

Disruptive Behaviour by the Public at Council Meetings

Local Government Operational Guidelines - **Number 06** Revised December 2005



Department of Local Government
and Regional Development
Government of Western Australia

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1. Introduction

- 1 In recent years, a small number of local governments in Western Australia have experienced disruptive behaviour in ordinary and committee meetings by one or more members of the public. In the majority of cases the behaviour was of short duration and while members of council and staff were made uncomfortable business could continue. Unfortunately, in a few instances, this behaviour became so bad that normal business could not proceed until the offending parties left, or were removed from the chamber. This guideline provides advice on the options available to councils when members of the public exhibit ongoing disruptive behaviour in meetings.
- 2 The *Local Government Act 1995* (the Act) promotes participation of the community in council meetings through public question time and observation of the decision-making process which should be conducted in an open and transparent way. It is important that council meetings be conducted in an atmosphere of inclusiveness and openness to foster productive relationships with the community. Public question time plays an important part in achieving these objectives by providing an opportunity for the public to seek council responses on issues that are of interest to them. It is at this time in the agenda that most difficulties are likely to arise. This guideline should be read in conjunction with Guideline No. 3 “Managing Public Question Time”
- 3 To a large extent, the general conduct of a council meeting, particularly during public question time, depends upon mutual respect and good faith between elected members and the public.
- 4 There can be instances at a council meeting where a member of the public fails to show respect or consideration for the presiding member, elected members, council staff and other members of the public. Such disruptive behaviour makes the conduct of council business more difficult and stressful, reducing the efficiency and effectiveness of council meetings.

Disruptive behaviour also denies other members of the public the opportunity to participate in and observe council proceedings.

5 The following are examples of inappropriate behaviour:

- constant interjection, particularly when the presiding member or elected members present at the meeting are speaking;
- members of the public calling for points of order;
- booing individual members or the council;
- contemptuous laughter or derisive comments at decisions or during debate;
- refusal to give up the floor to allow other members of the public to ask questions or demanding to ask questions before others in contradiction of an order by the presiding person;
- refusal to accede to a presiding member's instructions, particularly when asked to desist from disruptive behaviour;
- use of abusive and/or inflammatory language when addressing council with a question or making a statement;
- unnecessarily repetitive questioning; and
- aggressive/threatening behaviour towards either elected members, council staff or members of the public.

2. Dealing with Disruptive Behaviour by Members of the Public

- 6 Instances where a member of the public behaves inappropriately during a council meeting and refuses to accede to the directions of the presiding person can be stressful for councillors, council staff and other people.
- 7 Most of the interjections whether from an individual or a group will be of limited duration as they will relate to one item in which they have a particular interest. In such cases the advice is for the council, and in particular, the presiding person, to behave with dignity.

This can be done by effectively ignoring the interjection and moving on with the business of the day. If the interjections continue it may be appropriate to ask the offending parties to cease. In many cases other members of the public gallery will support the presiding person and ask the disruptive person(s) to quieten down.

8 If the disruptive behaviour does not cease then a very useful tool is for an adjournment for a specific time period to be called. In such cases the Chief Executive Officer (CEO) should discuss the situation with the offending parties during the adjournment and ask them to behave appropriately in a place of government. The Mayor or President and other elected members should retain the dignity of their office by not interacting in any way with the interjectors during the adjournment. It would be appropriate when resuming for the presiding person to issue a warning that further continuation of the disruptive behaviour will lead to stronger action.

9 If after resuming the meeting the disruptive behaviour continues it would be appropriate for the presiding person to again adjourn the meeting and instruct the CEO to ask the offending person or persons to leave the premises. The CEO must take this action as while the presiding person is in charge of the meeting, it is the CEO who, through section 5.41(d) of the Act, has control or management of the local government's buildings, including the council chamber and meeting rooms and is the "person in authority" in relation to Section 70A of the Criminal Code.

10 Once the meeting has been adjourned the CEO would advise the person or persons that they are requested to leave the premises and that if they remain they will be committing the offence of trespass under Section 70A of the Criminal Code and could be prosecuted. The request to leave should be in the nature of a firm demand indicating that the request is not open for debate. Should the person or persons refuse to leave the CEO should advise them that the Police will be called to apprehend them and the local government will instigate legal proceedings.

11 Depending on the nature and intensity of the disruptive behaviour the presiding person may decide that more warnings will be issued before asking the CEO to request the person or persons to leave or the Police being called.

12 If the person or persons refuse to leave, under Section 49 of the *Police Act 1892* the CEO, or a person authorised by him or her, may apprehend and detain any person found committing an offence punishable in a summary manner until the person can be delivered into the custody of the Police. It is advisable that on all occasions the assistance of the Police be the preferred action. The power to apprehend and detain is not a power to eject a person from a meeting. Apprehending and detaining a person would be impractical in circumstances where the Police cannot attend to arrest the person for some considerable time.

13 Local governments considering using the power of apprehension and detention should seek legal advice in advance, particularly in relation to the handling of a person being apprehended. The potential for a person being liable to prosecution for an unlawful assault when using physical force to apprehend a person cannot be excluded.

14 A Police Officer has the power under section 50(1) of the Police Act to order a person to leave a public place if he or she suspects that the person "is hindering, obstructing or preventing any lawful activity that is being, or is about to be, carried out by another person".

15 Prosecution for a breach of section 70A of the Criminal Code may be commenced by an employee of a local government who is acting in the course of his or her duties, a person authorised in writing by the local government or a Police Officer. A prosecution is initiated by a prosecution notice under section 24 of the *Criminal Procedure Act 2004*.

16 Section 70A of the Criminal Code authorises the CEO to request a person to leave not only the building where the meeting is taking place, but also the local government property. This would address the situation where a person leaves the meeting but waits outside to challenge the elected members or staff after the meeting.

ATTACHMENT

Sections 49 and 50 of the Police Act 1892

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Police and property owners may apprehend offenders; police may search vehicles and people for stolen property

Any person found committing any offence punishable in a summary manner may be taken into custody without a warrant by any officer or constable of the Police Force, or may be apprehended by the owner of the property on or with respect to which the offence shall be committed, or by his servant, or any person authorised by him, and may be detained until he can be delivered into the custody of a constable, to be dealt with according to law; and every police officer or constable may also stop, search, and detain any cart, carriage, or vehicle, in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found, and also any person who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained; and any person to whom any property or liquor shall be offered to be sold, pawned, or delivered (if he shall have reasonable cause to suspect that any offence has been committed with respect to such property or liquor, or that the same, or any part thereof, has been stolen, or otherwise unlawfully obtained, or is intended to be used for an unlawful purpose), may apprehend and detain the person offering any such property or liquor as aforesaid, and as soon as may be deliver him into the custody of a constable, together with such property or liquor, to be dealt with according to law; and every person taken into custody without warrant for any offence against the provisions of this Act, or for any offence punishable in a summary manner, shall be detained in custody until he can be dealt with according to law.

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Police may order suspects and others to move on

- (1) *A police officer may order a person who is in a public place, or in a vehicle, vessel or aircraft used for public transport, to leave it, or a part of it specified by the officer, if the officer reasonably suspects that the person —*
 - (a) *is doing an act —*
 - (i) *that involves the use of violence against a person;*
 - (ii) *that will cause a person to use violence against another person; or*
 - (iii) *that will cause a person to fear violence will be used by a person against another person;*
 - (b) *is just about to do an act that is likely to —*
 - (i) *involve the use of violence against a person;*
 - (ii) *cause a person to use violence against another person; or*
 - (iii) *cause a person to fear violence will be used by a person against another person;*
 - (c) *is committing any other breach of the peace;*
 - (d) *is hindering, obstructing or preventing any lawful activity that is being, or is about to be, carried out by another person;*
 - (e) *intends to commit an offence; or*
 - (f) *has just committed or is committing an offence.*
- (2) *A police officer giving an order under subsection (1) may in addition do either or both of the following —*
 - (a) *order the person to go beyond a reasonable distance from a place, or the part of a place, set by the officer;*
 - (b) *order the person to obey the order or orders for a period set by the officer; but the period must not be longer than 24 hours.*

- (3) *For the purpose of giving an order under this section to a person whose personal details (as defined in section 16 of the Criminal Investigation (Identifying People) Act 2002) are unknown to the officer, a police officer may request the person to give the officer any or all of the person's personal details.*
- (4) *If a request is made under subsection (3), section 16 of the Criminal Investigation (Identifying People) Act 2002 applies to and in relation to the request in the same way as it applies to a request made under subsection (2) of that section.*
- (5) *Any order given under this section to a person must —*
 - (a) *be in writing in a form approved by the Commissioner of Police; and*
 - (b) *be served on the person by giving it to the person in person or, if the person refuses to accept it, by leaving it near the person and orally drawing his or her attention to it.*
- (6) *A person who, without reasonable excuse, does not comply with an order given by a police officer under this section commits an offence. Penalty: imprisonment for 12 months and a fine of \$12 000.*
- (7) *This section does not prevent a police officer charging a person with an offence without having exercised a power in this section.*

Section 70A of the Criminal Code

70A. Trespass

- (1) *In this section —*
 - “person in authority”, in relation to a place, means —*
 - (a) *in the case of a place owned by the Crown, or an agency or instrumentality of the Crown — the occupier or person having control or management of the place or a police officer; or*
 - (b) *in any other case —*
 - (i) *the owner, occupier or person having control or management of the place; or*
 - (ii) *a police officer acting on a request by a person referred to in subparagraph (i);*
 - “police officer” means a person who holds an appointment under Part I, III or IIIA of the Police Act 1892, other than a police cadet;*
 - “trespass” on a place, means —*
 - (a) *to enter or be in the place without the consent or licence of the owner, occupier or person having control or management of the place;*
 - (b) *to remain in the place after being requested by a person in authority to leave the place; or*
 - (c) *to remain in a part of the place after being requested by a person in authority to leave that part of the place.*
- (2) *A person who, without lawful excuse, trespasses on a place is guilty of an offence and is liable to imprisonment for 12 months and a fine of \$12 000.*
- (3) *In a prosecution for an offence under subsection (2), the accused has the onus of proving that the accused had a lawful excuse.*

[Section 70A inserted by No. 70 of 2004 s. 6.]



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FURTHER INFORMATION

For more information about this and other guidelines, contact the Local Government Support and Development Branch of the Department of Local Government and Regional Development on:

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These guidelines are also available on the Department's website at www.dlgrd.wa.gov.au

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All guidelines are subject to review, amendment and re-publishing as required. Therefore, comments on any aspect of the guideline are welcome. Advice of methods of improvement in the area of the guideline topic that can be reported to other local governments will be especially beneficial.