

# Governance Practice Note

No. 9

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## Special Committees

Councils may establish special committees with authority to exercise certain Council powers.

Special committees must operate in accordance with the Local Government Act and comply with the limits imposed by the Council's instrument of delegation.

Members of special committees must disclose conflicts of interests and not misuse their positions.

### What is a special committee?

A special committee is any committee to which the Council delegates a duty, function or power.

When exercising a delegated power, duty or function, a special committee effectively "is the Council".

All special committees must comply with the rules for special committees in the *Local Government Act 1989* (the Act). This includes delegation limits, meeting arrangements and conflicts of interest.

### Section 86

Most Council special committees are specifically established under section 86 of the Act and are sometimes referred to as "section 86 committees".

### LOCAL GOVERNMENT ACT 1989

#### **86 Special committees of the Council**

- (1) *In addition to any advisory committees that a Council may establish, a Council may establish one or more special committees of the following—*
  - (a) Councillors;
  - (b) Council staff;
  - (c) other persons;
  - (d) any combination of persons referred to in paragraphs (a), (b) and (c).
- (2) *A Council may appoint members to a special committee and may at any time remove a member from a special committee.*
- (3) *Except as provided in subsection (4), a Council may by instrument of delegation delegate any of its functions, duties or powers under this or any other Act to a special committee.*
- (4) *A Council cannot delegate to a committee the following powers—*
  - (a) *this power of delegation;*
  - (b) *to declare a rate or charge;*
  - (c) *to borrow money;*
  - (d) *to enter into contracts for an amount exceeding an amount previously determined by the Council;*
  - (e) *to incur any expenditure exceeding an amount previously determined by the Council;*
  - (f) *any prescribed power.*
- (5) *A Council may require a special Committee to report to the Council at intervals determined by the Council.*
- (6) *The Council must review any delegations to a special committee in force under this section within the period of 12 months after a general election.*

### **87 Special committee meetings**

- (1) *The Council must keep a register of delegations to special committees.*
- (2) *The Council may appoint a Chairperson for a special committee.*
- (3) *If the Council has not appointed a Chairperson under subsection (2), the members of a special committee must appoint a Chairperson.*
- (4) *If the Chairperson is not present at a meeting of a special committee the members must appoint a Chairperson for that meeting.*
- (5) *A meeting of a special committee must be held at a time and place determined by the special committee.*
- (6) *If the special committee has not appointed a time and place for a meeting under subsection (5), the Chairperson, or if the Chairperson is incapable of doing so, the Council, must fix the time and place of the next meeting.*
- (7) *Until approved by the Council a decision of a special committee which does not relate to a matter delegated to the special committee cannot be given effect to.*
- (8) *A Council may specify in the instrument of delegation that a member of a special committee who is a member of the public or of Council staff does not have voting rights on the special committee.*

### **89 Meetings to be open to the public**

- (1) *Unless subsection (2) applies, any meeting of a Council or a special committee must be open to members of the public.*
- (2) *A Council or special committee may resolve that the meeting be closed to members of the public if the meeting is discussing any of the following—*
  - (a) *personnel matters;*
  - (b) *the personal hardship of any resident or ratepayer;*
  - (c) *industrial matters;*
  - (d) *contractual matters;*
  - (e) *proposed developments;*

(f) *legal advice;*

(g) *matters affecting the security of Council property;*

(h) *any other matter which the Council or special committee considers would prejudice the Council or any person;*

(i) *a resolution to close the meeting to members of the public.*

- (3) *If a Council or special committee resolves to close a meeting to members of the public the reason must be recorded in the minutes of the meeting.*
- (4) *Unless subsection (4A) applies, a Council must at least 7 days before the holding of—*
  - (c) *a meeting of a special committee comprised solely of Councillors—*  
*give public notice of the meeting.*
- (4A) *If urgent or extraordinary circumstances prevent a Council from complying with subsection (4), the Council must—*
  - (a) *give such public notice as is practicable; and*
  - (b) *specify the urgent or extraordinary circumstances which prevented the Council from complying with subsection (4) in the minutes.*
- (5) *The Chairperson of a special committee that is not comprised solely of Councillors must provide reasonable notice to the public of meetings of the special committee.*

### **91 Conduct of meetings**

- (1) *A Council must make local laws governing the conduct of meetings of the Council and special committees.*
- (3) *Except as provided in this Act and subject to any local laws and any resolutions of a Council, the conduct of meetings of a special committee is in the special committee's discretion.*
- (3A) *A quorum at a meeting of the Council or a special committee must be at least a majority of the members of the Council or the special committee.*
- (4) *Resolutions made at a meeting of a Council or special committee must clearly state the intention and effect of the resolution.*

## Other Acts

Special committees may also be established under other Acts. For example, a planning committee established under section 188 of the *Planning and Environment Act 1987* is a special committee.

This is because the Local Government Act says that any committee that is delegated a Council power, duty or function, under any Act is a special committee.

### Types of special committee

Examples of common types of special committee are:

- Committees which exercise specific Council powers, such as planning decisions;
- Committees of management for public facilities such as community halls and recreation reserves;
- Committees of management for retail shopping strip promotion, which may or may not have delegations to spend funds raised by council specifically for the purpose of business promotion.

## Delegations

While it is desirable that major decisions be made by the Council, it is useful for lesser decisions to be delegated to committees or members of staff.

When a Council delegates a power, duty or function it invests the delegate (committee) with the authority to act as the Council.

### Instrument of delegation

The process of delegating a power, duty or function must include Council formally approving an instrument of delegation. Without a formal instrument of delegation, a special committee may not exercise any Council powers.

An instrument of delegation defines what authorities are given to the committee, including setting limits on the amounts of any contracts or expenditure that the committee may approve.

### Limits to delegation

While the Council may delegate most matters to a special committee, it is prohibited from delegating the following powers:

- Declaring a rate or charge
- Borrowing money
- Entering into contracts for amounts exceeding the limit set in the instrument of delegation
- Incurring expenditure beyond the limit set in the instrument of delegation.

In addition, the Council cannot allow a special committee to delegate any of its responsibilities to others. For example, a committee established to manage a Council facility cannot delegate its powers to approve expenditure to a single committee member or an employee.

## Register of delegations

Council must maintain a current register of delegations to special committees. The register must be available for public inspection.

## Review of delegations

Section 86(6) of the Act requires the Council to review all delegations to special committees within 12 months after a general election.

This ensures the new Council knows what decisions may be made in its name and who may make them.

Further, this is an opportunity to assess whether all the current committees are actually required.

Regular review of delegations is also important for probity reasons. Ultimately the Council must accept responsibility for the exercise of its powers, even when exercised by delegates.

## Membership

### Members

A special committee may include Councillors, Council staff or any other people as members. The membership of a special committee is a matter for the Council to decide.

It is recommended that Councils regularly review the membership of its special committees.

## Appointing members

No appointment process is specified in the Act for the appointment of community members to special committees. However, it is common for Councils to use an application form to collect information about candidates.

Application forms should not collect personal information beyond the minimum required to satisfy council data requirements, relative to the level of responsibility of the special committee.

Application forms for committees of management for public facilities should only require name, address, email and telephone contact details and a recognition members will comply with conflict of interest requirements.

Where a council is appointing community members to a committee of management for a recreation reserve, public hall or other public facility with tenant sporting clubs or community organisations, it is encouraged to allow those clubs/organisations to nominate representatives to serve on the special committee. However, the council remains responsible for making the formal appointment. An example nomination form for such a committee is attached (Appendix A).

Councils are encouraged to minimise unnecessary red tape in this process.

A Council may at any time remove a member from a special committee.

## **Appointing a Chairperson**

The Council may appoint a Chairperson for a committee. If it does not, the members must appoint a Chairperson.

If the Chairperson is not present at any meeting, the members present must appoint a Chairperson for that meeting.

## **Meetings**

Conduct of meetings must comply with the Act, Council's local law on meeting procedures, and any Council resolutions on the subject.

A quorum is at least a majority of the committee members.

A question before a special committee must be determined by majority vote of members present, following the procedures set out in section 90 of the Act.

Resolutions of the committee must clearly state their intention and effect.

Minutes of meetings must be kept as per the requirements set out in section 93 of the Act.

## **Caretaker restrictions**

The restrictions on decision making by a Council during a caretaker period before an election under section 93A apply equally to special committees.

## **Responsibilities of Delegates**

As delegates, special committees and their members have responsibilities that must be taken into account.

### **Delegation limits**

Delegates' powers are strictly limited to the powers described in the instrument of delegation. Any decision made that tries to exceed those powers is invalid and may result in legal action by anyone who is disadvantaged as a result.

### **Statutory limitations**

Any laws that limit the powers that may be exercised by the Council also apply to a special committee exercising the same powers.

For example, the provisions of section 186 of the Act regarding contracts, apply equally to contracts entered into by a special committee as those decided by Council resolution.

### **No improper purpose or misuse**

A special committee must not exercise a power, duty or function for any purpose other than that intended by the Act.

The provisions relating to misuse of position by Councillors apply equally to committee members (section 76D).

## Confidentiality

Committee members must not disclose confidential information.

In this context, 'confidential information' means information which is:

- provided to the committee in relation to a matter considered at a closed meeting;
- designated as confidential by resolution of the committee on specific grounds in section 89(2); or
- designated as confidential by the CEO and the Council or committee has not resolved the information is not confidential.

## No improper direction

Special committees must not be improperly directed in the exercise of the delegation. This includes by the Council or the CEO. However a special committee risks being terminated by the Council if deemed to be exceeding its delegated authority or improperly exercising its powers.

Further, many Councils have specific procedures for the Council to "call in" decisions, so they can be made by the Council, instead of the special committee.

The Council may require a special committee to report to it when required.

## Register of interests

Under the Act, special committee members must complete and submit a primary return of interest within 30 days of becoming a member of the committee, in accordance with section 81(2). They must also complete and submit an ordinary return twice a year thereafter, by the dates specified in section 81(5).

The Act allows Council to exempt non-Councillor members from this requirement.

Councils are encouraged to exempt all volunteer non-councillor members of committees of management for public facilities, such as public halls and recreation reserves, from this requirement.

## Conflict of Interest

The Act requires any member of a Committee with delegated powers to comply with conflict of interest rules.

Essentially, this involves procedures for:

- The disclosure of relevant interests and conflicts, and
- The person removing him or herself from the decision making process.

Local Government Victoria's 'Conflict of Interest Guide for Council Committees' sets out these requirements in detail, and is available online under 'Publications & Research' at [www.localgovernment.vic.gov.au](http://www.localgovernment.vic.gov.au).

**Councils are encouraged to make copies of this Guide available to Committees.**

While this document provides general guidance, it is not intended as legal advice.

# Nomination Form – Public Facility

<b>President / Chairperson</b>	
Name	
Address	
Email	
Tel	
Nominating Organisation (if required)	
<b>Secretary / Public Officer</b>	
Name	
Address	
Email	
Tel	
Nominating Organisation (if required)	
<b>Vice President</b>	
Name	
Address	
Email	
Tel	
Nominating Organisation (if required)	
<b>Treasurer</b>	
Name	
Address	
Email	
Tel	
Nominating Organisation (if required)	



Other Committee Members	
Position	
Name	
Address	
Email	
Tel	
Nominating Organisation (if required)	
Position	
Name	
Address	
Email	
Tel	
Nominating Organisation (if required)	
Position	
Name	
Address	
Email	
Tel	
Nominating Organisation (if required)	
Position	
Name	
Address	
Email	
Tel	
Nominating Organisation (if required)	
Position	
Name	
Address	
Email	
Tel	
Nominating Organisation (if required)	

The above named have acknowledged their obligation to disclose any relevant conflicts of interest. Any disclosed conflicts are attached.

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_  
**Secretary**