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INDEPENDENT COMMISSION AGAINST CORRUPTION

MODEL CODE OF MEETING PRACTICE FOR LOCAL COUNCILS REVIEW

SUBMISSION TO THE OFFICE OF LOCAL GOVERNMENT

February 2025

OFFICIAL

Introduction

Local government is a significant area of focus for the Independent Commission Against Corruption (the Commission). In recent Commission investigations, councillor behaviour at both meetings, and less formal forums, has come under scrutiny. This submission reflects insights from these investigations and the recommendations that resulted. The headings below correspond to those adopted in the proposed *Model Code of Meeting Practice for Local Councils in NSW* (the proposed Model Code of Meeting Practice).

Questions with notice

The proposed amendments remove clause 3.13, which prohibits councillors asking a question with notice that comprises a complaint, or implied wrongdoing, against a council officer. The Commission does not support the removal of this clause from the proposed Model Code of Meeting Practice as it creates a risk that public officials may be subject to unjustified claims of wrongdoing in a public forum. In addition to having an adverse effect on the person accused of wrongdoing, the raising of allegations in such a way potentially undermines public trust and confidence in a council.

The public voicing of allegations of improper conduct can also result in the loss of investigative opportunities, impairing the ability of agencies, such as the Commission, to investigate matters. For example, allegations that have become common knowledge, may lead to the loss or destruction of evidence or provide an opportunity for witness collusion.

The Commission similarly asserts that the term 'acts of disorder', referred to in proposed clause 15.10, should continue to encompass allegations about code of conduct breaches. As such, the reference removed from clause 15.10 should be restored.

Statement of ethical obligations

The Commission does not support the proposed removal of clause 3.23 from the current Model Code of Meeting Practice, which requires a statement of ethical obligations to be contained in business papers. This clause was introduced in response to the Commission's 2021 report, *Investigation into the conduct of councillors at the former Canterbury City Council and others* (Operation Dasha), which recommended:

> *Recommendation 6*
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> *That the DPIE amends the Model Code of Meeting Practice for Local Councils in NSW to require that council business and briefing papers include a reminder to councillors of their oath or affirmation, and their conflict of interest disclosure obligations.*

A growing body of research suggests ethical nudges can influence decision-making. Clause 3.23 represented a low-cost practice with potential to improve the integrity of decision-making in local government. The purpose of the recommendation was to afford a positive reinforcement of councillors' obligation to disclose conflicts of interest. Although councillors are responsible for understanding their obligations in this regard, the fact remains that recent Commission investigations highlight failures to comply with these requirements.

Pre-meeting briefing sessions

The Commission advised in its November 2024 submission to the *Councillor Conduct Framework Review* that it did not oppose the proposal to ban the pre-meeting briefing sessions that take place prior to council meetings. As noted previously, the Commission's concern is that some councillors participate in briefing sessions without disclosing conflicts of interest. While the existing Model Code of Meeting Practice makes provision for declaring and managing conflicts of interest during briefing sessions, as well as prohibiting the debating and making of preliminary decisions, these clauses are not mandatory. Moreover, the existing Model Code of Meeting Practice does not address the distribution of materials to councillors during briefing sessions; a practice that reduces transparency.

Commission investigations also highlight that during briefing sessions, and other forums such as workshops and informal 'working parties', some councillors attempt to influence council officers' report outcomes. The lack of public oversight, limited record keeping and suspension of normal meeting procedures associated with these forums have the potential to diminish trust in a council.

To address the governance arrangements relating to informal forums, the Commission recommended in its July 2022 report, *Investigation into the conduct of the local member for Drummoyne* (Operation Witney):

> *Recommendation 14*
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> *That the Department of Planning and Environment amends the model code to include provisions about the appropriate role of council workshops. In particular, it should be made clear that workshops cannot be used to transact council business.*

Additionally, the Commission made the following two recommendations in its August 2023 report, *Investigation into the conduct of three former councillors of former Hurstville City Council, now part of Georges River Council, and others* (Operation Galley):

> *Recommendation 3*
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> *That the Department provides guidelines for councils stating that, when they propose to form an informal committee consisting of councillors, they should establish:*
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> *(i) clear terms of reference and objectives for the group, including its role*
> *(ii) governance arrangements, accountability and transparency measures (including proper record-keeping requirements and ensuring the group cannot direct staff)*
> *(iii) an obligation to report in a timely manner on the deliberations of the group to other councillors*
> *(iv) that the group does not have a decision-making function normally carried out through other council processes or activities.*
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> *Recommendation 4*
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> *That the DPE also provides guidelines for councils in relation to when it is appropriate or inappropriate to establish informal working groups. For example, whether they should be convened to deal with statutory and administrative decisions including planning and other regulatory and procurement matters.*

The December 2024 consultation paper accompanying the proposed Model Code of Meeting Practice envisages that councils may still hold periodic workshops with councillors. While the Commission does not object to this practice, there is still a need to clarity the governance arrangements for these forums in line with the above recommendations.

Additionally, it is important that mechanisms are in place to ensure all councillors are fully informed when voting on matters. The consultation paper notes that mayors will not be subject to the proposed restrictions on the distribution of information outside of meetings. Leaving aside the additional responsibilities of mayors, in the interests of transparency, information relevant to a specific council agenda item should be provided to all councillors.

Voting on planning decisions

The Commission supports proposed clauses 11.12 and 11.13, which adopt recommendations made in previous investigation reports.

The Commission's November 2023 report, *Investigation into the conduct of the City of Canada Bay Council mayor and others* (Operation Tolosa), detailed how a planning proposal was advanced at a council meeting via an amendment to a motion involving an adjacent site. As a result of this arrangement, the requirement to give due notice of council business was avoided. The proponent's planning proposal benefited from not being subject to the same level of assessment as the original planning proposal, which was reasonably expected to take some time to complete under the standard practices. Accordingly, the Commission recommended:

> *Recommendation 4*
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> *That the Department of Planning and Environment limits the ability of a council to make decisions to advance planning matters at meetings in the absence of an assessment report considering relevant matters and an associated recommendation.*

Additionally, the Commission's Operation Galley report observed that the existing Model Code of Meeting Practice does not require that councillors provide reasons when they resolve to adopt recommendations that vary from those provided by staff in respect of planning matters. The Commission believes there is value in requiring councillors to state their reasons publicly in such situations to provide a disincentive for corrupt conduct. If approval from councillors is given in accordance with a planner's recommendation, they can adopt the reasons in the council staff report. If not, it should be councillors' responsibility to set out their reasons. This view was expressed in the Operation Galley report, which provided:

> *Recommendation 5*
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> *That the DPE amends the Model Code of Meeting Practice for Local Councils in NSW to require a council's governing body to provide reasons for approving or rejecting development applications, planning proposals and planning agreements where decisions depart from the recommendations of staff. These reasons should refer to the relevant merits criteria and explain why the decision is more meritorious than the recommended outcome.*

Resolutions passed at closed meetings to be made public

The Commission supports proposed clauses 14.19, 14.20, 20.20 and 20.21. There are instances where business papers provided at closed meetings remain inaccessible, despite the grounds for closing the meeting to the public no longer existing. While s 10A of the *Local Government Act 1993* has a legitimate role in protecting the confidentiality or privilege of the information upon which a council relies, there is no justifiable reason to continue to deny the public access to information in these situations. Although a member of the public may be able to access the information under the GIPA Act, it would be excessively inconvenient to make an application in these circumstances. Moreover, the proactive publication of business papers that cease to be confidential will ensure the public has meaningful information about decision-making processes as well as the basis for decisions.

This issue was considered in the Commission's Operation Tolosa report, which recommended that:

> *Recommendation 3*
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> *That the Department of Planning and Environment:*
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> - *takes steps to require councils to proactively release relevant business papers, correspondence and reports where confidentiality under Part 1 of Chapter 4 of the Local Government Act 1993 no longer exists, either via initiating an amendment to legislation or a regulation, and/or amending the Model Code of Meeting Practice for Local Councils in NSW and The Closure of Council Meetings to the Public guidelines*
> - *advises councils of an appropriate framework for considering the release of information previously considered confidential.*

In addition to the proposed amendments, councils should have a framework in place to avoid unnecessary litigation when removing confidentiality associated with documents. As outlined in the Operation Tolosa report, this could include:

- a determination by the relevant council that the information is no longer considered confidential, which includes the reasons why it is no longer considered to be confidential
- the granting of an opportunity to the party or person whose confidential information may be released to provide reasons as to why the information should remain confidential.