



BRRAG

Belmont Resident and Ratepayer Action Group Inc.

"To provide an effective voice for the people of Belmont"

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Office of the Auditor General
7th Floor, Albert Facey House
469 Wellington Street Perth

Dear Sir/Madam

We would like to make a complaint regarding the conduct of the CEO and the Senior Staff from the City of Belmont. We believe it may be a matter of serious misconduct. The actions of those Public Officers who have been doing reports and policies on Gratuity Payments and have recommended to council that they be accepted them, may well be a breach of Section 5.50 of the Local Government Act 1995. We are hoping you may be able to look into this matter on our behalf.

Background

Earlier this year at an Ordinary Council Meeting (OCM), Councillor Jenny Davis made comments during the course of the meeting regarding the million dollar gratuity payments. She made it very clear she did not agree with them. As a result of her comments which alerted us to this excessive spending our organisation has been asking questions at the OCM.

We do not believe our questions have been answered. Some of the responses seem to contradict previous responses and we seem to have hit a dead end with it.

As a result of comments of these inconsistencies, we have made our own enquiries. We contacted the Fair Work Ombudsman for advice on the basis the City of Belmont advised that the gratuity policy had no legal affect due to a Federal Employment Bargaining Agreement (EBA).

The Fair Work Ombudsman brought up both Section 5.50 of the Local Government Act 2005 and the Regulations that are referred to in the Act. They advised that the Federal Act does not include gratuity payments and that the WA legislation I referred them to was inconsistent with the EBA. It was a state matter.

I have subsequently spoken to two lawyers one of which was in the area of work agreements advised me the clause in the EBA was ultra vires as a result of the state legislation. Further questions with the City of Belmont have gone nowhere and a request for the Councillors to review the policy including this inconsistency has been dismissed by them.

Well over a million dollars has been paid out by the City of Belmont in the last five years for gratuity payments for leaving staff. Two recent payments included \$125 000 and \$45 000 respectively.

If these payments are incorrect, it has cost the ratepayer a large amount of money. We are unable to find anyone that can explain the point of having legislation in regards to this matter, when it would seem you can get around it.

Details

- At the September 2020 Ordinary Council Meeting BRRAG read out section 5.50 of the Local Government Act in addition to the Local Government Administration Regulations rule 19A. This was part of our preamble to our questions.
- One question asked was “*why does our policy allow for such huge gratuity payments recently one of \$125000 and for the previous five years around a million dollars when the regulations state that it should not exceed \$5000.*” The question was Taken on Notice **See Attachment A**
- The response received from the CEO was “ *Council Policy does not give legal effect to this condition of service for City staff. This arrangement is given legal standing through the existence of the City’s two Certified Agreements which are in turn governed by federal industrial laws.* **See Attachment B**
- At the October 2020 Ordinary Council Meeting BRRAG asked further questions. One being “*What is the point of council having a policy on gratuity payments, when it does not give legal affect? How much does it cost the residents to do a policy that has no legal effect?*” This question was Taken On Notice **See Attachment C**
- The response received from the CEO was “*It is a requirement under the Local Government Act to have a Council Policy which at the City has legal effect on any proposed payments to staff that fall outside of the Gratuity Payment arrangements*” **See Attachment D**
- On 14 November 2020, we wrote to the Mayor and Councillors requesting a review of the policy. In the letter we provided the legislation and regulations, copies of the responses from the CEO, the advice we received from a legal practitioner in addition to the advice we received from the Fair Work Ombudsman. **See Attachment E**
- On 27 November we received a response to our letter from the Mayor. He advised there was no inconsistencies and that there was a lack of understanding on our part. **See Attachment F**
- On 28 November we again wrote to the Councillors with a copy of the Mayor’s response to us asking that if they did not agree with the Mayor’s response to let us know. **See Attachment G** No response has been received.
- A copy of the Government Gazette dated 31 March 2005 Page 1032 provides Regulation 19A **See Attachment H**
- A copy of the Government Gazette dated 13 July 2012 Page 3218 provides the amendment to Regulation 19A **See Attachment I**

We would appreciate it if you could look into this matter on behalf of both our members and the residents of Belmont. It would seem it is very difficult to know where to go if you think something

is not right. It would appear that we will get nowhere with the City of Belmont in regards to this.

Kindest regards

Committee

Belmont Resident and Ratepayer Action Group Inc (BRRAG)