

PART 2: THE EFFECT OF THE BAN

Discretionary Power:

Notwithstanding the shortcomings in the unlawful ban and its consequences as described above nonetheless remain and have effect until the Rule of Law is restored.

Consider the following statement extracted from the [Department of Local Government and Communities' 2014-2015 Annual Report](#) – Page 6:-

"Since its establishment on 1 July 2013, the Department of Local Government and Communities has been working to strengthen linkages between the local government and community sectors, and to support strong and sustainable local communities

Local government reform continued as a major priority,

Elected members are required to provide good governance to their communities and to demonstrate transparency and accountability in their decision making in line with community expectations.

An important role for the department has been to ensure compliance with the Local Government Act 1995, to continue to build the knowledge and skills of elected members and to foster greater engagement between councils and their communities.

Notwithstanding those noble sentiments, following completion of an official investigation into the above matters in response to my formal complaint, the Western Australia Department of Local Government and Communities - the State Government body responsible for setting and enforcing standards in local government - determined both on its own volition and on behalf of the Minister for Local Government, that notwithstanding the Rule of Law, it is now the case that all or any of the 138 local governments in Western Australia can upon its whim:

- discretionally determine any question from any person about any matter can be dismissed, rejected or ignored without a response.
- discretionally prohibit any person from asking any question about any matter - even before the subject matter is known and regardless of the relevance, significance or timing of an issue or matter
- discretionally prohibit any individual person from asking any public question about any matter - even when there is no other questioner present at the same meeting
- discretionally prohibit any individual person from asking any public question about any matter within a prescribed period
- discretionally impose numeric limitations on the number of questions that may be asked at any one time
- discretionally impose numeric limitations on the number of questions that may be asked in aggregate over a period
- discretionally impose different limitations and/or conditions upon

different people

- discretionally declare a question "out of order" - regardless of its merit or relevance.
- discretionally retrospectively declare an unanswered question "out of order" - even a year after Council has resolved to accept the question, and notwithstanding formal *confirmed* minutes have been publically published declaring acceptance and directing that a response be provided
- discretionally determine the statutory 15 minute *minimum* Public Question Time for meetings of Council and Committees (having powers and duties) to be the *maximum* time
- discretionally determine that if a questioner and/or questions are rejected by the person presiding and there being no other unresponded questioner present, then public question time may be terminated immediately
- discretionally ignore the processes prescribed by City of Armadale *Local Law* Standing Orders 2000 that require a record of written responses to public questions referred to the administration by Council to be attached to the minutes of the following Council or Committee meeting
- discretionally disregard the requirements of Local Government (Administration) Regulations 1996 11(e) - that minutes record "*a summary of each question raised by members of the public at the meeting and a summary of the response to the question;*" by referring questions to the Administration for later independent consideration and discretionary unminuted response
- discretionally declare Standing Orders, having the sole purpose and function of specifying procedures intended to maintain order in meetings, to be a local law carrying penalties for non-compliance, as well as creating a lifelong criminal record for any person prosecuted thereunder
- discretionally creating provisions within those Standing Orders having the power of law under the RULE OF LAW, that enable those Standing Orders to be set aside for discretionary purpose at the convenience of a Council or Committee – thereby voiding said law
- discretionally construct Standing Orders, meeting procedures and policies in such manner as to remove fundamental civil and political rights from Councillors that prevent them from performing their

intended function of representing the interests of their Electorate

- discretionally impose mandatory procedures that require all Public Questions to be submitted in advance in writing - and to impose a minimum time period during which such questions may be submitted and accepted

The Department of Local Government and Communities, endorsed by the Minister for Local Government Office, has determined this *absolute* discretionary power is given to and may be applied by either the Mayor or President, Committee Chairperson, the Council or the CEO - or, under delegated authority, by an officer.

If this discretion is applied personally by "the person presiding" over a Council or Committee meeting (the "Chair"), there is no redress available - regardless of who the person presiding may be.

For the record, the Department of Local Government publishes its "Compliance Framework" at

<https://www.dlgc.wa.gov.au/Publications/Pages/LG-Compliance-Framework.aspx>

That page commences with the statement:

"The Local Government Compliance Framework outlines the Department of Local Government and Communities (DLGC) approach to ensuring that the integrity of the local government sector is of the highest order."

This was published BEFORE submission of my complaints re alleged unlawful conduct by the City of Armadale Local Government.

Thus the Department has determined that the conduct described above is not only lawful, but has integrity and is of the highest order.

NOTICE:

The specific discretionary bans described above are generic to ALL local governments in Western Australia.

"Falsehood has a perennial spring."

"When bad men combine, the good must associate; else they will fall one by one - an unpitied sacrifice in a contemptible struggle."
Edmund Burke (1729 – 1797)

BUT !!!!

Just when we thought everything was clear in the dominant discretionary relationship between Council and Electors, the CEO of the City of Armadale provided the following formal advice to the City Strategy Committee 20 February 2017 – a full 18 months AFTER the above BAN and determinations by the City as recorded under his own hand - and subsequent endorsement by the Department of Local Government and the Office of the Minister for Local Government.

That City Strategy Committee, after due consideration, subsequently unanimously endorsed that advice for submission to full Council 27 February 2017.

The advice is as follows:

(quote)

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- *On 24 October 2016 Council reviewed and adopted Policy & Management Practice EM-6 relating to public question time.*
- *The person presiding has the discretion to ensure that these procedures are applied fairly and consistently but in a manner appropriate to the circumstances.*
- *Whilst Council can write into its Management Practice that questions and preambles are to be in writing before the meeting, **the Regulations do not authorise the presiding person to stop a person, not having put their question and preamble in writing, from asking their question** (unless of course the 15 minute question time has elapsed and no extension of time is agreed).*

*Reg 7(3) of the LG (Administration) Regs. states that **“each member of the public... is to be given an equal and fair opportunity to ask a question and receive a response.”***

- *While the Regulations do not specifically preclude the requirement that questions be submitted in writing, **any procedures adopted to manage question time in this way cannot prevent a person verbally asking a question.***
- *The Department’s Guidelines suggests that Councils should not make it mandatory that questions be submitted in writing prior to a meeting.*
- *Further, it has been this Council’s experience that those submitting a voluminous written preamble also expect a voluminous answer. This is not the intent of Question time.*

Detailed questions should be submitted to the administration as correspondence where they will be responded to in a formal manner.

Council is equally accountable for its responses in this fashion.

(end quote)

Confused ??

I am.

It seems then that the BAN is lawful but not lawful, dependent upon who is giving the interpretation of the law.

But then a quick read of [POLICY EM6: Public Question Time](#) and its subsidiary [EM6 Management Practice: Procedures](#), clearly shows the most recent advice is contrary to those longstanding documented instructions – recently reviewed and endorsed by Council AND enshrined as LAW in City of Armadale Local Law Standing Orders 2000.

Despite considerable detailed submissions from this writer over many years supporting this new advice, it has not previously been accepted by either the CEO or Council or its Mayor – all of whom supported the Ban.

An important element of Policy EM6 is that if the Administration do not like a question they can simply dismiss or reject it on several grounds and not submit it to Council at all – without Council being aware of the question.

Finally, as a person who has on relevant occasions, but reluctantly and as a last resort, submitted voluminous questions – unfortunate but necessary in order to elicit clarity or facts from the elusive gobbledegook – it can be shown that most questions could have been satisfactorily responded to with a "yes" or "no" response.

This is because most of my questions have been structured to show, face to face, to Council that its organisational design, local laws, policies, practices and procedures are defective – not to seek justifications for its chosen decisions and/or actions

Regrettably Council routinely chooses to close ranks to defend its decisions and/or actions rather than seek constructive solutions from the collective skills, knowledge and experience of the 40,000 Electors it governs.

I do not recall a Person Presiding or any Councillor ever thanking myself or any other person for a question – as is the protocol in Federal and State Parliaments.

This approach confirms we are "the governed".