

# **LOCAL GOVERNMENT REGULATION REVIEW**

## **PART 9 -**

### **MANAGEMENT & ACCOUNTABILITY**

**Submission by**

**DG & AB MAXWELL  
Consulting Accountants**



# **NSW Local Government Regulation Review**

## **Part 9 - Management & Accountability**

### **INTRODUCTION**

Our firm provides specialist financial and administration consulting services solely to Local Government throughout Australia, but principally within New South Wales. Our senior principal, David Maxwell is a Fellow of the Institute of Chartered Accountants and an Associate of Local Government Managers Australia with over 29 years experience as Local Government Auditor, Principal Accounting Officer, Chief Executive Officer and Consultant.

We have also developed a range of spreadsheet templates designed taking advantage of common features in computer mainframes to assist Council officers in the preparation of the Annual Financial Statements, and these are marketed under the name of Coalface Software Solutions. Our templates complying with the NSW Local Government Code of Accounting Practice and Financial Reporting are used by over 50% of the Councils in the State.

Coalface Software Solutions sponsors the NSW Annual Financial Statements Award presented by the NSW LGMA Financial Professionals Group, judged by nominees of the NSW Local Government Auditors Association, Finance Professionals Group and Coalface Software Solutions.

Our comments in this submission are limited to matters in relation to Part 9 of the public consultation draft of the proposed Local Government (General) Regulation 2005.

### **PRELIMINARY SUBMISSION**

On 4 January 2005, in response to an invitation contained in the Departmental circular 04/62, we forwarded a number of comments, which were acknowledged in paragraph 4.2.7 of the Regulatory Impact Statement (RIS).

### **PROPOSED CLAUSE 206**

#### **Proposal**

On the basis of our understanding that there is no statutory requirement that a Council must set aside amounts to repay the principal outstanding on loans made to Council on interest-only terms, we recommended deletion of clause 9 (a). We stated that “it is good practice to establish a sinking fund...”.

#### **RIS Response**

The following is included in paragraph 4.2.7 of the RIS.

“It is considered that proposed clause 206 (clause 9(a) of the existing Local Government (Financial Management) Regulation 1999) should be retained as it



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operates to ensure that councils set aside money to pay principal amounts on loans where they may only be required to pay interest payments. ...”

### Further Submission

With respect, we submit that the existing wording does not operate to that effect. We submit that the regulations only require that any moneys that a Council must set aside for the purposes stated<sup>1</sup> must be held in cash or in authorised investments. We suggest that the clause does not, of itself, impose that requirement, nor have we been able to identify anything elsewhere in the Act, Regulation or Code that imposes such a requirement. This wording does not act to require any moneys that a Council voluntarily sets aside<sup>2</sup>, to be held in cash.

We submit that the following wording *would* impose the requirement.

A council must set aside money

- (a) to repay the principal outstanding on loans made to the council on interest-only terms,
  - (b) lent to the council not expended for the purpose for which it was obtained, and
  - (c) to meet outstanding claims to be met by council under any self-insurance scheme that the council operates,
- and must ensure that those moneys are withdrawn for use only for the purposes for which they are held or for investment in accordance with section 625 of the Act.

We support the effective imposition of a requirement for Councils to establish “sinking funds” for the repayment of the principal on interest-only terms.

## PROPOSED CLAUSE 213

### Proposal

We suggested that the wording be amended to provide that an investment report, made up to not less than 21 days before the date of the meeting, be provided to an ordinary meeting of the Council in every month.

### Current Situation

1. The investment report must be presented to an ordinary meeting of the Council.

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1. i.e repayment of principal on interest only loans, unexpended loan funds, and self-insurance claims.
  2. Such as Reserves (or internally restricted funds), where the requirement is imposed by policy 8.1.2 of the Code of Local Government Accounting Practice and Financial Reporting. We would have no objection to this requirement being imposed by the regulations rather than the Code.



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2. All investment reports must be made up to the last day of the month preceeding the meeting (proposed clause 213 (2) ).
3. If more than one ordinary meeting is held in each month, Council must by resolution determine to which ordinary meeting the report is to be presented.

### Further Submission

1. We do not propose any change to this requirement.
2. Meeting dates for ordinary meetings of the Council are sometimes scheduled for a day in the first week of the calendar month. Section 367 requires meeting papers to be forwarded to elected members at least 3 clear days before each meeting. If the Council meeting is scheduled for (say) the first Wednesday of the month, and that Wednesday is dated (say) the 3rd of the month, the meeting papers will have to be dispatched before the end of the previous month, and will therefore not include the investment report.

Accordingly, the investment report will have to be submitted to Council as a supplementary report, supplied at the meeting, which we understood to be contrary to the policy of the Act. We understand that there are some Councils where this has not always occurred, and that have therefore breached the Regulation.

Our proposal would permit the investment report to be made up to (say) one week before the meeting date, such that it can be included in the meeting papers forwarded to elected members. We submit that our proposal would in fact reduce the pressures on accounting staff of all Councils with ordinary meeting dates in the first two weeks of the month.

We submit that our proposal *should* not increase the pressures on accounting staff of any other Council, as it is our view that the investment report should be prepared, and fully reconciled to the general ledger, well within the 21 days we have nominated. Indeed, our view is that this *should* occur well within 14 days of the date the report is made up to.

3. We understand the policy of the Act to be to encourage elected members generally to address policy rather than administrative matters (see Chapter 9, Part 2, Division 3). To require a formal Council resolution for such a minor administrative matter appears to sit uncomfortably with the general direction of the Act.

Indeed, given that the Regulation requires that the investment report be submitted in every month, this is surely a matter that could be determined at staff level. If the report is not submitted to the first ordinary meeting, it must be submitted to the second.



### PROPOSED CLAUSE 216

#### Proposal

We proposed that, where adjustments are made to the draft Statements submitted to Council, that the Mayor and other councillor authorised to sign the statement required by section 413 (2) (c), be required to inform themselves of the amount and nature of any material adjustments.

#### RIS Response

The following is included in paragraph 4.2.7 of the RIS.

“The adoption of a procedure requiring certification of financial statements by two councillors falls outside the scope of the regulation review as the proposal is inconsistent with the Local Government Act.”

#### Further Submission

It would appear that our suggestion has been misinterpreted to imply that the certificate be signed only by the Mayor and another elected member, but this is not the case. We are merely suggesting that the elected members who do sign the certificate be explicitly required to enquire and inform themselves of the amount and nature of any material adjustments made to the draft Annual Financial Statements as submitted for audit, and the final audited version of the Annual Statements.

Certainly, we make the assumption that the General Manager and Responsible Accounting Officer will inform themselves of any adjustments, and believe that this assumption is warranted.

### PROPOSED CLAUSE 217

#### Proposal

We proposed that this clause be deleted.

#### RIS Response

The following is included in paragraph 4.2.7 of the RIS.

“Contrary to the claim made in the submission, the Department is unaware of any instances of invalid adjustments made under existing clause 20.”



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### Further Submission

The Department may well be unaware, but these circumstances did arise in the case of 1999 annual statements for Windouran Council. I have confirmed this with the then auditor of Windouran Council, and confirmed that his letter to the Department dated 29 October 1999 stated that the statements "were materially correct when originally lodged ... and their subsequent amendment under instruction from your officer resulted in materially incorrect information." In this letter the Auditor refused to sign an unqualified audit report for the statements as amended in accordance with the Department's instructions, and I understand that the original statements were reinstated.

For appointment as Auditor, a person must be a registered company auditor (section 422) which in turn requires compliance with the Australian Auditing Standards. These Standards impose obligations on an Auditor in relation to events leading up, and subsequent to, the issue of audited Financial Statements, and contain special provisions in relation to amended financial reports (eg AUS 706). Disciplinary action may be taken under the *Corporations Act* and by professional bodies where a registered company auditor fails to comply with the Auditing Standards<sup>1</sup>.

Where accounts are amended there are specific requirements in relation to making public the nature and cause of the amendments, which in the case of local government would be to re-initiate the public notice procedure in the Act.

We submit that the Department has many other options available - including "flying squad" inspection and investigation, direct contact with the auditors, direct correspondence to the Mayor requiring tabling of the correspondence at a meeting, etc - all of which can achieve the identical result.

Alternatively, the direction to amend the statements could be issued only after consultation and agreement of the proposed amendment with the Auditor.

We shall be pleased to supply any further information that you may require.

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1. We cannot believe that the Companies Auditors and Liquidators Disciplinary Board would refuse to investigate a formal complaint lodged by the Department against an auditor, albeit that the circumstances of the complaint arose in the course of a local government audit.

