McCullough Robertson Lawyers

The Local Law

Navigating good government | November 2022

Welcome

We are pleased to bring you the November 2022 edition of *The Local Law*.

This publication has been designed to assist CEOs, elected representatives, local government officers and in-house lawyers to navigate the ever-changing government landscape, keeping you up to date with key decisions, legislation and relevant topics.

In this edition we unpack Chapter 3 of the *Local Government Act* looking at making and reviewing local laws, provide an overview of the new planning regulation for emergency housing, our key takeaways from the Office of the Independent Assessor and Councillor Conduct Tribunal report, and recent cases touching on council WHS duties, accessing private property and option terms for leases.

With the 2032 Olympics and Paralympic Games on everyone's mind, and planning well underway, we discuss the opportunities this will present for local governments.

To provide feedback or if you would like to read more about particular topics, please send your thoughts to a member of our team.

We hope you find this edition insightful and engaging.

Troy Webb
Partner and Head of McCullough Robertson's
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Contents

2032 Olympic and Paralympic Games - impacts on local governments

It is easy to be complacent about the 2032 Olympic and Paralympic Games (**Games**), after all it is 10 years away. Sometimes, that fact implies that there is no urgency across the broader community to develop a plan for the Games as it is all down to the Brisbane Organising Committee for the Olympic Games (**BOCOG**). It can be left until some intermediate point, say around 2025 and 2026! That could not be further from the truth.

These Games will take place across the entire State and the opportunity and dividend does not necessitate a direct connection with hosting either. There is much to plan for.

We have already negotiated preliminary venue agreements for several venues across the State with the forerunner of BOCOG. We are familiar with the demands which the International Olympic Committee through what BOGOC demanded. Whilst some of these wants are of an operational nature and are non-negotiable, there is a Federal and State underpinning to these Games which can be a game changer for sporting and leisure infrastructure in terms of capital outlay.

The ambition for the 2032 Games is that they are effectively cost neutral, carbon neutral and will promote or spur greater economic activity in the regions which events are to be held. This is all doable.

The opportunity extends beyond simply sporting infrastructure much of which will be subject to either temporary overlay or the renovation or construction of facilities, render such facilities permanent editions to the local environment.

Transport infrastructure will, by necessity, improve as will other social infrastructure.

The demands of the period around the Games themselves will mean that opportunities arise for visiting teams or visiting countries for training and the climatisation facilities. We are already seeing this with some facilities in and around Brisbane in advance of the FIFA Women's World Cup 2023.

But more than that, what the International Olympic Committee and the Games demand now is a long-term 'happiness' dividend which means that the local populations can look back on the Games and see them as a pivot in the social and economic developments of the local communities. This is why the Games should be embraced by local governments, as the Barcelona and London experiences will demonstrate.

Planning to be a full and active participant in the Games, and in the momentum towards the Games and after, really needs to take place now.

To plan properly will mean being in a position to undertake necessary works or to be available to partner on necessary works, particularly from 2026/2027 onwards. Putting in place the processes now to accomplish that and devising plans for how your communities can help increase the spin off activity for your region. A community does not need to be a direct contractor of BOGOC to take advantage of the Games' dividend.

More practically, it is essential that other non-2032 focused capital works be developed now or perhaps be accelerated. Given that the works for the Games will take up so much demand in the construction and infrastructure sector from 2027 onwards, if there are other related infrastructure projects in your long-term planning (for example, for the periods 2025-2030), then consideration should be given to bringing those projects on in advance of that construction pinch point of 2027-2032 in Queensland to avoid increase on costs or availability of resources. There may well be a scarcity of personnel and other supply chain resources to complete your 'non Olympics' projects at that time.

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Unpacking the Local Government Act - Chapter 3, the business of local governments - specifically local laws

Welcome to the second edition of our ongoing series, Unpacking the Local Government Act. In this article, we turn to Chapter 3 of the *Local Government Act 2009* (Qld) (**LGA**) to look at the business of local governments – specifically local laws.

Local laws

Local laws, as the name suggests, are laws made by a local government applying to all or part of a local government area. Local laws can be:

- subordinate - sitting under primary local laws like State or Federal regulations sit under legislation;
- interim – only in effect for less than six months; or
- model – discussed below.

Local governments can make and enforce any local law that is '*necessary or convenient for the good rule and local government of its local government area.*' However, local laws cannot set a penalty above 850 penalty units, purport to stop another local law being made, repealed or amended in future, or be about a prohibited topic. In the event of inconsistency, State law prevails over local laws.

Prohibited local laws

Local governments are specifically prevented from making local laws about network (telecommunication) connections, election advertising to the extent it prohibits or regulates how to vote cards or prohibits the placement of election signs or posters, development processes, the anti-competitive processes under the LGA and regulations, or swimming pool safety.

Councils should also be aware of other Acts that may impact the ability to make local laws. For example, the *Transport Operations (Road Use Management) Act 1995* (Qld) provides restrictions on making local laws about road use and the T*obacco and Other Smoking Products Act 1998* (Qld) touches on smoking restrictions.

Model local laws

The Department keeps a set of 'model' local laws available for local governments to utilise. The model local laws offers a precedent suite of local laws that can be adopted rather than re-inventing the wheel. The model local laws have been widely adopted across Queensland.

Local governments should carefully consider whether the model local laws are appropriate for their local government area for two reasons –

- firstly, the model local laws were drafted and gazetted in 2010, so may not account for current circumstances and current legislation (they have received minor updates since 2010); and
- secondly, and more importantly, every local government area is different, local governments should consider whether the model local laws need to be adjusted to fit unique local circumstances.

Local governments do not need to adopt all, or any, of the model local laws but they offer a strong starting point and guide for what local laws usually deal with.

Making a local law

Local laws have to be passed by resolution – so cannot be made under delegation. They must be drafted in compliance with the guidelines issued under the *Legislative Standards Act 1992* (Qld).

Other than for subordinate local laws or the adoption of model local laws without amendments, local governments must undertake a 'state interest check' prior to making a local law. The obligation, set out in section 29A of the LGA, is for local governments to '*consult*' with '*relevant government entities*' prior to making the law.

Practically, local governments should determine what state agencies (departments or other agencies) have an interest in the subject matter of the proposed local law and undertake consultation with those agencies. For example, if a local government wanted to pass a local law about pollution management, it may be necessary to consult with the Department of Environment and Science, the Department of Agriculture and Fisheries or even the Department of Resources.

The Minister can suspend or revoke a local law if the Minister reasonably believes the local law is contrary to any other law, is inconsistent with the local government principles, or does not 'satisfactorily' deal with the overall State interest.

Key Resources for local governments

The Department keeps copies of the model local laws and the guidelines issued under the *Legislative Standards Act 1992* (Qld) on its website.

Guidance on undertaking state interest checks is also available on the Department's website.

McCullough Robertson has assisted local governments with reviewing, revising and updating local laws (including drafting). Please contact Troy Webb if you would like to discuss your local laws.

If there is a particular area of the LGA you would like us to unpack, please email Kristy Jacobsen.

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New planning regulation – emergency housing

A need for emergency housing

As a result of the impacts of COVID-19, recent natural disasters, and increasing inflation, local governments have needed to look at ways they can deliver housing for emergency purposes, including constructing or providing temporary accommodation for community members impacted by disaster situations.

Previously, there were a number of administrative hurdles for Councils to provide secure and stable emergency housing, including the need to first seek relevant planning approvals, as a 'housing' or 'dwelling' use is generally not anticipated on local-government-owned land. These approvals (especially if they would be impact assessable under Council's Planning Scheme) could potentially involve a long assessment process, that may require public consultation, or even end with Court appeals being lodged. Such potential expense and delay in the process restricted Councils from being able to provide urgent support to displaced community members.

Planning (Emergency Housing) Amendment Regulation

On 21 October 2022, the *Planning (Emergency Housing) Amendment Regulation 2022* (Qld) (**Amendment Regulation**) was enacted.

The Amendment Regulation allows State and local governments to deliver emergency housing on a temporary basis, in response to an event (including floods, cyclones, fires, gas leaks and blackouts) without needing to obtain planning approval.

The Amendment Regulation amends Schedule 6, Part 2 of the *Planning Regulation 2017* (Qld), which is the Schedule outlining developments that a Planning Scheme must not make 'assessable' development (i.e. development that does not require Council assessment and approval).

The Amendment Regulation adds a particular exempt material change of use to the Schedule, in the following terms:

> ***4 Material change of use for emergency accommodation***
>
> *(1) A material change of use of premises if—*
>
> *(a) the use is the provision of emergency accommodation, on a temporary basis, for persons affected by the impact of an event; and*
>
> *(b) the accommodation is provided by, or on behalf of, the State or a local government; and*
>
> *(c) no part of the premises is in any of the following areas under a State planning instrument or local instrument—*
>
> *(i) a flood hazard area;*
>
> *(ii) a bushfire hazard area;*
>
> *(iii) a landslide hazard area.*
>
> *(2) In this section—*
>
> ***event** see the Disaster Management Act 2003, section 16.*

The amendments do not affect building requirements, including fire safety, to ensure that emergency accommodation is safe.

What is a disaster event?

Section 16 of the *Disaster Management Act 2003* (Qld) is quite broad, and defines a relevant 'event' as any of the following:

- a cyclone, earthquake, flood, storm, storm tide, tornado, tsunami, volcanic eruption or other natural happening;
- an explosion or fire, a chemical, fuel or oil spill, or a gas leak;
- an infestation, plague or epidemic (an 'epidemic' includes a prevalence of foot-and-mouth disease, for example);
- a failure of, or disruption to, an essential service or infrastructure;
- an attack against the State; or
- another event similar to the events mentioned above.

An event may be natural, or caused by human acts or omissions.

Public housing changes

The Amendment Regulation also introduces a streamlined assessment pathway for use by State-funded organisations, community housing providers, or private sector providers who are 'registered providers' within the meaning of the *Housing Act 2003* (Qld). By designating developments of this nature as 'infrastructure', the Amendment Regulation will allow delivery of social or affordable housing in a more timely and cost-effective manner (for example, a truncated assessment process will apply, and no infrastructure charges will be payable).

This means that such registered providers can access these provisions to provide emergency housing or social housing infrastructure on behalf of Council.

Key takeaway

These new provisions will streamline Council's ability to deliver immediate outcomes to support the local community.

If you would like to know more about the Amendments to Regulation, contact our Planning and Environment Team here.

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Takeaways from the Inquiry into the Office of the Independent Assessor

The Parliamentary Committee Inquiry into the function and performance of the Office of the Independent Assessor (**OIA**) and Councillor Conduct Tribunal (**CCT**) has delivered its final report. After receiving 59 written submissions and hearing from 47 witnesses, the State Development and Regional Industries Committee (**Committee**) made 40 recommendations to improve the system. Here's three things that caught our eye out of the report.

Speed

The biggest gripe from stakeholders was that the complaints system is too slow. Between the time taken by the OIA to investigate an allegation and the CCT's '*18-month backlog*', complaints that are not dismissed early are taking years to resolve.

A number of the recommendations of the Committee were focused on improving the efficiency of the system and reducing duplication. Recommendation 1 of the Committee is to adopt a target time frame for complaints of:

- initial assessment or 'triage' of complaints by the OIA within 7 days;
- misconduct investigations completed by the OIA within 60 days of initial assessment; and
- determination by the CCT within 3 months of lodgment.

Some of the notable efficiency recommendations include increased funding, remuneration and resources for the OIA and CCT (recommendations 3-5, 7-9), limiting the focus of the OIA to its primary investigative role (recommendations 14 and 36), and procedural improvements (recommendations 11 and 12).

Interestingly, the Committee also recommended work go into a statute of limitations on complaints, to potentially reduce the number of complaints coming in the OIA's door.

Ambiguity

A further theme that arose in the report is that councillors are having difficulty in understanding and applying codes of behaviour and conflict of interest provisions. Recommendation 25 is that the Department of State Development, Infrastructure, Local Government and Planning (**the Department**) '*review the working*' of the standards of behaviour to '*create clearer and unambiguous interpretation for all stakeholders*'. Additional general and targeted training for councillors, CEOs and senior managers was also recommended.

Inconsistency in advice between different government entities, legal advisors and other groups was also identified as a problem, with recommendation 37 being that the Department be reaffirmed as the policy lead, steward of the complaints framework and '*point of truth*' on how the legislation should operate.

Specific issues from recent high profile cases were also touched on, including a clarification that social media moderation is not a breach of the Code of Conduct (recommendation 33), and that clarification should be provided by the Minister and Department that the Code of Conduct '*does not usually impinge on the implied freedom of political expression*'.

Vexatious and politically motivated complaints

Finally, the Committee received a lot of feedback about vexatious or politically motivated complaints, with a number of submitters suggesting the system was being weaponised for political gain. Many potential solutions were put forward, including banning anonymous complaints, charging a fee for making a complaint and, as was ultimately recommended by the Committee, clarifying the definitions of vexatious and frivolous complaints and investigating whether making vexatious complaints should be elevated to an offence.

We will have to see what recommendations are ultimately adopted.

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Waste watchers

The environmental performance of the waste and recycling sector is a prominent focus for the Department of Environment and Science (**DES**). Broadly, DES promotes waste reduction, but it also seeks to improve the performance of waste processing and landfill operations. This emphasises the importance of both Council-run and private facilities complying with environmental authority (**EA**) conditions.

Maintaining awareness of EA compliance is also relevant for Councils when considering the operations of private sector operators, such as for the purposes of waste management procurement, and managing community expectations for waste collection and processing.

What is waste?

The definition of 'waste' in the *Environmental Protection Act 1994* (Qld) (**EPA**) is very broad and can be difficult to interpret. Different categories of waste (for example, regulated, clinical, green, and recyclable) all have their own statutory definitions and different requirements. An operator's EA creates additional regulatory requirements on top of the EPA. The complexity of the regime can lead to differences in expectations between the regulator and the operator, and therefore the interpretation and practical implementation of EA conditions can be difficult to navigate.

Misinterpreting the conditions of an EA can be costly. Recently, a waste company was fined $300,000 for accepting 326,137 tonnes of landfill waste over its allowed limit. In addition to the fine, the company was required to pay legal and investigation costs, and convictions were recorded.

Amending EAs

As the waste sector is constantly evolving, operators may at times change their site requirements or operations. There are various pathways to facilitate a change to EA conditions, but the simplest and most flexible option is to change the conditions by written agreement with DES. DES also has power to unilaterally change EA conditions, but only in specific circumstances. If an operator predicts that their current conditions may not be right for their operations, it is best to get on the front foot and seek an amendment to the EA to complement what is happening on site.

Transitional environmental programs

If an EA holder is aware of an issue that has caused, or threatened to cause, environmental harm, the EA holder can provide DES with a 'program notice' about the act or omission which provides immunity against prosecution for a continuation of that offence. DES may in turn require the EA holder to prepare and submit a transitional environmental program (**TEP**) which provides a plan for transitioning back into compliance with the EA, through a series of timed action items. The TEP can authorise activities or action items despite anything contrary in the EA or an environmental protection policy.

Environmental Protection and Other Legislation Amendment Bill 2022

On 12 October 2022, the *Environmental Protection and Other Legislation Amendment Bill 2022* (Qld) (**EPOLA22 Bill**) was introduced in Queensland Parliament.

Several of the amendments proposed may have implications for waste operators in terms of the enforcement and compliance regime, especially relating to TEPs.

Under the current legislation, the EA holder can submit a TEP application along with proposed draft TEP action items for approval by DES. In this sense, it is an operator-driven tool. The EPOLA22 Bill proposes an overhaul of this regime which gives the pen to the Department to draft a TEP in response to an application.

For EA holders who are in potential non-compliance with their EA, these changes may have a significant impact on how a holder is able to transition back into compliance.

Key takeaways

- Ensure Council officers or staff are aware of the conditions or requirements under an EA.
- EA conditions can be amended.
- Be upfront about any EA breaches and consider getting on the front foot by accessing tools that assist with transition to compliance.
- The TEP regime may soon change, which will have an impact on compliance and enforcement of EAs.

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With thanks to Amy Whinn for her contributions to the article.

Landlord refusing to grant further lease – equity to the rescue

The Supreme Court in *NightOwl Properties Pty Ltd v Replay Australia Pty Ltd*[1] granted relief against forfeiture of an option term to grant a further lease even though the tenant was in breach of the lease at the end of the term.

Case background

Replay (**Landlord**) leased a premises to NightOwl (**Tenant**) for a term of 10 years ending on 13 October 2020 (**Initial Term**) with options to renew the lease.

The Tenant proceeded to give notice on 22 January 2020 of its exercise of the first option term for five years.

Between April and August 2020, the Tenant paid reduced amounts for rent and outgoings (**Shortfall Amount**).

On 9 December 2020, the Landlord's solicitors issued a notice to remedy a breach, and asserted the Landlord was not obliged to grant a further term of the lease due to breaches of the lease that occurred during the Initial Term. The Tenant paid the Shortfall Amount and remedied the breach the next day.

Court findings

The Tenant sought relief the Landlord had waived the breaches, and alternatively, relief against forfeiture[2].

The Court concluded the lease specifically reserved the Landlord's right for breaches and had not been waived.

Relief was not available under the *Property Law Act*[3] because the Initial Term had lapsed and the Tenant had not complied with the requirements for the exercise of the option term (i.e. not being in breach of the lease during the Initial Term).

However, relief was available in equity. Where the landlord can be restored to the position it was in before such breach and the breaches have been remedied, the tenant is entitled to equitable relief against forfeiture.

The Court found that the parties could not have intended for a breach post exercise of the option term to mean the option term was lost.

Having considered the relevant circumstances, history, and conduct of the parties, the Court granted relief against the forfeiture of the option term.

Key takeaways

Tenants should be mindful of the requirements in option terms not to be in breach during and at the end of the term or the landlord may refuse to grant a further lease. If a tenant can demonstrate a history of substantial compliance and having remedied the breach, it is likely that the Court will grant relief against forfeiture of the option term in those circumstances on equitable grounds.

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[1] [2022] QSC 204.

[2] Under s 124(2) of the Property Law Act or as an equitable remedy.

[3] 1974 (Qld).

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My home is my castle – avoid a trespass claim

Councils have broad power to access private property for a variety of reasons under the *Local Government Act 2009* (Qld) (**LGA**), for example, the installation and maintenance of underground assets such as sewers and pipelines, and for the purpose of conducting investigations relating to compliance with planning and assessment laws.[4]

An authorised person may enter onto privately owned land for the purpose of exercising powers under the LGA in a number of ways, requiring the Council's authorised person to obtain consent, rely on permit, notice or search warrant.

Entry onto privately held land without such authority gives rise to serious risks for Councils, including adverse orders for damages and costs, or injunctions restraining Council conduct.

An owner, or an occupier in actual possession, of private property is entitled to sue for (among other things) trespass. In pursuing an action in trespass, it is not necessary to prove that the trespasser (for example, the Council) caused any damage to the land, although proof of damage will be relevant to quantification of compensatory damages.

Councils throughout Australia have been subject to actions for trespass, for example in relation to authorised persons entering property to purportedly enforce Council by-laws, to demolish buildings or in relation to water infrastructure actually on the property or that cause waterflow onto the property. Indeed, unintended consequences can give rise to claims for trespass.[5]

In certain circumstances, unlawful access of property due to a Council failing to comply with due process to ensure any property access is lawful may result in exemplary awards of damages to discourage similar breaches by local government authorities. Although not an example from *Queensland*, *in Rumble v Liverpool Plains Shire Council*[6], the District Court of New South Wales considered similar legislative provisions and, in that case, the Council had conceded that notices of entry served on the property owners were invalid. The Court awarded each plaintiff $10,000 in exemplary damages in addition to compensatory damages.

If private property is not accessed lawfully, even where the access is for a lawful purpose, this can preclude Council from relying on any information or observations gathered during that attendance as evidence later on in proceedings.

Prior to entering private property, Councils should be clear on the purpose of the entry and, accordingly, what legislative power Council relies on to enter the property.

If an authorised person wishes to obtain a property owner's consent – either because there is a specific requirement to do so or because that is preferable – the authorised person should follow clear steps outlined in section 129 of the LGA. While consent is often preferable, it should be recognised that there may be extreme circumstances where access without notice is necessary to achieve the Council's purpose.

Be mindful that the right of the authorised person to stay on the private property is subject to any conditions imposed by the occupier (for example, the timeframes which the authorised person may enter) and may be cancelled by the occupier at any time.

If an authorised person wishes to rely on a 'permit', the person should ensure that the permit, approval, authorisation, licence, permission or registration is current and valid, that it authorises the specific entry, and the conditions which must be met or steps that must be followed before entry is permitted. If an authorised person proposes to rely on a statutory notice, strict adherence to the legislative process – both substance and form – is critical to avoid a challenge to its validity and the legality of the entry. In each of these cases, the authorised person must abide by the restrictions in section 132 of the LGA regarding the time of entry, and communication of that entry.

Council's authorised person will be protected from civil liability provided that they act honestly and without negligence, and Councils will go a long way avoiding liability for trespass and other claims if they access property only strictly in accordance with legislative process.

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[4] Councils also have access authorities under other legislation, for example the *Food Act 2006* (Qld).

[5] Claims for nuisance and negligence may also be available.

[6] *Lee and Robert Rumble v Liverpool Plains Shire Council* [2012] NSWDC 95.

The WHS high bar for Councils

Councils are a target for work health and safety (**WHS**) regulators. There is often an expectation that councils 'set the standard' for WHS, particularly in regional and remote areas.

A recent prosecution against a council (and its contractor and a subcontractor) has shed some light on how seeking to meet these expectations can affect exposure to WHS prosecutions.

Background - relevant WHS law considerations

A council owes a duty to ensure, to a reasonably practicable standard, the health and safety of its workers and others arising out of its operations. Contractors engaged by councils owe the same duty arising out of their own operations. Given work often overlaps, the WHS laws require councils and their contractors to consult, cooperate and coordinate activities with other persons to ensure health and safety.

Given the various different types of activities carried out by councils, there are many circumstances where councils will need to engage contractors and will therefore need to manage WHS matters with them.

This does not mean that councils should take full responsibility for managing and overseeing the work performed by others that it engages. However, councils must have systems in place that show how risks are agreed to be managed, and that they are discharging their own obligations in an effective manner.

Recent prosecution - the facts

A recent prosecution arose out of the operation of a sewerage treatment plant by a New South Wales council. Work required to be performed at the site included dewatering a settlement pond by using a centrifuge and pontoon to remove biosolids. The biosolids were to then be transported from the site by truck.

As part of performing the work, the council's contractor required a mobile crane to load the dismantled centrifuge onto a truck. The contractor engaged an unincorporated crane provider to assist. At the time the loading was to be performed, the qualified crane operator was running late. Despite not holding the required license, another employee of the crane provider elected to operate the crane and, when doing so, the crane's boom contacted, or came into close proximity to, live 11,000kV overhead power lines. This resulted in two workers receiving electrical shocks and suffering significant burns.

Following investigations by the regulator, prosecutions were commenced against the council, the contractor and the individual crane provider.

While sentencing is yet to occur, a decision was handed down against the individual crane provider finding he had breached his safety obligations by not instructing his unlicensed employee to avoid operating the crane, and by failing to conduct other risk assessments and implement control measures.

Also, earlier this year a decision was handed down finding that the contractor had breached its WHS duty and more recently, the council entered into an enforceable undertaking.

Relevant considerations

There was no question that the unlicensed crane operator was a 'worker'. While employed by the unincorporated crane provider, the crane operator was also a 'worker' for both council and its contractor. Similarly, the contractor's two injured employees were 'workers' of council.

Relevantly for the contractor, it was prosecuted based on its failure to ensure the health and safety of the three workers by not, before the work was commenced:

- undertaking a site-specific risk assessment for the task so that the hazard could be identified and controls implemented;
- developing and implementing a safe work method statement for the task, and training workers in that procedure;
- requiring and confirming that all employees engaged in the task performed a joint safety assessment, had undergone a site induction and were suitably qualified to perform the work; and
- instructing that a qualified dogman was required for the crane works and confirming that a qualified dogman or spotter was tasked with identifying powerline locations to issue warnings.

For its part, by entering into its enforceable undertaking, the council accepted that the individual who acted as the crane operator had not been provided with a site-specific induction and was not licenced to operate the crane.

It is implicit from this the council was required to have systems in place for managing these matters as part of discharging its statutory WHS duty to the workers.

Lessons for councils

Councils will necessarily need to engage with contractors, and subcontractors, as part of delivering services to their communities. The range of potential work required is incredibly broad, and councils will have differing roles and responsibilities.

There is an obvious need to balance between doing enough that ensure councils meet their statutory obligations against overstepping the mark and unwittingly taking on more responsibility (with its attendant legal exposure) than is required.

The path to success for councils when managing their WHS obligations, and how they interact with other duty holders, starts with determining where responsibility lies for the work being performed, including how and by whom hazards will be managed.

Where there is joint responsibility for identified hazards, consultation becomes key to ensuring that everyone understands their role for managing them, and the level of control that a council has over the activity will be determinative of the council's WHS exposure.

For example, while councils might have a responsibility for inductions to sites they control and for advising about hazards on site that they are aware of, it does not follow that councils will be required to otherwise oversee work being performed by contractors or subcontractors as part of ensuring safety compliance.

This is especially the case where contractors with specialist expertise are engaged to perform work outside of the council workforce's abilities.

Getting the balance right is not always easy, and if there is doubt, obtaining advice about how compliance can be achieved is of course always recommended.

If you have any questions in this space, our specialist team of WHS lawyers can help guide you.

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Peter is a litigation specialist who works with government, corporate and individual clients on disputed commercial matters or regulatory and administrative disputes.

His area of particular expertise in commercial litigation are contractual disputes, and misleading or deceptive conduct and other competition, consumer or defamation claims. No matter how good a contract is, sometimes disputes cannot be avoided or some enforcement of rights may be necessary, and Peter can assist in drilling down to the specific issue, and laying out options to balance legal, commercial and public interests.

In administrative and regulatory matters, Peter's experience includes advising local, state and federal government clients in relation to proper decision making processes, including preparing statements of reasons, and acting for government and private clients in the Supreme and Federal Courts, Land Court and Queensland Civil and Administrative Tribunal (QCAT) in relation to judicial and merit reviews, including under the *Judicial Review Act 1991* (Qld). Peter also advises on other industry specific legislation such as those relating to property rights, use of public roads by private business, and education services.

Peter is a Nationally Accredited Mediator and specialises in resources, property, shareholder and other commercial disputes. He is appointed by the President of the Land Court of Queensland to the Court's Alternative Dispute Resolution Panel.

Meet our team

Lawyers | McCullough Robertson

McCullough Robertson has acted for local governments across Queensland for over 25 years. Our dedicated Local Government Industry Group are specialists in fields of law relevant to local government and ensure that the advice given aligns with, and is cognisant of, the industry and its framework.

For further information, please contact one of our team members:

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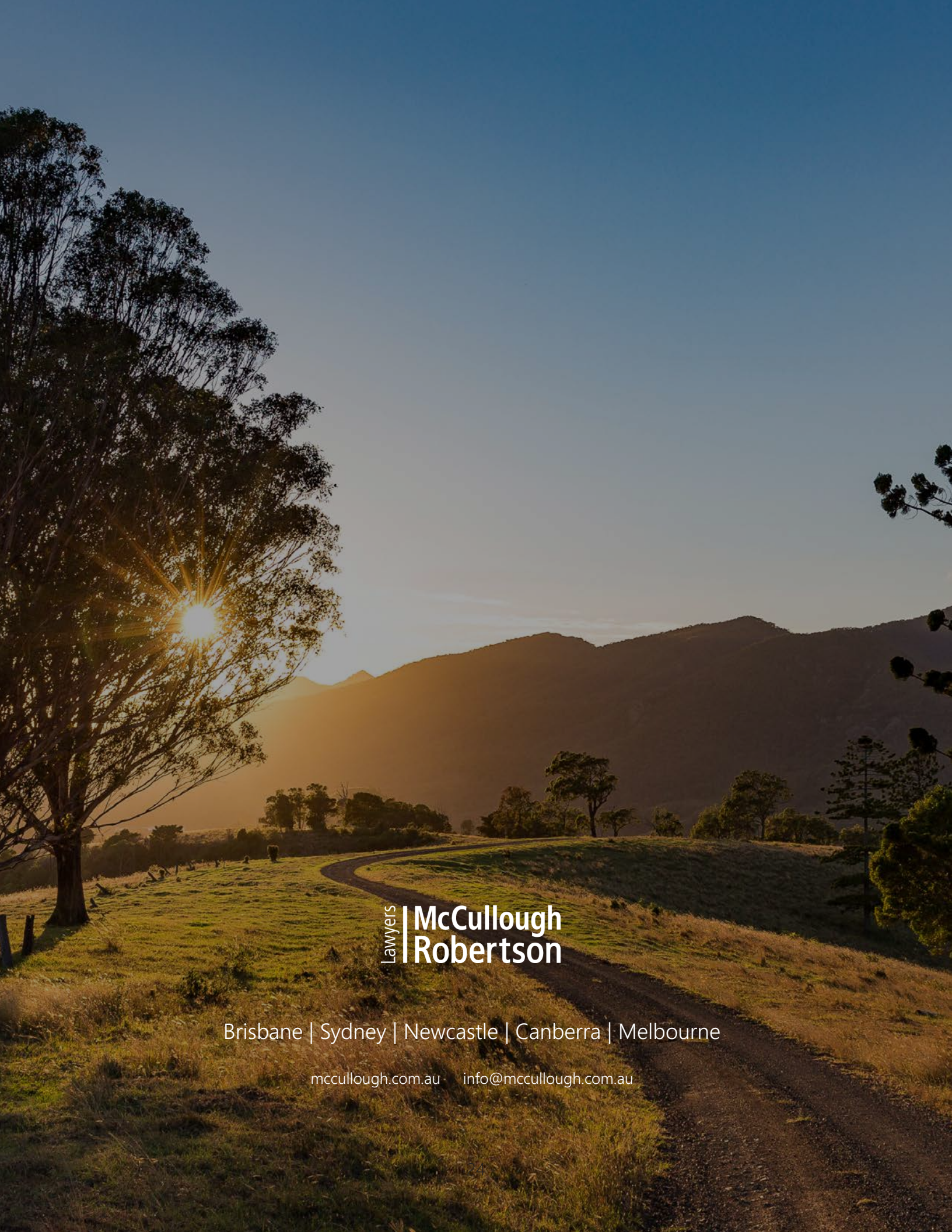

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