

Question 1:

Council, given that during your meeting of 23 March 2015 you *unanimously* resolved – without “consideration” or debate - to amend Local Law Standing Orders 2000 for the primary purpose of “*providing for the orderly conduct of the proceedings and business of the Council*”,

- (a) would you agree your decision implies that contrary to the minuted record thus far, neither the conduct of meetings nor the business of the Council have been adequately orderly – ie since 1973, Members have failed to deliver “orderly conduct of the proceedings and business of the Council” to an acceptable standard, thereby requiring strengthening of your local law and increases in applicable penalties to ensure compliance?
- (b) in support of this draconian law, how many prosecutions for alleged breaches of Standing Orders have been commenced since 1973 and how many of those prosecutions resulted in conviction?
- (c) how do the current changes improve the orderly conduct of the proceedings and business of the Council in ways not seen in the past?
- (d) what do Council believe to be the root causes of disorderly conduct and what measures might be applied to prevent them without resorting to prosecution of Members – eg education, training and inspirational leadership ?
- (e) how do Standing Orders respond to those identified or suspected root causes of anticipated future disorderly conduct by Members?
- (f) is it the case that the consumption of alcohol by Members from the Local Government’s well stocked bar before meetings may be a contributing factor to disorderly conduct and is therefore preventable?

Question 1 - City of Armadale Response

Part a) I do not agree

Part b) none that I am aware of

Part c) The Standing orders have not yet changed as a review of all submissions received is still to occur.

In general legislation and community needs and expectations change over time. It is expected any final changes will assist to ensure outdated, inefficient or ineffective practices are removed and replaced to assist ensure the orderly conduct of meetings.

Part d) The Council has an outstanding record of conducting its proceedings in an orderly and effective manner. There are no examples from which to draw conclusions in the root causes. The measures that contribute to this record are education, training, coaching and effective leadership

Part e) Standing Orders are one of the measures providing for the orderly conduct of Council and Committee Meetings. They act as a guide to those present on the process and standards expected. Standing Orders do not serve to predict what may or may not occur in the future but are designed to assist to provide a consistent and equitable mechanism to best maintain these standards.

Part f) I strongly disagree. Provision of meals before or after a meeting is required where people are consistently scheduled to attend after hours. Councillors and officers are well aware of their responsibilities.

Question 2:

Council, given the Interpretation Act 1984 at S18 sets out requirements for the “*Purpose or object of written law, use of in interpretation*”, why have you not included a “purpose” and/or “object” in Local Law Standing Orders 2000 to improve understanding by those upon whom it seeks to impose compliance – ie Councillors, staff and the public ?

Question 2 - City of Armadale Response

The Local Government Act 1995 s3.12 and the Local Government (Functions and General) Regulations 1996 r3 only require the purpose and effect to be included in the agenda and minutes.

Question 3:

Council, why have you not included in Local Law Standing Orders 2000 “definitions” of key terms;

- (a) likely to be the subject of prosecutions, such as “adverse reflection”, “ruling”, “relevant person”, “respect”, “disturbance”, “elector”, “ratepayer”, “owner”, “occupier”, “public”, “disrespectful” and “to have regard to” ?
- (b) that will enable Members, staff and the public to have some idea or concept of permissible boundaries of conduct?

Question 3 - City of Armadale Response

Some of these terms are defined in legislation. Others are generally understood and need to be applied to the circumstances as they arise, so that effect may be given to every part of the local law according to true spirit, intent and meaning.

Question 4:

Council, to assist interpretation, understanding, application and implementation, why have you not referenced in Local Law Standing Orders 2000;

- (a) the Government of WA publication: “*A Guide to Meetings for elected members to support their effective participation in council and committee meetings*”,
- (b) the relevant sections of *the Local Government Act 1995*,
- (c) *Local Government (Official Conduct) Amendment Act 2007*,
- (d) *Local Government (Administration) Regulations 1996*,
- (e) *Local Government (Rules of Conduct) Regulations 2007*,
- (f) *the Defamation Act 2005*?

Question 4 - City of Armadale Response

Legislation does not require these matters to be included, but, where appropriate reference and explanations are included. The City’s Standing Orders need to be kept practical and readable.

Question 5:

Council, given that under normal “orderly” circumstances only the elected Members of Council are the subjects of Local Law Standing Orders 2000 and said Members are regarded as mature, responsible civic leaders above reproach,

- (a) how can you justify creating a law that does not need to be a law in order to control your own ultra-conservative behavior?
- (b) and given Local Law Standing Orders 2000 is primarily a “procedure” having the intent of defining the well-established process to be used for the efficient management of business during meetings, why is it necessary for this simple procedure to be enshrined in law ?
- (c) have you considered that enshrining meeting procedures in law removes your capability to flexibility make changes as opportunities present from time to time to improve meeting efficiency and effectiveness because both the Chair and Members are similarly bound by them?
- (d) if making procedures law is a good strategy for internal organisational governance, why is it that none of your management systems or policies or procedures are also similarly enshrined in law with threat of substantial penalties for non-compliance?

Question 5 - City of Armadale Response

Part a) the purpose of the law is to manage the behaviour of all participants of the meeting.

Part b) Standing Orders play an important role in ensuring the efficient and orderly conduct of Council and Committee Meetings. The degree of importance Council places on these is reflected in their preference to have them enshrined in law rather than a less formal procedure or protocol.

Part c) Yes

Part d) several are e.g. Record Keeping Policy and Associated Management Practice with significant (\$10,000) penalties for certain breaches.

Question 6:

Council, are you aware the Local Government Act prohibits any Member from instructing officers to prosecute another Member (*LG (Rules of Conduct) Reg 10 - and City of Armadale 2010 Code of Conduct 1.5*) thus it will therefore be the case that a prosecution can only be launched independently by the CEO – a subservient employee - upon his or her own initiative or upon a direction to the CEO by a resolution from full Council?

Question 6 - City of Armadale Response

If a Councillor has an issue with another Councillor, then they have a number of mechanisms at their disposal. This could include reporting the matter to:

The CEO

The Department of Local Government and Communities

The Public Sector Commission

The Corruption and Crime Commission

The Police

Who the issue is reported to will depend on the nature of the issue to be reported.

Question 7:

Council, do you realise that your Committees, not having powers or duties, are not empowered to take any action of any kind and therefore a decision of a Committee to prosecute one of its Members, Staff, Elector or the Public;

- (a) can only at best be a “recommendation” and thus require a submission to full Council for action to be ratified and initiated, thereby protracting and inflaming causes and consequences from an alleged breach of Standing Orders?
- (b) exposes the all or any of the whole Committee Members to risk of a defamation/libel suit from the disaffected Member, Officer, Elector, or a Member of the Public, because a Committee is not a legal entity ?

Question 7 - City of Armadale Response

Part a) Yes Councillors are aware at Committee action of any kind must be by recommendation to full Council.

Part b) I do not agree on the basis Councillors still need to abide by the Local Government (Rules of Conduct) Regulations 2007, the Code of Conduct and other laws such as Chapter XXXV of the Criminal Code.

Question 8:

Given S9.56 of the Local Government Act 1995 provides protection against actions in tort to “protected persons” as defined, it follows that a breach of Local Law Standing Orders 2000 can only be in the criminal jurisdiction, therefore have you considered;

- (a) the consequences of a prosecution upon a Member?
- (b) there is no provision in Local Law Standing Orders for a summary infringement penalty and therefore a prosecution appears to be only possible by summons to the Magistrate’s Court in the criminal jurisdiction?
- (c) each and every Member will be liable to a permanent criminal court record upon the whim, anger, malice or resentment of fellow Members?
- (d) the effect of a lifetime criminal court record upon those of your number who are a Justice of the Peace, a marriage celebrant, or employed in an occupation requiring a *national* Police Clearance Certificate
- (e) to protect his or her reputation, good standing in the community and future election prospects, a Member so prosecuted will likely defend a charge all the way to the Supreme Court, WA Appeals Court or High Court, diverting Council’s attention and resources from governing to prosecuting or defending?
- (f) the likely effect upon future working relationships between Members and functioning of Council, if one or Members are ostracised by fellow Members?
- (g) the effect a prosecution might have on a Member’s willingness to support future projects or motions presented by those who prosecuted him or her?
- (h) prosecuting an officer employee of the Local Government is likely to lead to crippling disruptive industrial action?

Question 8 - City of Armadale Response

Part a) Yes

Part b) This type of penalty would require support from the Department of Local Government and the Joint Standing Committee on Delegated Legislation (JSCDL). As a new concept for local government consideration would be required to its effective administration if it was supported by the JSCDL.

Part c) If a person commits an offence and is found guilty by a court then it would depend on the nature of the offence as to whether there would be a permanent criminal record. The courts do not issue convictions on the basis of a whim or because one person resents another.

Part d) Yes

Part e) This is the individual's right. There are limitations on the use of City resources for legal representation in accordance with Policy ADM17. The City also appoints its own legal firms to represent its own legal interests in Court.

Part f) Yes

Part g) Yes

Part h) Not necessarily

Question 9:

Council, given your experience shows a series of recent trials and appeals through the courts resultant from the decisions of your CEO to prosecute can easily take two to three years and cost huge sums not always recoverable,

- (a) how will you manage disaffected Members caught up in the justice system during that period?
- (b) how much of Ratepayer funds are you prepared to spend on frivolous persecutions for minor breaches of Standing Orders ?

Question 9 - City of Armadale Response

Part a) Each case as it arises (or if) will be assessed on its merits.

Part b) If frivolous then minimal to none.

Question 10:

Council, how will you prevent “payback” or “tit for tat” complaints from convicted Members against those who initiated their original conviction(s)?

Question 10 - City of Armadale Response

There are other avenues available to prevent or stop such occurrences. These include the code of conduct, rules of conduct and standing orders local law, councillor training and separate internal meetings with the individuals concerned.

Question 11:

Council, have you considered that both the “person presiding” and the CEO do not normally participate in debate and are therefore;

- (a) not subject to the rules of Standing Orders in a way likely to lead to prosecution ?
- (b) for practical purposes exempt ?
- (c) being part of Council and its most senior executive are thereby both participant and prosecutor in events that would allegedly breach the laws of natural justice
- (d) nonetheless liable to prosecution for errors or omissions in application and implementation of decisions, processes or actions under their direct control ?

Question 11 - City of Armadale Response

Part a) The CEO presents reports and information to Council seeking a decision or informing them of matters that relate to their role as a Councillor. The CEO is to guide and inform Councillors on protocol and provide information to assist with their decision and not to enter into debate. It is Council that debates and makes decisions therefore the CEO is not subject to the same rules as Councillors. However, the CEO is still bound by Standing Orders. There are other measures available to the person presiding or Council should the CEO behave inappropriately.

Part b) as above.

Part c) the laws of natural justice still apply regardless of what mechanism is used. Prosecutions need to be presented to court at which point the normal judicial processes apply. This includes the rights of both parties to present their respective cases, the outcome of which is adjudicated by a person at arms’ length to the issues, usually a magistrate.

Part d) both parties are subject to a variety of prosecutions. Each individual circumstance would need to be assessed on its individual merit.

Question 12:

Council, are you aware the Local Government Act 1995 prescribes at Section 9.16;

“(1) An authorised person who has reason to believe that a person has committed a prescribed offence against a regulation or local law made under this Act may, within 28 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender. ”

and that in consequence;

- (a) an *infringement notice* may be issued after the event – ie after a meeting at which disorderly conduct is alleged to have occurred ?
- (b) there is no requirement for the Member to be advised during a meeting that a breach has occurred ?
- (c) once issued, the Infringement Notice must be responded to or else it automatically triggers the Fines Enforcement Registry process in the Magistrate’s Court ?

Question 12 - City of Armadale Response

Part a) Correct

Part b) It is an appropriate application of s.9.16 that up to 28 days is available to enforce the provision. However, it is more likely that alleged issues would be brought to the person’s attention at the meeting during a meeting adjournment.

Part c) Yes this aligns to the normal infringement process unless the matter is withdrawn by an authorised officer prior.

Question 13:

Council, to give effect to the Local Government Act 1995 S9.16 it is necessary to appoint “*authorised persons*” under the powers bestowed by S9.10.

Consequently,

- (a) what process will be used to determine who those *authorised persons* will be ?
- (b) will this process be effected and authorised by full Council or independently by the CEO ?

Question 13 - City of Armadale Response

Part a) the process includes an assessment of the nature of the officers role within the City, the type of power to be authorised and the level of administration required to perform the authorisation.

Part b) both.

Question 14:

Council, having regard to the Local Government Act 1995 S9.16;

“(2) A local government can only prescribe an offence for the purposes of subsection (1) if a prosecution for the offence could be commenced by the local government or any of its employees and the local government is satisfied that —

- (a) commission of the offence would be a relatively minor matter; and*
- (b) only straightforward issues of law and fact would be involved in determining whether the offence was committed, and the facts in issue would be readily ascertainable.”*

would you agree that prosecution of an elected Member could become a very messy affair with conflicting opinions between elected Members as to what constitutes “*straightforward issues of law and fact*” supporting an alleged breach of Local Law Standing Orders ?

Question 14 - City of Armadale Response

s.9.16 relates to infringement notices and not penalties therefore is not relevant in the context of your question. If however effective processes and system are in effect for handling prosecution matters then the risk is considerably low.

Question 15:

Council, how is it possible for a person to make a complaint as defined in Standing Order 8.8 about a Member or an employee;

- (a) when there is no provision in meeting agendas, processes or procedures for such a complaint to be made – particularly when Standing Order 8.4.3 expressly prohibits the making of such a complaint ?
- (b) when there is no commitment to confidentiality ?
- (c) when a complaint made in good faith about a Member, a Committee or full Council, but based upon unverifiable evidence available to the complainant at the time of making the complaint – eg a “suspicion” or “suspicious inference” requiring further internal investigation by the local government, when the laws of libel apply ?

Question 15 - City of Armadale Response

Part a) It is fairly clear from both the Act and Guidelines that public Committee and Council meetings are not the place for complaint against either members or employees of the Council. There are other mechanisms in place for such complaints to be addressed. Further, it is important to draw a distinction between reflecting adversely about an employee at a council meeting i.e. making adverse comments or statements about the officer at the meeting, versus lodging a formal complaint in writing about the officer.

Part b) It is not accepted practice for people to make a complaint about individuals at a Council or Committee Meeting in the manner described so Councillors commitment to confidentiality is not in doubt. Should such an incident occur in the future then it will be the Presiding Person’s discretion as to how the matter is handled, including commitment to confidentiality.

Part c) This is common to applying all the laws of the land. The process would depend upon the circumstances and merit of each complaint.

Question 16:

Council, have you considered that in relation to the giving of evidence to support a prosecution;

- a) the defendant could summons every other Council or Committee Member in their defence and subject them to cross-examination under oath to examine their motives in supporting a prosecution and by that means reveal otherwise confidential personal information, open up old wounds and settle old scores ?
- b) the Local Government Act 1995 prescribes:

9.37. Using meeting minutes as evidence

- (1) *Evidence of a matter that is recorded in a document purporting to be a certified copy of all or any part of confirmed meeting minutes may be given by tendering the document.*

it has been the practice of the City of Armadale not to record details of debates – ie who said what and when are not recorded in Minutes and therefore a prosecution must rely upon (unreliable) oral evidence only ?

Question 16 - City of Armadale Response

Part a) Yes it has been considered.

Part b) Yes it has been considered.

Question 17:

Council, pursuant to the requirement of the Local Government Act 1995 S9.37, evidence comprising minuted records must be “confirmed” – an act normally performed by Members at their next scheduled subsequent meeting of Council or Committee – and therefore have you considered that;

- (a) unless that confirming meeting occurs within 28 days from the date of alleged breach of Standing Orders, a Summary Justice Infringement Notice cannot be given ?
- (b) since Council and Committee meetings occur fortnightly or monthly and there is a delay between Committee meetings and subsequent Council meetings essential to receiving reports and recommendations, it is inevitable that under the rules of “due process”, an Infringement Notice cannot be issued ?
- (c) and in consequence a prosecution can only be practically commenced by summons in the criminal jurisdiction ?

Question 17 - City of Armadale Response

Part a) Modified penalties are not in place and are not proposed to be introduced therefore infringements are not applicable and proposed penalty must be presented to a court of summary jurisdiction for determination.

Part b) Infringement Notice would be issued on the issuing officer’s consideration of the facts. Evidence will be required at time of summons – Minutes will have been confirmed.

Part c) correct

Question 18:

Council, have you considered that the Local Government Act prescribes at Section 9.15;

9.15. Terms used

In this Subdivision —

authorised person in section 9.16, 9.17, 9.19 or 9.20 means a person appointed under section 9.10(1) by the local government to be an authorised person for the purposes of the section in which the term is used;

“local government” means the local government that could, or an employee of which could, prosecute for the offence concerned;

“prescribed” means prescribed by a local law or, if the alleged offence is against a regulation, prescribed by regulations or by a local law.

9.10. Appointment of authorised persons

- (1) The local government may, in writing, appoint persons or classes of persons to be authorised for the purposes of performing particular functions.*
- (2) The local government is to issue to each person so authorised a certificate stating that the person is so authorised, and the person is to produce the certificate whenever required to do so by a person who has been or is about to be affected by any exercise of authority by the authorised person.*

thus to give effect to Local Law Standing Orders 2000 is it your intention to authorise either all or any of yourselves or a City employee(s) to issue infringements or is it your intention to wait until after an alleged offence before creating authorisations ?

Question 18 - City of Armadale Response

Refer to question 17 – Infringements do not apply so it is not the City’s intention at this point to authorise any officer with the power to issue them in accordance with the Local Law Standing Orders 2000

Question 19:

Council, the Local Government Act 1995 prescribes at Section 9.23:

“9.23. Restriction on appointment of authorised persons

A person who is authorised to give infringement notices under section 9.16 is not eligible to be an authorised person for the purposes of section 9.17, 9.19 or 9.20.”

consequently, given it would be a criminal offence to interfere with the course of justice once an Infringement Notice or Summons is issued, what protective measures could you apply to prevent disaffected Members or employees from colluding to initiate vindictive or malicious prosecutions, or the withdrawing of prosecutions from favoured Members, or Members and/or officers who have a close relationship ?

Question 19 - City of Armadale Response

There are a number of measures and tools available to minimise the risks including meeting with people alleged to have breached any requirement, induction and refresher information sessions on the code of conduct, rules of conduct, training / education seminars to inform officers of the associated risks and processes should they become aware of alleged breaches and periodic audits.

Question 20:

Council, given Part 5 of Division 9 of the Local Government Act 1995 sets out requirements for conduct of certain officials;

5.103. Codes of conduct

(1) Every local government is to prepare or adopt a code of conduct to be observed by council members, committee members and employees.

City of Armadale Code of Conduct 3.3 - Improper or Undue Influence (Rule of Conduct – Reg 7 refers)

Councillors and staff will not take advantage of their position to improperly influence other Councillors or staff in the performance of their duties or functions, in order to gain undue or improper (direct or indirect) advantage or gain for themselves or for any other person or body. Similarly, Councillors, Committee Members and staff will not take advantage of their position to the detriment of Council, the City or other persons.

and penalties for breaches are set out in S5.110 (6) and 5.117, in relation to opportunities for prosecutions under Local Law Standing Orders 2000, how do you propose to manage the requirements of your Code of Conduct 3.3 when it is clear that any prosecution would politically advantage other Members by mere inference of misconduct or wrongdoing on the part of another Member ?

Question 20 - City of Armadale Response

Of primary importance is ensuring any Councillor or officer that is allegedly in breach of any obligation, particularly a law, be dealt with in accordance with the type and severity of breach that has occurred. It is not clear how you perceive other Members gain any “advantage” by a prosecution? Every Council decision requires elected members present to vote on merit on the information before them.

Question 21:

Council, given the Local Government Act 1995 prescribes:

5.120. Complaints officer

(1) Each local government is to designate a senior employee, as defined under section 5.37, to be its complaints officer.

is it then the case that the requirements of S9.16 and S5.120 taken together mean that the only person who can initiate prosecution of a Member of Council, a committee member or an employee is the “Complaints officer” ?

Question 21 - City of Armadale Response

No – the role of a complaints officer is separate to that of an authorised officer authorised to issue notice to a person for committing a prescribed offence against a regulation or local law made under the *Local Government Act 1995*.

Question 22:

Council, given the Local Government (Audit) Regulations 1996 require every local government to carry out a Compliance Audit for the period 1 January to 31 December each year and to complete a Compliance Audit Return (CAR) as produced by the Department of Local Government, and Council at its meeting of 23 March 2015 unanimously endorsed that certified report for 2014/15 prepared by your Audit Committee, and that report identifies the CEO as your Complaints Officer,

- (a) are you aware that in the case of official conduct complaints against the CEO and/or breaches of Local Law Standing Orders 2000 by the CEO, the CEO would be “standing in his own shoes” in relation to complaints about himself or herself – ie a breach of the principles of natural justice and not likely to initiate a prosecution ?
- (b) why did your Audit Committee not detect that non-complying arrangement before completing its Official Return ?
- (c) why did you unanimously resolve to accept the Audit Return at face value without debate ?
- (d) why did you adopt revised Local Law Standing Orders 2000 at that same 23 March 2015 meeting when they do not comply with the Official Conduct requirements of the Local Government Act 1995 ?

Question 22 - City of Armadale Response

Part a) Incorrect – complaints against a CEO for breach of any law can be undertaken by any natural person in a variety of ways including outside of the City’s internal complaints process.

Part b) this is not a non-complying issue as section 5.120 of the *Local Government Act 1995* prescribes the CEO as the complaints officer if an officer is not nominated.

Part c) this is the Audit Committee’s discretion

Part d) Incorrect - The Local Law Standing Orders 2000 was not adopted on 23 March 2015. In accordance with the legislative process Council simply informed the community of its intent to review the local law.

Question 23:

Council, given the Local Government (Official Conduct) Amendment Act 2007 and Local Government (Rules of Conduct) Regulations 2007 have been in place for eight years, why has your Audit Committee not yet identified that Local Law Standing Orders 2000 have been and remain non-compliant with those laws determined by the Parliament of Western many years ago ?

Question 22 - City of Armadale Response

The current Local Law Standing Orders 2000 were compliant and relevant at the time they were adopted. This is supported by the fact the State Governments Joint Standing Committee on Delegated Legislation approved them.

Over the course of time new legislation is introduced or existing legislation is amended by the State or Commonwealth Governments that affects existing older laws and practices. It is for this reason local government is periodically required to review local laws to ensure they keep up with these changes and that they best reflect the latest community needs and expectations.

This is the basis of the current review of the City’s standing orders.

Question 24:

Council, given the Local Government Act 1995 prescribes:

2.22. *Disqualification because of convictions*

- (1) *A person is disqualified for membership of a council if the person —*
- (b) *has been convicted in the preceding 5 years of a serious local government offence;*
- (3) *A “serious local government offence means an offence against this Act or the former provisions for which an offender —*
- (b) *could be sentenced to pay a fine of or exceeding the amount prescribed for the purposes of this section.*

and Standing Order 19.1 applies a penalty that in aggregate over a period will exceed the prescribed amount, do you accept it follows that if an offence against Local Law Standing Orders is deemed to be a “*a serious local government offence*” then each and every convicted Member of Council would be automatically disqualified from office ?

Question 24 - City of Armadale Response

No I do not agree on the basis regulation 12 of the *Local Government (Constitution) Regulations 1998* refers to the prescribed amount of \$5,000 being an offence and not multiple offences even if this offence occurs five times in one year.

Question 25:

Council, having regard to the Local Government (Rules of Conduct) Regulations 2007, which prescribe:

4. *Contravention of certain local laws*

- (1) *In this regulation —*
local law as to conduct *means a local law relating to conduct of people at council or committee meetings.*
- (2) *The contravention of a local law as to conduct is a minor breach for the purposes of section 5.105(1)(b) of the Act.*
- (a) can you accept that in relation to Councillors – but not staff, Electors, Ratepayers, Occupiers and the Public, being “people” - the monetary penalties prescribed by Local Law Standing Orders 2000 are not permitted in relation to matters defined by the Regulations as “Rules of Conduct” ?
- (b) why have you created a Local Law that imposes upon each Member of Council a \$5,000 penalty when the Act and applicable Regulations prescribe no money penalty is applicable ?
- (c) is your ethos of threats and penalties simply a case of you implementing the literal advice of Jesus as recorded in Matthew 5:30 in the King James Bible:-
“if thy right hand offend thee, cut it off, and cast it from thee: for it is profitable for thee that one of thy members should perish, and not that thy whole body should be cast into hell.” ?

Question 25 - City of Armadale Response

Part a) The Rules of Conduct were introduced after the City's Standing Orders were enacted therefore any requirement that is contrary to or in conflict with newer State (or Commonwealth) legislation may not be enforceable. This is a cyclical process that affects all legislation.

Part b) The Standing Orders were enacted well prior to the Rules of Conduct therefore were current and relevant until the enactment of the Rules of Conduct. Whilst the Rules of Conduct do not contain a direct financial penalty under certain circumstances they contain other sanctions including dismissal, which is indirectly a financial penalty as the Councillor would no longer receive their annual allowance.

NOTE: As already commented in the response to question 22, on 23 March 2015 Council did not adopt the Standing Orders local law it simply advised of its intent to review them. After a public consultation period all submissions will be taken into account and where there are any out dated legislative references or inconsistencies with other legislation these are to be updated.

Part c) No

Question 26:

Council, given your formal official "Code of Conduct 2010" prescribes:

"A Councillor is part of the team in which the community has placed its trust to make decisions on its behalf and the community is therefore entitled to expect high standards of conduct from its elected representatives."

- (a) why is it necessary to impose a money penalty and criminal court record upon those who may breach that code unintentionally or in "the heat of the moment" in vigorous pursuit of the best interests of the people comprising the Ward which that Member represents ?
- (b) how can you maintain "team spirit" in a team in which its Team Leader and/or Members are prepared to prosecute each other ?

Question 26 - City of Armadale Response

Part a) Lessor (or nil) penalties and consequences apply where Councillors or officers act in good faith and/or in the greater interests of their electors and community as a whole. Every instance will be assessed on its merits.

Part b) if it arose then by ensuring fair and reasonable application and enforcement of the very protocols you refer to within these questions i.e. the Standing Orders, Code of Conduct and Rules of Conduct. Other less formal methods include training, coaching and mentoring, use of facilitators and mediators etc.

It is testimony to the City's "Team Spirit" that no breaches or serious complaints have occurred.

Question 27:

Council, given you determined by formal and unanimous resolution at your meeting of 23 March 2015 that the “effects” of your current amendments to Local Law Standing Orders 2000 are:

- b) *to update the Local Law to more accurately reflect current legislation and operational practices as applied by the Council in the conduct of Council, Committee and other meetings.*

would you agree that your decision not to not declare in that statement a five to tenfold increase in penalties, inclusion of specific requirements for Elector Meetings and setting aside the requirements of the Local Government Act and Regulations might be reasonably described as “misleading” and a breach of your own existing Code of Conduct 2010 ?

Question 27 - City of Armadale Response

No

Question 28:

Given it is not possible in law for a Member of the Public, not being an authorised Public Officer or Public Authority, to prosecute a public official or a public authority in the criminal jurisdiction;

- (a) would you agree it is not fair and reasonable for Members to be absolved from prosecution for their own actions when those same Members have decided the public will be exposed to prosecution and heavy fines for the same acts in the same place ?
- (b) what processes are available to disaffected or concerned Ratepayers, Electors, Owners or Occupiers – otherwise described as “the Public”, to seek prosecution for alleged provable breaches of Standing Orders by the Person Presiding or the CEO ?

Question 28 - City of Armadale Response

Part a) incorrect – Members of the public can prosecute directly by taking Civil action, or indirectly by reporting issues to the most appropriate officer or agency responsible for the issue in question.

Part b) Reporting allegations to the CEO or Mayor (Depending upon the nature of the matter), The Department of Local Government and Communities, the Corruption and Crime Commission, Public Interest Disclosures, the Police

Question 29:

Council, given Local Law Standing Orders 2000 provide for their “suspension”, it is reasonable to assume for good governance they should be suspended in entirety – ie all or none, consequently;

- (a) do you believe it a reasonable practice in a country governed by “the Rule of Law”, for a Council or a Committee, not being a natural person or an entity in law, to be able to turn law on or off depending upon its mood or whim ?
- (b) do you believe it a reasonable practice for a Committee, not authorised to make “decisions”, to independently make a decision to absolve itself from the Rule of Law ?
- (c) how can a Committee have delegated powers when it does not have delegated powers ?
- (d) do you believe it reasonable for “the person presiding” to have unconstrained powers to switch the law on and off without recourse by those affected, specifically staff and the public ?
- (e) having regard to the skills and knowledge of the more experienced Members among your number, do you believe it likely that if they foresee a situation where they may be exposed to prosecution, they will move to suspend all or certain Standing Orders – particularly SO 19.1 - to eliminate that threat, whereas inexperienced Members may remain exposed to the full force of the law ?
- (f) do you think it reasonable for a process to be available in Standing Orders to enable Members to switch suspended Standing Orders back on - instead of its current omission and therefore unlawful status ?
- (g) do you think it reasonable for said process to be defined and documented in Standing Orders so that all affected may be aware of requirements ?
- (h) in the case of SO 20 (2) which prescribes “*The mover of a motion to suspend temporarily any one or more of the Standing Orders is to state the clause or clauses to be suspended, and the purpose of the suspension.*” why is it not a mandatory requirement to record said purpose in the official record ?

Question 29 - City of Armadale Response

Part a) I believe laws should be abided by

Part b) A committee cannot make decisions it is not authorised to make

Part c) The answer is in the question –a committee without delegated authority doesn’t have delegated authority

Part d) this is the law

Part e) No, I don’t believe it is likely. I acknowledge it is possible. Any officer or Councillor that abuses their power or position would be answerable.

Part f) I believe in what is lawful

Part g) I believe in what is lawful

Part h) SO 20(2) does not exist within the current Standing orders therefore I presume you are referring to 18.1(2). If this is the case then all order of business is captured on the public record including suspension of the Standing Orders and the clause or clauses to be suspended. I refer you to regulation 11 of the *Local Government (Administration) Regulations 1996* that deals with motions.

Question 30:

Council, given the Local Government Act 1995 provides:

5.24. Question time for public

(2) Procedures and the minimum time to be allocated for the asking of and responding to questions raised by members of the public at council or committee meetings are to be in accordance with regulations.

and Local Government (Administration) Regulations 1996 prescribe:

7. Question time for public, procedure for (Act s. 5.24(2))

(1) Procedures for the asking of and responding to questions raised by members of the public at a meeting referred to in regulation 6(1) are to be determined —

- (a) by the person presiding at the meeting; or*
- (b) in the case where the majority of members of the council or committee present at the meeting disagree with the person presiding, by the majority of those members, having regard to the requirements of subregulations (2), (3) and (5).*

18. Procedure at meeting (Act s. 5.31)

Subject to regulations 15 and 17, the procedure to be followed at a general or special meeting of electors is to be determined by the person presiding at the meeting.

- (a) would you agree the requirements “to have regard to Council Policy” ” in Standing Order 3.3 and “to have regard to” in SO 18.1 are contrary to, and covertly attempt to impose limitations upon, the requirements of the LGA S 5.24 (2), 9.59 (2) (c) and Local Government (Administration) Regulations 1996 R 7 and 18, and are therefore unlawful ?
- (b) would you agree that the Act and Regulations directly empower the *person presiding* to determine procedures *absolutely*, and therefore the requirements of Local Law Standing Order 18.1 are an attempt by Council to undermine and diminish the statutory authority of the *person presiding* ?
- (c) would you agree Standing Orders have abrogated a Public Question Time statutory right and substituted a “management practice policy” (SO 3.3), subject to capricious variance by the Chair ?
- (d) is it not the case that Regulation 7 explicitly refers to “*procedures*” and therefore, in the case of Standing Order 18.1, if the person presiding chooses to “*have regard to*” Local Law Standing Orders then that power “*to determine procedures*” does not include imposing the penalties or threat of penalties prescribed by Local Law Standing Orders ?
- (e) is it not the case that Regulation 7 explicitly authorises the person presiding to determine “procedures” for Elector Meetings, but not to discretionally impose a law, or selected part of a law, which is otherwise not applicable ?
- (f) given these issues were raised at your meetings of 6 March 2001 and 6 June 2006, and again in a formal detailed “public submission” in June 2010, why has it been so long for nothing to change when there is clear need for improvement in the way you interface with your constituents and manage your meetings ?
- (g) would you agree that if in fact Standing Orders are applicable to Elector Meetings then past rulings of the person presiding at an Elector Meeting not to allow a motion from an Elector to suspend Standing Orders during such a meeting was unconstitutional ?

Question 30 - City of Armadale Response

Part a) this requirement was relevant and approved by the JSCDL in 2000 when the laws were adopted. Recent submissions have been received as part of the public consultation process relating to this section and are currently being reviewed so it may change to reflect current practices.

Part b) No on the basis a local law does not override an act of Parliament and further, if at the time of the meeting Council as a whole disagree with the Presiding Person a point of order can be raised and his/her decision can be challenged and over turned.

Part c) No

Part d) where a specific standing order includes provision of a penalty and a person breaches that order, then the presiding person (or Council) can choose to pursue that matter.

Part e) No

Part f) Local law review public submissions are encouraged with all information received considered and factored into the decision making process. Part g) No – There are many factors that can affect the ability for a person being denied the opportunity to present a motion including being disruptive, unreasonable, offensive or rude, creating a disturbance, interrupting or interfering with proceedings etc.

Question 31:

Council, given the Local Government (Administration) Regulations 1996 provide:

6. Question time for public, minimum time for (Act s. 5.24(2))
 - (1) *The minimum time to be allocated for the asking of and responding to questions raised by members of the public at ordinary meetings of councils and meetings referred to in regulation 5 is 15 minutes.*
 - (2) *Once all the questions raised by members of the public have been asked and responded to at a meeting referred to in subregulation (1), nothing in these regulations prevents the unused part of the minimum question time period from being used for other matters.*
7. Question time for public, procedure for (Act s. 5.24(2))
 - (2) *The time allocated to the asking of and responding to questions raised by members of the public at a meeting referred to in regulation 6(1) is to precede the discussion of any matter that requires a decision to be made by the council or the committee, as the case may be.*

in relation to the time set aside for Public Question Time, is it not the case that the time limit constraining requirements of Standing Order 3.3 Public Question Time, being defined as:

“The procedure for Public Question Time shall be determined by the person presiding having regard to Council Policy” (sic: “including”),

EM 6 POLICY & MANAGEMENT PRACTICE 5.1.29 – PUBLIC QUESTION TIME PROCEDURES

- *Meetings of the Community Services, Development Services, Technical Services and City Strategy Committees shall be open to the public and include a public question time.*
 - *Unless otherwise determined by the person presiding, or a majority of the members present, the procedures for public question time at Council and committee meetings shall be in accordance with the current Management Practice.*
1. *Minimum time allocated to Question Time is 15 minutes.*
Where it is apparent that additional time is required, the Presiding Member will invite Committee or Council to resolve to extend for a given period.
 2. *If at the end of the allotted extension there are still questions outstanding these may be submitted in writing for an early response.*

are in breach of the Local Government Act and Regulations and are therefore unlawful ?

Question 31 - City of Armadale Response

No. Whilst Council is yet to consider updating of this clause, it remains totally lawful. There is no conflict.]

Question 32:

Council, given that in the case of Standing Order 3.3: Public Question Time, the term “public” refers to:

- (a) all or any persons other than Council Members, CEO and support staff directly involved in the meeting
- (b) Electors, Ratepayers, Residents, Owners and Occupiers
- (c) all or any City of Armadale employees, consultants and contractors not on official duty at the meeting who may wish to ask a question

and,

Council, given that in the case of Standing Order 18.2: Elector Meetings (at which “the public” may be present) the term “public” is defined in SO18.2 by inference as “a person who is not an elector of the City”

and,

Council, given that the Local Government Act 1996 prescribes at S1.4: “*elector, in relation to a district or ward, means a person who is eligible to be enrolled to vote at elections for the district or ward;*” and at S 5.26: “*electors*” includes “*ratepayers*”,

it follows that both Electors and Ratepayers are entitled to be present and participate in Elector meetings

and,

Council, given that the Local Government Act 1996 prescribes at S4.29 to 4.33 inclusive that:

- (d) *owners, occupiers, non-residents and two persons representing corporations and body corporates are eligible to vote in elections,*

would you agree the wording of Standing Order 18.1 is deceptive, incomplete, likely to cause confusion and to dissuade otherwise eligible Electors from exercising their statutory right to participate in meetings ?

Question 32 - City of Armadale Response

No

Question 33:

Council, in the case of Standing Order 8.1, it is prescribed that official titles must be used by Councillors, however there is no provision for the public to do likewise in Public Question Time, or for Public and Electors at Elector meetings.

Council given you have determined a \$5,000 penalty applies for non-compliance, and “ignorance” is not a defence in law, do you think it reasonable for both the Public and Electors;

- (a) to be informed of these penalty requirements prior to the commencement of a meeting at which Standing Orders apply ?
- (b) to be advised of the official titles to be used for yourselves and for officers present or not present ?
- (c) to be subject to such a high penalty for using an incorrect title or words that may be discretionally and arbitrarily deemed “disrespectful” ?

Question 33 - City of Armadale Response

Part a) there is not a \$5000 penalty of Standing Order 8.1 and further members of the public are able to access the City’s standing orders on the City’s website at any time or by contacting the City’s administration.

Part b) Standing Order 8.1 only applies to Councillors therefore members of the public or electors are not subject to the same requirements.

Part c) as detailed in part b above this section does not apply to the public or electors.

Question 34:

Council, in the case of Standing Order 3.4 (2) *Petitions*, would you agree;

- (a) since a petition can only be presented to Council by a Member – ie Councillor, it follows that a petition containing language disrespectful to the Council will also enjoin the presenting Member in breach of Standing Orders and risk of prosecution ?
- (b) it follows then that any petition containing language or critical subject matter considered by a Ward Representative to be “disrespectful” or likely to be perceived as “disrespectful” to Council, will never be presented ?
- (c) noting SO 8.4 *already* prohibits “adverse reflection” on Council or employee decisions and actions, “disrespectful” is yet another vague term that can mean simply expressing disagreement with a decision or policy or proposal of Council or a Committee ?
- (d) Council will always receive the respect it deserves from its own attitudes and actions towards those whom it governs ?

Question 34 - City of Armadale Response

Part a) No – If a petition containing offensive language disrespectful to Council was permitted to go to Council then the Councillor would simply be tabling it and not necessarily supporting the cause or the way it is expressed.

Part b) each petition will be assessed on its merits - should it be deemed to be offensive or disrespectful it may not be presented.

Part c) I do not agree it is a vague term on the basis of the normal meaning of the word as contained within the Macquarie Complete Australian Dictionary 6th Edition.

Part d) No

Question 35:

Council, having regard to the Bill of Rights Act 1689, which provides a statutory right to petition the Crown without fear of prosecution or penalty;

“Right to petition.

That it is the Right of the Subjects to petition the King and all Commitments and Prosecutions for such Petitioning are Illegal.”

- (a) given you represent the Crown as its servant and agent, what justifications can you offer for not including a formal “Public Statement Time” in your meetings, as do more democratically oriented Councils, to allow a direct and effective interface between yourself and your subjects ?
- (b) given this issue was formally raised at your meetings of 6 March 2001, 19 July 2004, and 6 June 2006, and again in a formal detailed “public submission” on 25 June 2008, why do you continue to deny your constituents a right to talk to you as a Council ?
- (c) would you agree that the penalty provisions of Local Law Standing Orders 2000 are in direct contravention of this ancient law ?

Question 35 - City of Armadale Response

Part a) There is a formal petitioning process as well as the opportunity to ask questions during Public Question Time. There is opportunity for deputations to address Committees. This has worked adequately until now. Some Councils have chosen to enable formal statements - the City of Armadale is one of these that has used its discretion and chosen not to have one.

Part b) Council meetings are the forum for formal decision-making of the Council bound by the dictates of law. It is not a form for talk or debate with constituents. That would require a whole new format and set of rules, not conducive to decision-making. Those who wish to take part in debate and decision-making should seek the support of other constituents and seek election to the body of the Council.

Question 36:

Council, given SO 19.1 prescribes an additional penalty of \$500 per day applies to continuing offences, how do you envisage this working when your meetings last only between minutes and hours ?

Question 36 - City of Armadale Response

There is no differentiation between time variances. The penalty will apply regardless of whether it is for part of a day or longer.

Question 37:

Council, why is there no provision in Standing Orders for an apology to be given in lieu of a penalty, or is it a case of “all or nothing” intended to maintain an autocratic environment?

Question 37 - City of Armadale Response

Standing Order 15.2 provides for an apology

Question 38:

Council, given your “statutory review” options are to either gazette Local Law Standing Orders 2000 as-is (with or without minor amendments), or to restart the entire process, having regard to all the above;

- (a) will you reconsider your decision and accept the wisest and most pragmatic course is to repeal Local Law Standing Orders 2000 as a local law and henceforth apply Standing Orders discretionally and unconstrained as a “management policy” ?
- (b) will you undertake to refer the matter to your Audit Committee to re-examine the form, structure and content of Standing Orders by persons skilled in management systems design and implementation, to ensure they are informative, efficient, effective, aligned with current legislative and Dept. of Local Government policies and are best suited to their intended purpose as a “procedure” describing a process?

Question 38 - City of Armadale Response

Part a) A decision has not yet been made - Submissions relating to Standing Order Local Law 2000 have only recently closed. These are now being considered with all comments being factored into the final version.

Part b) Council considers that it already has persons “skilled in management systems design and implementation” on staff who are regularly in contact with the Department of Local Government on such matters. Should Council wish to refer the matter the Audit Committee then this will be undertaken.

Question 39:

Council, would you agree:

- (a) Standing Orders enforce ritual over content, time management over importance of subject matter, and promote expediency over openness and transparency ?
- (b) “*Concensus*” and “*conciliation*” are not terms provided for in the Standing Order regime ?
- (c) The majority-vote decision making system ensures that the need for a decision *to be made* exceeds the need for a decision – ie “decisions” become the product of a production line system, processed efficiently and expeditiously ?

Question 39 - City of Armadale Response

Part a) No

Part b) No

Part c) No

Question 40:

Council, would you agree:

- (a) Within the framework permitted by legislation, regulations, DLGA policy and directives, tribunal and court case history, the introduction of substantial penalties by Council for even minor breaches of Standing Orders ensures all of Council and its Committees are now captive to its Executive, who pre-determines the scope and content of;
 - (i) agendas,
 - (ii) items of business to be considered,
 - (iii) “reports” material presented for deliberation,
 - (iv) supporting material and discretionary justifications such as “amenity” and “policy”

and therefore Council, its Committees and Councillors have been sidelined, contained, restricted, curtailed and reduced to a passive executive committee of contractors made impotent by discretionary process and rules - in place of a pro-active elected legislature representing the principles of democratic government and residents of the Wards you represent ?
- (b) Council, its Committees and Councillors are now exposed to manipulation of process and outcomes by its executive in an environment where dissent can result in prosecution ?
- (c) the foregoing proves Council is being managed by its Executive instead of its Executive being managed by Council as the Local Government Act 1995 requires ?

Question 40 - City of Armadale Response

Part a) No

Part b) No

Part c) No

Question 41:

Council,

Would you agree that in the absence of any other participative method available to Electors, Ratepayers, Owners, Occupiers and the Public;

- (a) in order to present these issues to you, our elected Council, directly and with certainty, it is necessary to use Public Question Time in a manner designed to draw attention to deficiencies in your leadership, management and administration instead of an alternative process that encourages and facilitates welcomed constructive suggestions and recommendations ?
- (b) there must be a better and more productive way ?

Question 41 - City of Armadale Response

Part a) No – the City welcomes constructive criticism and practical suggestions as to how it may better conduct its business. There are many efficient and effective methods of participating in the Council decision making process. As mentioned earlier, this includes nominating and seeking election to Council thereby earning the right to debate and participate in decision-making, whilst also becoming fully aware of the high responsibility of elected membership.

Part b) Possibly, but not apparent at this point in time.