



Department of Planning and Community Development

Circular No: 6/10

To all Mayors and Chief Executive Officers
(As addressed)

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IMPLEMENTATION OF WORKCOVER TO LOCAL GOVERNMENT COUNCILLORS

As you will be aware, the amendments to the *Accident Compensation Act 1985 (ACA)* received Royal Assent on 23 March 2010.

Circular 1/10 of 24 February 2010 outlined the entitlements that Councillors would be eligible to access after extension of the WorkCover Scheme to them from 1 July 2010. Also highlighted in the Circular were a number of implementation matters raised by the Municipal Association of Victoria (MAV) to the Hon Richard Wynne, Minister for Local Government.

Although it was broadly expected at the outset that it would fall to Council Chief Executive Officers (CEOs) to make the necessary arrangements in their local operations to accommodate WorkCover for Councillors, it is understood a counter view has emerged in surveys of Councils and roundtables organised by the MAV. The view is that an independent entity be established to manage Councillor WorkCover on behalf of Councils. Whether an independent entity is necessary is a matter for the sector to decide in association with MAV. The rationale for an independent entity is understood to lie in the concerns noted in Circular 1/10 – among them the issue of perceived reversals in Councillors' authority over CEOs.

This appears to have had the effect of shifting the focus onto Councillors to make decisions on WorkCover arrangements that may apply to them in readiness for 1 July 2010. As a consequence, possible conflict of interest issues have emerged under the *Local Government Act 1989 (LGA)*.

A further outstanding issue is finalisation of the content for a Subordinate Instrument to be published under ACA as Ministerial Guidelines on Councillor Duties of Office. These Guidelines will determine those duties to which WorkCover will apply from 1 July 2010. (The new s14AA(4) of ACA makes specific provision that "the Minister (for WorkCover) may make guidelines for the purposes of this section specifying duties performed by a Councillor that may be taken not to be duties as a Councillor for the purposes of this Act". These Guidelines will be Gazetted and published on the internet.

MAV raised the conflict of interest issues and LGV sought the advice of the Victorian Government Solicitor (VGS). The pertinent points of the advice of the VGS are:

- Council CEOs have the power to make decisions about who handles Councillors' WorkCover claims, their specific workplace rehabilitation needs and their workplace injury risk management systems, with or without delegation.
- Councillors who vote upon a matter considered or discussed at a Council meeting on who handles Councillors' WorkCover claims, their specific workplace rehabilitation needs and their workplace injury risk management systems may be at risk of being

found in breach of ss79 (6) and 79 (2) or 79 (3) of the *Local Government Act 1989 (LGA)* as a result of having a direct interest within the meaning of s77B (1) of the *LGA*.

In line with the advice of the VGS, the prudent course of action will be for Councillors to not vote or engage in decision making on any arrangements that relate to the extension of the WorkCover Scheme to them, including any arrangements for management of Councillor WorkCover through an independent entity. Decisions in this regard are within the authority of the CEO.

The Minister for Local Government in Circular 1/10 referred to independent consultation sessions to arranged by LGV and held with the peak bodies on the Guidelines under s14AA (4) and on other implementation matters. Following the VGS advice, these sessions are proceeding and being finalised for 10 or 11 May with the Victorian Local Governance Association (VLGA) and the Local Government Professionals (LGPro). Further discussions with MAV will follow. A representative from WorkSafe's legal team will attend the sessions to address any legal questions on the Guidelines, and if required, assist in coordinating responses to other implementation issues that may be raised. The attached draft content for the Guidelines has been circulated to all peak bodies.

It can be expected that in preparation for the forthcoming sessions and meetings the peak bodies may seek further input. Input on content for the Guidelines can also be made directly to LGV.

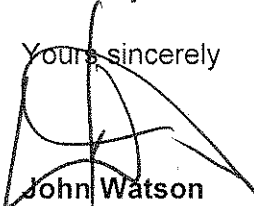
The forthcoming May 10/11 sessions will be facilitated by Ms Liz Roadley, former chair of the Local Government (Councillor Remuneration Review) Panel. Discussion will focus on:

- (a) Councillor activities that are proposed to be included/excluded from WorkCover and that will inform the Guideline.
- (b) Other operational/implementation issues/proposals that require to be discussed that are not being addressed through other channels.

It should also be noted that LGV has been advised that, although the ACA has a range of other existing provisions that give the Minister for WorkCover the power to issue Directions and Guidelines (e.g.: on claims for compensation and payments for compensation) and provisions for the Work Cover Authority to issue its own guidelines, forms and advisory practice notes, only the Subordinate Instrument under s14AA on Councillor Duties has been identified as necessary at this stage.

In summary, key activities are (a) the consultations with peak bodies in May on the Guidelines and other implementation issues, and (b) Gazettal of the Guidelines relating to Councillor Duties by the Minister for WorkCover.

Yours sincerely



John Watson
Executive Director
Local Government Victoria

4/5/2010

DRAFT

Councillors - Duties of Office for the purpose of WorkCover

Duties of office

- attending any scheduled ordinary, special or committee meetings of Council
- attending any scheduled meetings with the Chief Executive Officer of Council or any other member of Council staff at Council premises
- where the Councillor is involved in local community organisations based within the municipal district, attending meetings of those organisations as a *representative* of Council (meaning where the Councillor has been formally appointed as representative of Council by Council resolution, or has been nominated by the Mayor as representative of Council).
- attending any other municipal or community functions or events as a representative of Council (within the above meaning).
- attending scheduled meetings with representatives of other local, state or federal government entities as a representative of Council (within the above meaning).
- inspecting development and other sites that are the subject of Council approval processes
- visiting any other site as a representative of Council (within the above meaning) and where such visit is necessary or appropriate for the purposes of achieving the objectives of Council
- attending approved training and professional development for Councillors
- responding to telephone calls and electronic or hardcopy correspondence from constituents.

Circumstances in which a councillor will not be carrying out duties of office

- where the Councillor's conduct contravenes the Council's Councillor Code of Conduct developed pursuant to section 76C of the Local Government Act 1989 (LG Act)
- where the Councillor's conduct contravenes the Councillor conduct principles specified in sections 76B and 76BA of the LG Act
- where the Councillor is otherwise not acting in accordance with any other provision of the LG Act or is otherwise acting unlawfully.
- where the Councillor was acting solely in his or her capacity as a private member of the community
- where the Councillor was carrying out work in his or her capacity as a worker of another individual, company, organisation or other body, or as a self-employed person