practice.**

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## Part 6—Meetings of electors

### 93—Meetings of electors

- (1) A council may convene a meeting of electors of the area or a part of the area.
- (2) The chief executive officer must, by advertisement in a newspaper circulating in the area, give notice of the time and place of a meeting of electors, and of the nature of the business to be transacted at the meeting, at least 14 days and not more than 28 days before the date of the meeting.
- (3) The following persons are entitled to attend and vote at a meeting convened under this section:
  - (a) in the case of a meeting of electors of an area—
    - (i) any person who is enrolled on the voters roll for the area as an elector;  
and
    - (ii) a nominee of a body corporate or group which has its name on the voters roll for the area;
  - (b) in the case of a meeting of electors of a part of an area—
    - (i) any person who is enrolled on the voters roll for the area as an elector— (A) in respect of a place of residence within that part of the area; or (B) in respect of rateable property within that part of the area; or
    - (ii) a nominee of a body corporate which is a ratepayer, or of a group of persons who are ratepayers, in respect of rateable property within that part of the area.
- (4) A meeting of electors under this section cannot proceed unless at least one member of the council is present at the meeting.
- (5) If the principal member of the council is present and available to preside at a meeting of electors held under this section, he or she must preside at the meeting.
- (6) If the principal member is absent from a meeting of electors held under this section or is not available to preside at the meeting, the following provisions apply:
  - (a) if there is a deputy mayor or deputy chairperson available to preside at the meeting—the deputy must preside;
  - (b) if there is no deputy or he or she is not available to preside—a member of the council appointed by the council must preside;
  - (c) if no member of the council is so appointed or a member so appointed is absent from the meeting—a member chosen by the persons present and lawfully voting at the meeting must preside.
- (7) A question to be decided at a meeting of electors will be decided by a majority of the votes of the persons present and lawfully voting at the meeting.

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- (8) A person present at the meeting who is entitled to vote on a question arising for decision at the meeting in his or her own capacity as an elector may also, if the person is a nominee of a body corporate or a group of persons who are ratepayers, vote in that capacity as a nominee.
- (9) The member presiding at a meeting of electors does not, in the event of an equality of votes, have a casting vote.
- (10) The chief executive officer of the council must ensure that minutes are kept of the proceedings at a meeting of electors.
- (11) Each member of the council must, within five days after a meeting of electors, be supplied with a copy of the minutes of the proceedings.
- (12) The member presiding at a meeting of electors must transmit a resolution passed at a meeting held under this section to the council.
- (13) A meeting of electors may be adjourned from time to time and from place to place.
- (14) The procedure to be observed to make a nomination for the purposes of subsection (3)(a)(ii) or (b)(ii) will be as determined by the council.
- (15) Subject to this Act, the procedure to be observed at a meeting of electors will be as determined by the person presiding at the meeting.

## Part 7—Related matters

### 93A—Audits by Ombudsman

- (1) The Ombudsman may, if the Ombudsman considers it to be in the public interest to do so, conduct a review of the practices and procedures (or of any aspect of the practices or procedures) of one or more councils or council committees under Part 3 or Part 4.
- (2) The Ombudsman may, in carrying out a review under this section, exercise the powers of the Ombudsman under the *Ombudsman Act 1972* as if carrying out an investigation under that Act, subject to such modifications as may be necessary, or as may be prescribed.
- (3) At the conclusion of a review under this section, the Ombudsman may prepare a report on any aspect of the review.
- (4) A report may make recommendations to a council or councils.
- (5) The Ombudsman must supply a copy of any report to—
  - (a) the Minister; and
  - (b) any council that was under review, or that has (or had) a council committee that was under review,
 and may also publish any report, a part of any report, or a summary of any report, in such manner as the Ombudsman thinks fit.
- (6) The Minister may also publish any report, a part of any report, or a summary of any report, in such manner as the Minister thinks fit.
- (7) This section does not limit powers of investigation under other provisions of this or another Act.

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## 94—Investigation by Ombudsman

- (1) ***The Ombudsman may, on receipt of a complaint, carry out an investigation under this section if it appears to the Ombudsman that a council may have unreasonably excluded members of the public from its meetings under Part 3 or unreasonably prevented access to documents under Part 4.***
- (2) The Ombudsman may, in carrying out an investigation under this section, exercise the powers of the Ombudsman under the *Ombudsman Act 1972* as if carrying out an investigation under that Act.
- (3) At the conclusion of an investigation under this section, the Ombudsman must prepare a written report on the matter.
- (4) The Ombudsman must supply the Minister and the council with a copy of the report, and may also publish the report, a part of the report, or a summary of the report, in such manner as the Ombudsman thinks fit.
- (5) If the Minister, after taking into account the report of the Ombudsman under this section, believes that the council has unreasonably excluded members of the public from its meetings under Part 3 or unreasonably prevented access to documents under Part 4, the Minister may give directions to the council with respect to the future exercise of its powers under either or both of those sections, or to release information that should, in the opinion of the Minister, be available to the public.
- (6) The Minister must, before taking action under subsection (5), give the council a reasonable opportunity to make submissions to the Minister in relation to the matter.
- (7) A council must comply with a direction under subsection (5).
- (7a) The Minister may also publish the report, a part of the report, or a summary of the report, in such manner as the Minister thinks fit.
- (8) This section does not limit other powers of investigation under other provisions of this or another Act.

## 94A—Meeting information on website

***The chief executive officer of a council must, so far as is reasonably practicable, make available for inspection on the Internet an up-to-date schedule of the dates, times and places set for meetings of the council and council committees.***

## 95—Obstructing meetings

A person who intentionally obstructs or hinders proceedings at a meeting of a council or council committee, or at a meeting of electors, is guilty of an offence.  
Maximum penalty: \$1 250

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