



Access to council and committee meetings and council documents code of practice

Classification	Codes
Reference number	
Strategic reference	Goal 4 Organisational : Effective governance and organisational efficiencies
Relevant legislation	Local Government Act 1999
Relevant documents	Nil
Responsible officer	Chief Executive Officer
Date adopted	January 2016
Next review date	January 2020

1. Introduction

This Code sets out the commitment of Southern Mallee District Council to provide public access to Council and Council 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. Confidentiality guidelines

This code should be read in conjunction with the LGA's Confidentiality Guidelines which are designed to assist with the application of the provisions in the Act to restrict public access to meetings and or documents.



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3. Public access to the agenda for meetings

Public access to Council agendas is encouraged. This provides one of the main opportunities for the community to gain information about the business of Council and Committees. Agendas and associated documents for the meetings are publicly available subject to any indication from the Chief Executive Officer under section 83(5) of the Act or to an order of confidentiality under section 90(3) of the Act.

The following procedures apply to encourage public access:

1. At least three 'clear days' before a Council or Council 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.
2. The notice and agenda are to 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 and on Council's website.
3. The notice and agenda must be kept on public display and continue to be published on the website until the completion of the relevant meeting.
4. Items listed on the agenda are to be described accurately and in reasonable detail.
5. Copies of the agenda documents and non-confidential reports that are to be considered at the meeting must be made available to members of the public at the meeting. A reasonable number of copies are to be available for public inspection as soon as practicable after they are supplied to the members of Council.
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.
7. Distribution of agenda papers to members of Council, or members of a Committee, may include advice from the CEO of the Council (after consultation with the Principal Member of the Council, or in the case of a Committee - the presiding member) that a document or report on a particular matter be considered in confidence with the public to be excluded. Where this occurs, the CEO must specify the basis under which the order could be made in accordance with section 90(3) of the Act. [See sections 83(5) (Council) and 87(10) (Committee) of the Act]

4. Public access to meetings

Council and Council Committee meetings are open to the public and attendance is encouraged, except where a Council (or the Council 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 must encourage public attendance at meetings of the Council and Committees through public notification of meetings.



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4. Public access to meetings

In accordance with section 90 of the Act, it is not unlawful for Members of a Council, a 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.

A 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 Council Committee meetings. This means that section 90(2) to exclude the public has no role to play. It is recommended that public notice of an informal gathering, such as a workshop, be given and that the notice clearly indicate whether or not the informal gathering will be open to the public.

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
- Social gatherings to encourage informal communication between members or between members and staff.

5. Public access to minutes

Minutes of a meeting of Council or a Council Committee must be publicly available, including on the internet, within 5 days after the meeting.

6. 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.

A Council or Council committee should only order that a document associated with a discussion from which the public are excluded will remain confidential if it is considered proper and necessary in the broader community interest.

A Council or Council 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).

In accordance with section 91(8) a Council or Council 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



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6. Public access to documents

- the disclosure of the amount or amounts payable by the 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.

7. 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 a Council to resolve for the confidential order to be lifted. Once the order has lapsed, the minutes and/or documents automatically become public. At this point in time it is important that the Council make this information publicly available and also include it on the Council's website. It is recommended that the Code include a provision as to when the confidentiality orders will be reviewed.

Orders that exceed 12 months must be reviewed annually and a 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 Officer 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 Council 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. A Council or Council 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.



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8. Accountability and reporting to the community

A report on the use of sections 90(2) and 91(7) by a Council and Council Committee 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.

This information should also be considered in any review of the Code.

9. Availability of the code

The public may inspect a copy of the Code, without charge, at the offices of a Council during office hours, and may obtain a copy for a fee fixed by Council. The Code should also be available on the Internet. The availability of the Code can also be promoted to the local community through the Council's newspaper.

10. Review of the code

In accordance with section 92(2) of the Act each Council is required to review the Code within 12 months after the conclusion of each periodic election. However, it is recommended that Council undertake a review on a bi annual basis to ensure that the principle of open government is being applied in a proper manner. The Code of Practice should include when the next scheduled review is due to occur. Each Council has the ability to review the Code at any time if considered desirable.

11. Policy review

The effectiveness of this policy will be reviewed every three years or as necessary.

12. Further information

This document is available on Council's website www.southernmallee.sa.gov.au and at the principal office of the Southern Mallee District Council at Day Street, Pinnaroo SA 5304.

A copy of this document may be purchased from Council.