



BRRAG

Belmont Resident and Ratepayer Action Group Inc.

“To provide an effective voice for the people of Belmont”

14 November 2020

The Mayor and Councillors
City of Belmont
Belmont WA 6104

Dear Mayor and Councillors

Over the course of the last few Ordinary Council Meetings, BRRAG has been asking various questions relating to Gratuity Payments. We believe our questions have not been satisfactorily answered and have concerns that some of the responses have been contradictory.

As we all know, over the last 5 years in excess of \$1, 000,000 has been paid in gratuity payments for staff leaving the City of Belmont. As these payments come from money collected from residents via rates, we believe that there needs to be transparency with respect to these payments. There are many things residents would like to see such as more trees, better lighting, better security etc. Incorrect or over payments to staff who leave, not only means less money for the improvements residents may want, but also potentially increasing costs. Cost increases result in increased rates.

At the September OCM Section 5.50 of the Local Government Act 1995 was read out. Section 5.50 (3) of the Local Government Act is in regard to the value of the payments not exceeding the amount that is provided in the Regulations (See 5.50 on the link below)

http://classic.austlii.edu.au/au/legis/wa/consol_act/lga1995182/s5.50.html

The Local Government (Administration) Regulations 1996 Section 19A (1) (b) refers to the amount not exceeding in total of \$5000. This was also read out. (See 19A on the below link)

http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/wa/consol_reg/lgr1996443/s19a.html

The question was then asked : “ Why does the policy allow such huge gratuity payments, recently one of \$125,000 and another for \$45 000 and for the previous five years, amounts of around \$1million, when the Regulations state that it should not exceed \$5,000?”

The question was taken on notice and the following response was provided:

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.

Prior to the October OCM we undertook further investigation. At the meeting as a preamble to our question we advised council that the Fair Work Ombudsman had checked the WA legislation against

the EBA and we were told the inconsistency was a state issue. Under the Fair Work Act there is no provision for gratuity payments. We also advised council that further advice we received from a legal practitioner in the field of employment law, was that the clause in the EBA regarding gratuity payments was ultra vires, meaning beyond the powers to include the clause, due to the inconsistency with the Local Government Act 1995.

The question that followed the preamble was: "What is the point of a gratuity policy when it has no legal affect?"/ This was the response:

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.

A further question was provided with the following response:

At the time the Local Government Act was changed in regards to these kinds of payments advice was taken with regards to the City's legal position taking into account all matters relevant to the issue. Action taken to date is in accordance with this advice.

We are asking Council, on behalf of the residents, to request a review of the gratuity payments policy. In view of the information we have provided to you, any review would need to address the inconsistencies between the Local Government Act and the staff EBA's. Please note we have previously brought to your attention, at least one incident on public record in June 2018, wherein a Director received legal advice and decided that in future they would disregard the advice in the same situation again. as it was better practice the way the City approached the situation than the legal advice provided.

We apologise for a long winded letter but we wanted to put all the facts, the responses and the legislation in the one letter to make it easy to follow. We think the ratepayers of Belmont have every right to have transparency in regards to this matter as there is a significant amount of money involved.

With five councillors coming up for re-election next year, I am sure the residents would want to know that those councillors are proactive in investigating this. As such, we will be ensuring that any outcome, or lack thereof, is widely circulating within the community.

Please be advised this letter will be made available to the Residents of Belmont on the BRRAG website, as well as any response provided.

Kindest regards

BRRAG Committee