

PART 1: THE BAN

In a letter dated 20 August 2015, the CEO of the City of Armadale Local Government issued the following personal *official notice* to me:

- "1. No more than six (6) questions (inclusive of all parts) be forwarded to the City at any one time and on no more than four occasions a year be submitted to the City.
2. All questions received from you in future will be received and assessed as to whether they:
 - relate to similar questions raised and have already been responded to;
 - are a reasonable request for information to assist resolve a real and genuine issue;
 - are a genuine request for service;
 - will divert an unreasonable amount of officer time away from other functions;
 - are a genuine complaint about the standard of service received, the conduct of an officer or the actions or lack of action by an Officer or a City appointed contractor or agent.

Subject to the above a decision will then be made as to whether a response is practical and reasonable under the circumstances."

Then, in a subsequent letter dated 06 November 2015, the Acting CEO of the City of Armadale Local Government issued the following further notice to me:

"A maximum of six (6) questions can be presented by you at the (a) meeting;

- The Mayor will invite you to ask your preferred 6 questions
- Opening statements to questions are to be brief;
- If there is only one questioner the maximum period allocated should not exceed 15 minutes;
- Questions already substantially answered should be rejected; and
- Questions raised on matters not currently before Council and that relate to the City's affairs be referred to the CEO to deal with administratively."

This ban is exclusive to myself in a city having a population around 80,000 of whom around 40,000 are "Electors".

The City of Armadale local government has not sought to justify the ban with any explanation.

The power of discretionary disqualification by one law of Parliament, and the necessity of paying every debt of the Civil List by another law of Parliament, if suffered to pass unnoticed, must establish such a fund of rewards and terrors as will make Parliament the best appendage and support of arbitrary power that ever was invented by the wit of man. This is felt. The quarrel is begun between the Representatives and the People.

Edmund Burke (1729 – 1797)

Notes on the construction of the BAN:

Note 1: The condition *"submitted to the City"* includes, by definition, questions submitted to the Administration

Note 2: The condition *"All questions received from you in future will be received and assessed"* does not state who will do the assessing or the assessment criteria. Given public questions are orally submitted to full Council or a Committee during the formal statutory "Public Question Time" segment of their meeting, it follows that a question cannot be "assessed" until it is actually put to the meeting.

Consequently any question may be rejected at the whim of the person presiding.

Note 3: The condition *"All questions received from you in future will be received and assessed"* declares that any question submitted in advance (to the CEO as "Secretary to Council"), either as a courtesy or to enable "prior research" pursuant to City of Armadale Local Law Standing Orders 2000, may be summarily rejected before going anywhere near Council and without Council's knowledge.

Note 4: It is a *discretionary* policy requirement - (i.e. is not documented either in City of Armadale policies or local laws) - of the City of Armadale Local Government that *a public question will not be received by Council unless the questioner is physically present to personally orally put the question to Council or Committee.*

This applies even if the question(s) is submitted in writing in advance.

Most Council business is presented to Council and dealt with during one meeting only, which means that *Electors have a once in a lifetime opportunity to ask a question about a current matter.*

The ban has the effect that a questioner is under obligation to attend the relevant meeting but the City is under no obligation to advise in advance to the questioner that all or any questions have been, or will be, rejected. It also generically means that citizens who are unable to attend personally (e.g. the elderly, frail-aged, sick, disabled, shift workers, FIFO workers, persons on holiday etc.) are unable to participate in current community affairs.

This policy demands any able or disabled questioner get dressed up in their finest (to show the respect Council or Committees demand), travel to the City's administration in rain, hail or shine, risk fines for parking in after-hours time restricted zones or reserved bays around the administration building and sit through a meeting - just to ask a maximum of two questions.

Given most people are not emotionally capable of speaking in public or before a hostile audience, many disaffected persons are likely to avoid asking questions under this protocol.

Note 4A: This element of the ban has since been partly codified by Council in revised Policy EM6 24 October 2016, which states:

Questions must be read aloud by the questioner. If a person in attendance is unable to read aloud their question, another person present at the meeting may ask the question on their behalf

Furthermore, Local Law Standing Orders 2000 prescribe:

8.6 Prevention of Disturbance

(1) Any member of the public addressing the Council or a committee is to extend due courtesy and respect to the Council or committee and the processes under which they operate and must take direction from the person presiding whenever called upon to do so. Penalty \$1,000

Would you risk prosecution by asking a question on someone else's behalf ?

Note 5: There is no provision in City of Armadale Local Law Standing Orders 2000 to take "Public Questions on Notice". However, Public Questions submitted in advance to the CEO, as secretary to the

Council or Committee, are deemed by that officer as not being “questions on notice” – i.e. they have no formal status.

This discretionary policy has the effect that all or any questions presented to Council or Committee are presented orally without notice to individual members during *Public Question Time* – and not before. That is to say individual members do not have opportunity to consider matters raised before all or any questions are responded to by the person presiding - on their collective behalf - without consultation or canvassing to Council or Committee members.

Once the person presiding has responded, it is unlawful for a dissenting Councillor to revisit the matter raised or express disagreement with the response provided. When the person presiding responds, Councillors are neutered.

Even if public questions submitted in advance are circulated to individual Councillors before a meeting, unless and until the person presiding responds they do not know the official position predetermined on their behalf.

In my own case, questions submitted in advance have been (unlawfully) rejected by the CEO without presentation to Council. This is procedural censorship.

Note 6: Given that even if the questioner is in attendance at the relevant meeting, after having previously submitted questions to Council via the CEO, City of Armadale Local Law Standing Orders 2000 provide the questioner has no right whatsoever to challenge or query the person presiding as to why all or any prior questions have not been accepted to be put to the meeting.

Note 7: Even if their prior submission has been accepted and their submission is acknowledged by the person presiding, they may be then simply ruled “out of order” – or simply “rejected” - by the person presiding with no explanation. See also EM-6 POLICY & MANAGEMENT PRACTICE – PUBLIC QUESTION TIME

Note 8: Given that even if the questioner is physically in attendance at a meeting, City of Armadale Local Law Standing Orders 2000 provide the questioner has no right whatsoever to challenge or query the person presiding as to why all or any questions actually orally put (i.e. without prior notice) to the meeting during “Public Question Time” have not been accepted or ruled “out of order”.

Policy EM6 was revised by Council 24 October 2016 to prescribe;

7. No debate or discussion will be permitted on any question or response.

The term “response” was previously “answer”.

That is to say the Person responding may lie, deceive, misquote, mislead, misrepresent, or deliver unadulterated “spin” with the full power of LAW.

The term “response” includes a response declining to respond.

Note 9: Given questions are generally interpreted and answered literally, in relation to the conditions “relate to similar questions raised and have already been responded to;” and “Questions already substantially answered should be rejected;” the intent of these conditions is to ensure questions previously responded to – in any form - may not be asked again.

This ban element is in direct contradiction to the City’s longstanding EM-6 POLICY & MANAGEMENT PRACTICE – PUBLIC QUESTION TIME

3.3 (11.) “A summary of each question raised and response given during Public Question Time will be recorded in the Minutes. In the event that the person having raised a question believes the substance of their question (or response given) was not appropriately recorded, it may be the subject of a further question at the next meeting.”

“not appropriately recorded” would include not recording at all. Since EM6 is a local LAW the ban is unlawful.

On the other hand, if a question is not put - or put, thence discretionally rejected, it is not a "question" and need not be recorded.

Note 10: Notwithstanding the foregoing, Policy EM6 was revised by Council 24 October 2016 to remove any right described in Policy 3.3 (11) above, thereby reinforcing the ban.

Policy EM6 now states:

- 6. The person presiding may reject a question if, in the view of the person presiding, the question inter-alia;
- has been responded to by earlier questions or questions at a previous meeting.*

Note: "inter-alia" is Latin for "among other things." This phrase is often found in legal pleadings and writings to specify one example out of many possibilities.

Furthermore, this restriction is not defined as being Committee or Council specific. Consequently, if a person wishes to waste a question on a Committee (see ["Disclaimer"](#)), then it may not be asked again of Council.

Note 11: Current Policy EM6 now provides there is no lawful right in any person to challenge or require further particulars relating to a response previously provided to another person. This has the effect that any particular question on any particular issue or matter may be asked of the City ONCE ONLY – EVER. BY ANYONE !!!!

Note 12: In relation to the condition "are a reasonable request for information to assist resolve a real and genuine issue", "issues" are not presented to Council or Committees. An Elector cannot "resolve a real and genuine issue". There is no provision in Local Law Standing Orders 2000 for an Elector to make statements or recommendations to Council or Committee. The format of Council and Committee meetings is to consider and accept, reject or defer reports or advice submitted to it by its Executive. Council cannot resolve issues – it can only make decisions about "matters".

Note 13: In relation to the condition "are a genuine request for service;" a "request" is not *per se* a "question" and is therefore not permissible. There is no provision in Local Law Standing Orders 2000 for an Elector to make a request.

Note 14: In relation to the condition "will divert an unreasonable amount of officer time away from other functions;" it is impossible for an Elector to have any idea as to how much time is needed to respond to a question or set or series of questions. It is reasonable for an Elector to assume the City knows what it is doing and is on top of its game – particularly when the subject matter of questions is included as an Agenda item for that meeting. In most cases an *ad-lib* or factual response will be available immediately – as is often the case - from either the person presiding, the CEO or Executive officers, all of whom are well paid to be present at Council and Committee meetings to support Council and Committees as on the spot reference authorities. The minuted record shows that in the case of many of my own questions, a "yes" or "no" response would suffice. It is not within the province of an Elector to pre-empt the discretionary powers of the person presiding. Officer time has no relevance to the perceived importance of a matter to the community which the City serves.

Note 15: In relation to the condition "are a genuine complaint about the standard of service received, the conduct of an officer or the actions or lack of action by an Officer or a City appointed contractor or agent", City of Armadale Local Law Standing Orders 2000, which apply to all Council and Committee meetings, provide at Clause 8.4 (3):

- (3) No member of the Council, or a committee, or member of the public is to reflect adversely on the character or actions of a member, officer or any other person participating in the meeting.
Penalty \$1,000*

Furthermore, Policy EM6 of 24 October 2016 prescribes:

- 6. The person presiding may reject a question if, in the view of the person presiding, the question inter-alia;*

Questions the competence of Councillors or City Employees;

Therefore, **"a genuine complaint about the standard of service received, the conduct of an officer or the actions or lack of action by an Officer or a City appointed contractor or agent"** is prohibited by City of Armadale Local Law Standing Orders 2000 because that would be **"speaking adversely"**. It is therefore unlawful to complain.

On this point it is relevant to note the City of Armadale has refused to define **"speaking or reflecting adversely"** – either set out in its local law or orally by Council - which has the effect any person prosecuted for that offence faces a hefty legal and court costs bill.

A search of global legal databases reveals that in the modern era there has not been a court ruling re the meaning of this phrase – anywhere in the world. Its origin is in the long ago repealed WA Model (Standing Orders) Local Law gazetted 3 April 1998 and their predecessor Local Government Model By-law (Standing Orders) No. 4 gazetted 12 Dec 1961 – despite still being referenced in current Local Law Standing Orders 2000.

Thus any prosecution of an Elector or Member of the Public will be a first, potentially ending up in the High Court. However, in contrast, breaches by Councillors would be processed by the Local Government Standards Panel – which is not a prosecution. That's fair – that's democracy !!

Note 16: The condition **"the maximum period allocated"** includes responses, so a drawn out response consumes and wastes that precious time.

Note 17: In relation to the condition **"Questions already substantially answered should be rejected;"** the intent of this condition is to bury past indiscretions, shortcomings or mismanagement so they will never ever see the light of day again.

Note 18: In relation to the condition

"Questions raised on matters not currently before Council and that relate to the City's affairs be referred to the CEO to deal with administratively."

it is LAW that Council is directly responsible for the management of the local government. It is also LAW that the CEO may speak for the local government – but not for Council. Therefore, for Council to delegate questions to the CEO is abrogating its statutory responsibility. Council is paid to manage and manage it should.

Note 19: For the purpose of City of Armadale Local Law Standing Orders 2000, an "elector", "resident" or "ratepayer" is a "member of the public".

Note 20: Members of the Public are not participants in a Council or Committee meeting excepting when invited to ask a public question. Upon resuming one's seat a Member of the Public is again no longer a participant. Members of the public have the status of "observer", are not recorded as participants and may come and go to the public gallery as they please. Therefore Members of the public have no rights to raise a *point of order* or challenge any response or decision or action - or even speak - during a Council or Committee meeting. (Subservient silence is golden).

Note 21: Public Rights to question Committees are a perplexing dilemma. Pursuant to S5.8, 5.16 and 5.17 of the Local Government Act 1995, the Council of the City of Armadale resolved long ago its Committees DO NOT have "powers or duties", being merely "advisory". Therefore, pursuant to S5.24 (2) and Regs 5 and 6 of Local Government (Administration) Regulations 1996 there is NOT to be a Public Question Time in Committee meetings. However Local Law Standing Orders 2000 (at the time of the ban) specified that **EM-6 POLICY & MANAGEMENT PRACTICE – PUBLIC QUESTION TIME** applied to Committees. So there IS a Public Question Time. However when Council revised its Local Law Standing Orders 2000 (2016), SO3.3 Policy EM6 was replaced by direct reference to the LG Act. New SO1.2 and 17.5 prescribe that Local Law Standing Orders 2000 (2016) apply to ALL meetings of committees. Therefore the original status was restored and there is to be NO Public Question Time. Nonetheless, SO19.2 provides the person presiding may make his or her own rules. Consequently, the City continues to include a Public Question Time in Committees. Confused ? Don't be – its normal discretionary executive government.

Note 22: Since the City of Armadale Committees have no “powers”, it follows the person presiding over said Committees has no powers either. Notwithstanding Local Law Standing Orders 2000 (2016) assigns powers to chair meetings, the powers granted by Reg 7 of the Local Government (Administration) Regulations 1996 are limited to “Procedures for the asking of and responding to questions raised by members of the public”. There are no powers beyond that.

Note 23: Notwithstanding City of Armadale Local Law Standing Orders 2000 prescribes at SO1.2:

“1.2 Application

All meetings of the Council or a committee and other matters as prescribed are to be conducted in accordance with the Act, the Local Government(Administration) Regulations 1996 and these Standing Orders.”

they go on to prescribe;

“SO18.1 Suspension of Standing Orders

(1) The Council or a committee may decide, by simple majority vote, to suspend temporarily one or more of the Standing Orders.

(2) 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.”

Thus when Standing Orders are suspended, ALL or ANY powers granted by Standing Orders to the person presiding are voided

Note 24: When the person presiding discretionally determines to apply City of Armadale Local Law Standing Orders 2000 to all or part of a General or Special Meeting of Electors, all the above applies

Note 25: Members of the Public are wholly subjected to City of Armadale Local Law Standing Orders 2000 and prescribed penalties for breaches - as determined by the person presiding. Breaches may be prosecuted summarily by Infringement Notice or by summons to a Magistrate’s Court. Convictions by a court results in a criminal record which may adversely impact current or future employment and eligibility for insurance cover – ie dramatically and adversely affect one’s life.

Note 26: The City of Armadale Management Policy EM6 – revised 24 October 2016 - prescribes procedures and rules for Public Question Time.

Although revised two months AFTER Local Law Standing Orders 2000 was gazetted (GG154) and became law on 26 August 2016, Policy EM6 has NO legal standing because the Local Government Operational Guidelines Number 16 – November 2011 prescribe;

8. Other Common Local Laws Problems

8.1

Adoption of Policies

The Joint Standing Committee will not approve local laws which attempt to adopt policies and make them enforceable.

Adopting policies and making them enforceable is often done in planning schemes, however, that is done under the Planning and Development Act 2005, not the Local Government Act.

The Joint Standing Committee position is that the powers of the Act do not permit local laws to empower a local government to adopt internal policies as laws other than by inclusion of the matter in a local law (eg policies for advertising signs or codes of conduct). Attempting to adopt policies in local laws and make them enforceable is considered an attempt to avoid the process in section 3.12 of the Act and the scrutiny of Parliament.

The section 3.12 procedure is mandatory and must be followed in chronological order. Failure to do this will render the local law invalid and will likely result in the Joint Standing Committee recommending the law for disallowance.

The City of Armadale Local Government has deliberately and wilfully ignored this requirement by devising a backdoor method of enforcing its longstanding policy.

Therefore, in relation to "Public Questions", and noting that "*public statements*" are prohibited by those same Standing Orders, the conditions set out at Ban conditions (2) above cannot be met during a meeting of Council or a Committee.

It is also clear that Local Law Standing Orders 2000 are designed to exclude the Ratepayer, Elector or Member of the Public from participating in the governance of their community – this is called "democracy".

Even if a questioner manages to overcome the procedural hurdles and intimidatory atmosphere of meetings, City of Armadale Local Law Standing Orders 2000 provide the person presiding may still discretionally reject any question absolutely without justification or explanation.

In other words, pursuant to City of Armadale Local Law Standing Orders 2000, some of the terms and conditions of the formal Notice cannot be fulfilled by ANY member of the public.

Pure gobbledegook !!!!

"The man who asks a question is a fool for a minute, the man who does not ask is a fool for life."

Confucius

Given the above and other behaviours across a wide range of its functions, it is reasonable then to more accurately describe the City of Armadale Local Government as:-

"The Peoples Democratic Socialist Republic of Armadale"

practising a blend of political and governance ideologies drawn from elements of the ideologies of colonialism, socialism, fascism, authoritarianism and totalitarianism.

Although it is an agency of the Crown, and is wholly reliant upon the Crown for its powers to govern, regulate and prosecute, its narcissistic persona displays no homage to the Crown in any of its policies, practices, procedures or publications.

Her Majesty, Queen of Australia, is absent from the building – displaced by the City's flag, coat of arms and logo.