

SUPPLEMENTARY GAZETTE



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CONTENTS

STATE GOVERNMENT INSTRUMENTS
Local Government Act 1999 620

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STATE GOVERNMENT INSTRUMENTS

NOTICE PURSUANT TO SECTION 302B OF THE *LOCAL GOVERNMENT ACT 1999*

PUBLIC HEALTH EMERGENCY: ELECTRONIC PARTICIPATION IN COUNCIL MEETINGS (NO 1)

On 15 March 2020, the Chief Executive of the Department for Health and Wellbeing in the State of South Australia, pursuant to section 87 of the *South Australian Public Health Act 2011*, declared that an emergency which threatens to cause the death of, or injury or other damage to the health of any person is occurring or about to occur in relation to the transmission of COVID-19, and declared the emergency to be a public health emergency.

On 22 March 2020, the State Co-ordinator for the State of South Australia declared, pursuant to section 23 of the *Emergency Management Act 2004*, that a Major Emergency is occurring in respect of the outbreak of the Human Disease named COVID-19 within South Australia.

On the basis that a relevant declaration has been made in relation to a public health emergency and being satisfied that variation or suspension of the provisions specified in Schedule 1 to this notice is reasonably necessary as a result of the emergency, I, **Stephan Karl Knoll, Minister for Transport, Infrastructure and Local Government**, in the State of South Australia, in accordance with section 302B of the *Local Government Act 1999* (“the Act”) hereby vary or suspend the operation of the specified provisions of the Act as set out in Schedule 1 to this notice, subject to any conditions specified in this notice including in accordance with any alternative requirements, arrangements or procedures as provided for in this notice.

1. Citation

This notice may be cited as the *Electronic Participation in Council Meetings Notice (No 1) 2020*.

2. Definitions

In this notice—

Act means the *Local Government Act 1999*;

electronic means includes a telephone, computer or other electronic device used for communication;

regulations means the *Local Government (Procedures at Meetings) Regulations 2013*.

3. Application

This notice applies to all councils constituted under the Act including, for the avoidance of doubt, the Adelaide City Council.

Schedule 1—Provisions of the Act and regulations varied or suspended (section 302B(1) of Act)

Provision of Act or regulations	Variation or suspension
<i>Local Government Act 1999</i>	
Section 74	Delete subsection (1)(b) and substitute: <ul style="list-style-type: none"> (b) leave the meeting (physically or by disconnecting electronic means) such that the member cannot view or hear any discussion or voting at the meeting about the matter; and (c) not view or listen to the discussion or voting at the meeting about the matter via any live stream or recording of the meeting.
Section 74(2)	After “or being in the chamber where the meeting is being conducted,” insert: or being connected to the meeting by electronic means,
Section 74(3)	After “or to be in the chamber where the meeting is being conducted,” insert: or to be connected to the meeting using electronic means,
Section 74(5)	Delete subsection (5)(c) and substitute: if the member took part in the meeting, or was in the chamber during the meeting, or was connected to the meeting by electronic means, under an approval under subsection (3), the fact that the member took part in the meeting, or was in the chamber during the meeting, or was connected to the meeting by electronic means (as the case requires).
Section 74	After subsection (6) insert: (7) In this section— <i>connected to</i> means able to hear and/or see the meeting, including via a live stream or recording of the meeting; <i>disconnecting electronic means</i> includes— <ul style="list-style-type: none"> (a) ending a telephone connection such that the discussion and voting at the meeting cannot be heard; (b) ending a video conferencing connection such that the discussion and voting at the meeting cannot be seen or heard; (c) logging out of a virtual meeting room or space such that the discussion and voting at the meeting cannot be seen or heard; (d) signing out of a virtual meeting room or space such that the discussion and voting at the meeting cannot be seen or heard; or (e) disconnecting any other electronic means such that the discussion and voting at the meeting cannot be seen or heard; <i>live stream</i> means the transmission of audio and/or video from a meeting at the time that the meeting is occurring;
Section 81	After subsection (3) insert: (3a) If a place has been appointed for the holding of an ordinary meeting but the council is unable to meet at the designated place as a result of the public health emergency, the chief executive officer may appoint a different place at which the ordinary meeting is to be held.

Provision of Act or regulations	Variation or suspension
Section 81	After subsection (7) insert: (8) In this section— <i>place</i> includes an electronic location (such as a virtual meeting room).
Section 83	After subsection (3) insert: (3a) For the purposes of subsection (3)(c), the chief executive officer may sign the notice in hardcopy or electronically.
Section 83	After subsection (9) insert: (10) In subsection (3)— <i>place</i> includes an electronic location (such as a virtual meeting room).
Section 84(1a)(a)	Suspend subsection 84(1a)(a).
Section 84(3)	Delete subsection (3) and substitute: A person is entitled, on payment of a fee fixed by the council, to obtain a copy of a notice and agenda published under subsection (1a)(b) on request.
Section 84(4)	Delete subsection (4) and substitute: The notice and agenda must continue to be published on the website under subsection (1a) until the completion of the relevant meeting.
Section 84(5)	Delete subsection (5) and substitute: The chief executive officer (or a person nominated in writing by the chief executive officer) must also ensure that any document or report supplied to members of the council for consideration at a meeting of the council is available for inspection by members of the public— (a) in the case of a document or report supplied to members of the council before the meeting—on a website determined by the chief executive officer as soon as practicable after the time when the document or report is supplied to members of the council; or (b) in the case of a document or report supplied to members of the council at the meeting—on a website determined by the chief executive officer as soon as practicable after the time when the document or report is supplied to members of the council.
Section 84(7)	After subsection (6) insert: (7) In this section— <i>place</i> includes an electronic location (such as a virtual meeting room).
Section 85	After subsection (1) insert: (2) For the purposes of this section— (a) a member of the council participating in a council meeting by electronic means is taken to be present at the meeting provided that the member— (i) can hear all other members present at the meeting;

Provision of Act or regulations	Variation or suspension
	<p>(ii) can be heard by all other members present at the meeting; and</p> <p>(iii) can be heard by the person recording the minutes of the meeting.</p> <p>(b) A quorum is taken to be present even if 1 or more council members constituting the quorum is present by electronic means.</p>
Section 86	<p>After subsection (9) insert:</p> <p>(10) For the purposes of this section—</p> <p>(a) a member of the council participating in a council meeting is taken to be present at the meeting provided that the member—</p> <p>(i) can hear all other members present at the meeting;</p> <p>(ii) can be heard by all other members present at the meeting; and</p> <p>(iii) can be heard by the person recording the minutes of the meeting.</p>
Section 86	<p>After subsection (8) insert:</p> <p>(8a) For the purposes of subsection (8)(b), council members may meet by electronic means to alter a procedure determined by the council to be observed at a meeting of a council, even if the existing procedure prevents or inhibits the council members from meeting by electronic means.</p>
Section 90	<p>After subsection (1) insert:</p> <p>(1a) A council meeting will be taken to be conducted in a place open to the public for the purposes of this section even if 1 or more council members participate in the meeting by electronic means provided that—</p> <p>(a) the chief executive officer (or a person nominated in writing by the chief executive officer) makes available to the public a live stream of the meeting on a website determined by the chief executive officer and ensures that members of the public can hear the discussion between all council members present at the meeting via the live stream; or</p> <p>(b) if the chief executive officer (or a person nominated in writing by the chief executive officer) has taken reasonable steps to make available a live stream of the meeting but is unable to make available a live stream of the meeting, the chief executive officer (or a person nominated in writing by the chief executive officer) makes available to the public a recording of the meeting as soon as practicable after the meeting on a website determined by the chief executive officer and ensures that members of the public can hear the discussion between all council members present at the meeting via the recording.</p> <p>(1b) If the chief executive officer (or a person nominated in writing by the chief executive officer) has taken reasonable steps to comply with subsection (1) but is unable to comply—</p> <p>(a) the chief executive officer (or a person nominated in writing by the chief executive officer) must publish on a website determined by the chief executive officer the steps taken to comply with subsection (1); and</p> <p>(b) subsection (1) is suspended.</p>
Section 90	<p>After subsection (2) insert:</p>

Provision of Act or regulations	Variation or suspension
	(2a) A council or council committee must disconnect any live stream or recording of a meeting for the period that the meeting is closed to the public pursuant to an order made under subsection (2).
Section 90(5)	Delete subsection (5) and substitute: A person who, knowing that an order is in force under subsection (2), enters or remains in a room in which a meeting of the council or council committee is being held, or connects to a meeting of the council or a council committee by electronic means, or fails to disconnect from a meeting of the council or council committee, is guilty of an offence and liable to a penalty not exceeding \$500 and if such a person fails to leave the room on request it is lawful for an employee of the council or a member of the police force to use reasonable force to remove him or her from the room.
Section 90(9)	After “In this section—” insert: <i>connect</i> means able to hear and/or see the meeting, including via a live stream or recording of the meeting; <i>disconnect</i> means remove the connection so as to be unable to hear and see the meeting; <i>live stream</i> means the transmission of audio and/or video from a meeting at the time that the meeting is occurring;
Section 91(4)	Delete subsection (4) and substitute: A copy of the minutes of a meeting of the council must be placed on public display on a website determined by the chief executive officer within five days after the meeting and kept on display for a period of one month.
Section 92	Delete subsection (1) and substitute: (1) Subject to subsection (1a), a council must prepare and adopt a code of practice relating to the principles, policies, procedures and practices that the council will apply for the purposes of the operation of Parts 3 and 4. (1a) A council is not required to adopt any provision in a code of practice that would prevent or inhibit members from participating in council meetings or council committee meetings by electronic means.
Section 92	After subsection (3) insert: (3a) For the purposes of subsection (3), council members may meet by electronic means in a place taken to be open to the public pursuant to section 90(1a) to alter the code of practice of the council, or substitute a new code of practice of the council, even if the existing code of practice prevents or inhibits public access to the meeting by electronic means.
Section 92 (5)	Suspend section 92(5).
<i>Local Government (Procedures at Meetings) Regulations 2013</i>	
Reg 3(4)	Delete subregulation (4) and substitute:

Provision of Act or regulations	Variation or suspension
	<p>For the purposes of these regulations, a vote on whether <i>leave of the meeting</i> is granted may be conducted by—</p> <p>(a) a show of hands; or</p> <p>(b) where a member is participating in a meeting by electronic means which has audio only, a verbal indication of voting in the affirmative or voting in the negative,</p> <p>(but nothing in this subregulation prevents a division from being called in relation to the vote).</p>
Reg 3	<p>After subregulation (4) insert:</p> <p>(5) For the purposes of subregulation (1), a reference to “appear personally” includes to appear by electronic means.</p> <p>(6) For the purposes of these regulations, a member participating in a meeting by electronic means is taken to be present at the meeting provided that the member—</p> <p>(a) can hear all other members present at the meeting;</p> <p>(b) can be heard by all other members present at the meeting; and</p> <p>(c) can be heard by the person recording the minutes of the meeting.</p>
Reg 6	<p>After subregulation (3) insert:</p> <p>(3a) Without limiting subregulation (3), a council may at any time, by resolution supported by the prescribed number of members of the council entitled to vote on the resolution, alter a code of practice to facilitate participation by council members in council meetings by electronic means.</p> <p>(3b) For the purposes of subregulation (3a), the <i>prescribed number</i> of members of a council is a number ascertained by dividing the total number of members of the council for the time being in office by 2, ignoring any fraction resulting from the division, and adding one.</p>
Reg 6(7)	<p>Delete subregulation (7) and substitute:</p> <p>Regulation 12(4) does not apply to a motion under subregulation (3) or subregulation (3a).</p>
Reg 7(5)(b)	<p>Delete subregulation (5)(b) and substitute:</p> <p>give notice of the adjourned meeting to the public by causing a notice setting out the date, time and place of the meeting to be published on a website determined by the chief executive officer.</p>
Reg 8	<p>After subregulation (3) insert:</p> <p>(3a) For the purposes of subregulation (3), the presiding member may initial or sign the minutes in hardcopy or electronically.</p>
Reg 8(4)	<p>After subregulation (4)(b)(ii) insert:</p> <p>(iii) the method of attendance by the person;</p> <p>and</p>

Provision of Act or regulations	Variation or suspension
	<p style="text-align: center;">Example—</p> <p style="text-align: center;">The following are examples of methods of attendance:</p> <ul style="list-style-type: none"> (a) physical attendance; (b) by an audio-visual link; (c) by an audio link; (d) by telephone.
Reg 10(1)(d)	<p>Delete subregulation (1)(d) and substitute:</p> <p style="text-align: center;">be addressed to the council and delivered to the council by means determined by the chief executive officer.</p>
Reg 11(1)	<p>Delete subregulation (1) and substitute:</p> <p style="text-align: center;">A person or persons wishing to appear as a deputation at a meeting must deliver (to the council by means determined by the chief executive officer) a written request to the council.</p>
Reg 16(3)	<p>Delete subregulation (4) and insert:</p> <p>(4) Subregulation (3)—</p> <ul style="list-style-type: none"> (a) may be varied at the discretion of the council pursuant to regulation 6; (b) does not apply in relation to a member participating in a council committee meeting by telephone or electronic means approved in accordance with procedures determined by the council or council committee for the purposes of section 89 of the Act; and (c) is varied in relation to a member participating in a council meeting by electronic means such that the reference to “not in his or her seat” is taken to include a disconnection of the electronic means. <p>(5) In this regulation—</p> <p><i>disconnection of the electronic means</i> includes—</p> <ul style="list-style-type: none"> (a) ending a telephone connection such that the discussion and voting at the meeting cannot be heard; (b) ending a video conferencing connection such that the discussion and voting at the meeting cannot be seen or heard; (c) logging out of a virtual meeting room or space such that the discussion and voting at the meeting cannot be seen or heard; (d) signing out of a virtual meeting room or space such that the discussion and voting at the meeting cannot be seen or heard; or (e) disconnecting any other electronic means such that the discussion and voting at the meeting cannot be seen or heard.
Reg 17(3)	<p>Delete subregulation (3) and substitute:</p> <p>(3) The division will be taken as follows:</p> <ul style="list-style-type: none"> (a) subject to subregulation (3a), the members voting in the affirmative will, until the vote is recorded, stand in their places;

Provision of Act or regulations	Variation or suspension
	<p>(b) subject to subregulation (3a), the members voting in the negative will, until the vote is recorded, sit in their seats;</p> <p>(c) the presiding member will count the number of votes and then declare the outcome.</p> <p>(3a) Where a member is participating in a meeting by electronic means which has audio only, the member will provide a verbal indication of voting in the affirmative or voting in the negative.</p>

CONDITIONS

The variation of the operation of sections 85 and 86 of the Act is subject to the following condition:

1. Where—
 - (a) a council member is to participate in a council meeting by electronic means; and
 - (b) the electronic means has the functionality to allow the council member to participate in the meeting by being heard but not seen or by being both seen and heard; and
 - (c) the electronic means of the council has the functionality to allow the council member to be heard but not seen or to be both seen and heard, the member must participate by being both seen and heard.

This notice operates from the date of publication in the South Australian Government Gazette.

This notice has effect for the period specified in section 302B(2)(d)(ii) of the Act.

HON STEPHAN KNOLL MP
MINISTER FOR TRANSPORT, INFRASTRUCTURE AND LOCAL GOVERNMENT

Dated this day of 30 March 2020

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