

Local Government Update

February 2011

How do council staff conduct their meetings?

The Victorian Ombudsman has fired a warning to public authorities who do not keep proper records of their meetings.

The officer in charge of a municipality is obliged by the *Public Records Act 1973* to make and keep **full and accurate records** of its meetings, including informal meetings conducted as part of the planning process.

Cautionary tale no. 1 – taking records

The Ombudsman's report, into the proposed Windsor Hotel redevelopment, tells a cautionary tale about the failure of public authorities to comply with their statutory record-keeping obligations.

The Ombudsman was highly critical of the procedures and processes of public authorities during the course of the planning process relating to the redevelopment.

There were numerous formal and informal meetings of statutory authorities during this planning process. Rarely were minutes or records of these meetings taken. A pattern emerged, highlighted by the Ombudsman, of people at these meetings:

- not appreciating whether it was necessary to record the purpose or content of particular meetings;
- being confused as to what was resolved at the meetings, or even discussed during them; and
- not being aware of who, if anyone, was responsible for making a record of the meeting.

Even the then Minister for Planning, Justin Madden, in evidence given to the Ombudsman, conceded that he was not aware that a key issue had been discussed at a particular meeting. In fact, the Minister could only state to the Ombudsman about "*where my emphasis was in my head*".

The same problem occurred at an advisory committee public hearing (where the custom has been not to take formal records, but rather where the committee relies on its members' own notes made during the hearings). The Conservation Manager of the National Trust commented to the Ombudsman that he was "*... a bit miffed about how [his presentation at the hearing] was subsequently written up.*"

These statements illustrate that, unless proper records of meetings are taken, there is a real risk that there will be no common understanding shared by the meetings' participants. In fact it is apparent from the Ombudsman's report that many of those who attended the meetings in question had different perceptions of the matters discussed and the outcomes achieved.

The Minister for Planning also stated to the Ombudsman that he had assumed it was someone's task to take a record of the meetings he attended, although he admitted that he was not sure who that person was or whether notes were actually taken.

The Ombudsman stressed that it is a primary obligation of public authorities, including municipal councils, to comply with their statutory record keeping obligations under section 13(a) of the *Public Records Act 1973* and the *Public Record Office Standard (PROS) 97/002* by taking and maintaining adequate records of all meetings including those that may be considered 'informal meetings'.

The obligation to make and maintain adequate public records:

- ensures proper accountability and transparency which in turn ensures community confidence in government decision-making;
- demonstrates and justifies a proper decision-making process, showing the preparedness of the authority to open a project and its processes to public scrutiny and possible criticism;
- is a necessary element of good governance – properly maintained records being necessary for an authority to keep track of what it has done. This enables the authority's activities to be examined "*on the basis of a comprehensive and accurate knowledge of what has occurred and what has been decided in the past*".

As an important corollary to this third obligation – properly managed records also ensure that new staff will have an immediate and comprehensive knowledge of files they take over from outgoing staff. This is a crucial part of the file management process, often overlooked.

hunt & hunt

Because record keeping is often unsatisfactory, new staff members may be compelled to repeat the information gathering, or decision making, process by having to arrange new meetings and clarify previous instructions or advice accumulated by their predecessors.

This merely causes further frustration for all participants involved in the process, including members of the public, and results in a lack of confidence in the decision-making process.

Cautionary tale no. 2 – improper email communications

Another shortcoming addressed by the Ombudsman makes interesting reading – the various informal emails that passed between staff of the Department of Planning.

Here is another cautionary tale ~ you should assume emails sent from your office computer, particularly to your colleagues, will be the subject of public scrutiny.

The Ombudsman's report identified a culture where departmental staff sent each other emails, commenting on pertinent issues – but after the event. They wrongly assumed that their communications would not be considered relevant to the matters in issue and therefore not be the subject of official scrutiny.

Undoubtedly public disclosure of these emails has caused embarrassment to the Department and its staff.

Simple lessons learnt

1. A person should be nominated to record each meeting (irrespective of whether it's formal or informal). The obligation to ensure this nomination should rest with the most senior person at the meeting or the person convening the meeting.
2. The recorder or "minute secretary" should endeavour to record, at the least, the subjects discussed and any matters resolved or further action agreed upon.
3. Multiple streams of conversation, occurring simultaneously, at meetings should be strongly discouraged to ensure that all participants share the same information and have a common understanding of the matters discussed and the agreed outcomes of the meeting.
The occasion should never arise where a participant, let alone a government minister, asserts that he was not aware of a key strategy adopted at a meeting.
4. A written record of the meeting (this may range from formal minutes to an email summary) should be distributed to all other attendees. All participants must have an opportunity to:
 - (a) share the information discussed at, and the outcome of, the meeting; and
 - (b) correct the record, if appropriate.
5. Notes taken by members of a public authority are also public records in terms of the *Public Records Act 1973* and should be retained. When that staff member leaves the authority's employ, his or her notes should be retained and filed by the authority.

Hunt & Hunt has experience in advising municipal councils on their record keeping obligations and good governance principles.

For further information please contact Michael Bromby or Nieva Connell, Partners on 03 8602 9200.