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Minister's Good Practice Guideline MGPG-3: Virtual Meetings

This is a guideline issued by the Minister for Local Government pursuant to section 87 of the Local Government Act 2020.

Purpose

The COVID-19 pandemic has highlighted the need for, and usefulness of, a more flexible and modern approach to conducting certain required local government meetings.

The Victorian Government's *Regulatory Legislation Amendment (Reform) Act 2022* (Reform Act) introduces into the *Local Government Act 2020* (the Act) provisions relating to electronic attendance and participation in council meetings and delegated committees on a permanent basis. The new provisions take effect on 2 September 2022.

Electronic meetings, commonly referred to as 'virtual meetings', could include meetings where all participants attend electronically, some participants attend in person and some attend electronically i.e., 'hybrid', or where attendees across several meeting locations join electronically i.e., 'parallel'.

This Good Practice Guideline is designed to assist councils to amend their Governance Rules in consultation with their communities to comply with the new provisions in the Act relating to virtual meetings.

The Guideline takes effect from **2 September 2022** to align with the commencement of the new amendments.

Legislative requirements

Part 3 Division 2 of the Act provides for the procedure and proceedings for Council decision making, including the holding of meetings (being council meetings, joint meetings of councils, delegated committee, and joint delegated committee meetings).

The Reform Act introduces provisions into Part 3 Division 2 of the Act (section 60) that require a council to develop, adopt and keep in force Governance Rules relating to:

- the conduct of council (and delegated committee) meetings held by electronic means; and
- requesting and approving attendance by electronic means.

In developing or amending its Governance Rules, councils must ensure that a process of community engagement is followed in accordance with section 60(4) of the Act.

The new provisions further provide that Councillors, and members of delegated committees, may attend and be present by electronic means of communication provided they comply with the Governance Rules (section 61(6A)).

Under section 66 of the Act, a council or delegated committee must keep a meeting “open to the public” except in specified circumstances. New provisions insert a definition of “Open to the public” to mean, in the case of a council or joint meeting of councils, or a delegated or joint delegated committee:

- either, attendance in person by a member of the public, or a meeting that is broadcasted live on the council internet site; or
- a recorded meeting that is published on the council internet site as soon as practicable after the meeting (in the case of a delegated or joint delegated committee only); or
- any other prescribed means of meeting.

Responsibilities of Councillors and council staff

Irrespective of how council meetings are held, Councillors and council staff are required to continue to act in accordance with the prescribed Standards of Conduct, Councillor (or staff) Code of Conduct, the *Local Government Act 2020*, Governance Rules and other Acts, local laws and policies as applicable.

Disclosure of conflicts of interest as required under the Act and rules relating to conflicts of interest continue to apply.

Matters for a council to consider when developing Governance Rules for virtual meetings

Conduct of meetings

Governance Rules must provide for the conduct of Council and delegated meetings, whether held in-person or electronically.

Where these meetings are to be held virtually in accordance with the new provisions, Governance Rules could provide for how the format of a meeting is to be determined, including options for hybrid or parallel meetings where some members may attend in person and others by electronic means.

For example, the Governance Rules could set out how the Chair should manage a situation if a member attending electronically cannot hear proceedings, or cannot be seen or heard, but a quorum is present.

Requesting and approval of ‘electronic’ attendance (discrimination and reasonable adjustments)

The new provisions, in section 60(1) of the Act, provide that Governance Rules must provide for requesting and approving attendance at a council or delegated committee meeting by electronic means.

To comply with this requirement, councils should consider including in the Governance Rules:

- a. the format and criteria for requesting and approving attendance by electronic means
- b. whether the requests must be on a meeting-by-meeting basis or may be valid for a set period
- c. if there should be a 'deadline' for requests to ensure that facilities are available to accommodate the requested style of meeting and that appropriate notice can be provided to the public.

In developing and applying its rules in respect to requesting and approving requests to attend via electronic means, councils should have regard to other relevant Acts, such as the *Equal Opportunity Act 2010* (EO Act).

Under the EO Act:

- Direct discrimination occurs where a person treats, or proposes to treat, a person or group with a protected attribute, such as a disability, unfavourably because of the attribute.
- Indirect discrimination occurs if a person imposes or proposes to impose a requirement, condition or practice that is the same for everyone but disadvantages a person, or is likely to disadvantage a person, because they have one or more of the protected attributes, such as a disability, and the requirement, condition or practice is not reasonable.

Further, the *Gender Equality Act 2020* requires Councils to promote gender equality in their policies, programs and services.

Councils should consider providing flexibility with respect to participation at council meetings to enhance access for people with health issues and/or caring responsibilities, or who are unable to travel long distances.

Opening meetings to the public

Section 66 of the Act requires that council meetings and joint meetings of councils must be "open to the public" except in specified circumstances.

Councils should consider including rules regarding meetings if there is no option by which the public can attend the meeting in person, or if the council experiences technical difficulties in broadcasting the meeting to the public. The rules should set out how the council will address such matters to maintain an "open to the public" meeting.

Confidential council meetings or confidential/closed sections of council meetings are not required to be streamed live or electronically recorded.

Representation at council meetings by members of the public

Councils are encouraged to make arrangements to allow members of the public who wish to appear before council to do so through virtual or other means. The rules could consider how to ensure community engagement is maintained through virtual meetings including:

- a. the provision and uploading of written and/or oral statements
- b. reading out questions on notice at the virtual meetings
- c. electronically posting questions prior to the meeting.

Confidentiality

The provisions (in the Act) regarding confidential information continue to apply to electronic meetings. Confidential information must not be intentionally or recklessly disclosed. Councillors should be able to demonstrate to the satisfaction of the Chair that their location is secure to ensure the deliberations are confidential.

I have issued this guideline pursuant to section 87 of the Local Government Act 2020 (Vic).



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