Office of Local Government

NSW GOVERNMENT

A new model code of meeting practice

Consultation draft

December 2024

olg.nsw.gov.au

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Minister's foreword

Council meetings are where a council's most important decisions are made. They are where councillors, as democratically elected representatives, set the future direction of their council. For these reasons, it is important that meetings are effective, allow for robust, respectful debate and result in actionable outcomes for New South Wales communities.

Unfortunately, there has been a shift in the culture in local government. Debate in council meetings has been stifled by code of conduct complaints that aim to silence councillors from expressing contrary views. Rather than productively disagreeing, there have been too many cases where councillors have resorted to disorderly conduct, distracting from the critical work that is done in council meetings. By making changes to the Model Code of Meeting Practice for Local Councils in NSW, I hope to set a new balance between mayors, councillors and general managers and restore dignity to the council chamber.

Under the *Local Government Act 1993*, mayors are responsible for presiding at meetings of the council. Under the proposed changes outlined in this paper and the consultation draft of the new Model Meeting Code, they will have greater powers to control the agenda and activities of their council and better enforce order in meetings. Mayors will have the power to take immediate action against disorderly councillors or members of the public in meetings, which I hope will lessen the need for councils to resort to the broken code of conduct process. By further providing that mayors be granted respect, by standing when they enter, councils can begin to build a culture where it is the accepted duty of the mayor to run a dignified and democratic council chamber.

The changes will also reinforce the boundaries between councillors and general managers by depoliticising the role they play in council meetings. General managers will no longer need to provide advice on motions requiring the expenditure of funds. Disputes over the future direction of a council and the spending of ratepayer money should rightfully occur between elected councillors.

The Hon. Ron Hoenig MP
Minister for Local Government

The most important of the reforms is to end private councillor briefing sessions. While well-intentioned as a means of educating councillors on matters before council, these sessions have had a corrosive effect on the transparency of council decision making. Communities are entitled to know the deliberations of their councillors and the nature of the advice given to assist them in making responsible decisions. These changes will ensure that all material given to a councillor to make a decision in a council meeting is provided in a public fashion.

Local government is the legitimate third tier of Government in New South Wales. Through these reforms, I aim to uplift the standards at council meetings so that they should, as best as possible, resemble the forthright and effective debate that occurs at the State and Federal levels. It is the duty of all councils to work together to provide outcomes that lead to better lives for the communities they are elected to serve. These outcomes are decided within the confines of the council chambers. It is critical that councillors can make these informed decisions in an environment that supports democracy, transparency and where elected representatives are given the respect they deserve.

Introduction

The Office of Local Government (OLG) is inviting feedback from the local government sector and others on proposed amendments to the Model Code of Meeting Practice for Local Councils in NSW (Model Meeting Code).

A consultation draft of the new Model Meeting Code has been published on OLG's website at www.olg.nsw.gov.au. The proposed amendments to the Model Meeting Code are indicated in track changes.

The amendments are part of the Government's agenda to ensure that councillors are visibly in control of their councils, demonstrating to the community that decision making is genuinely local.

The reform of the codes and procedures governing how councillors gather, debate and make decisions was flagged by the Minister for Local Government as part of the discussion paper issued in September, "Councillor conduct and meeting practice: a new framework".

The proposed amendments to the Model Meeting Code are the first tranche of reforms to the regulation of meetings. The second tranche will be legislated in 2025 as part of the measures implemented to reform the regulation of councillor conduct and will have a particular focus on behaviour at meetings.

Information on how to make a submission together with targeted questions is provided at the end of this paper.

The feedback OLG receives will be used to inform the amendments that are ultimately made to the Model Meeting Code.

It is anticipated that the new Model Meeting Code will be prescribed in early 2025.

What is the Model Meeting Code?

The Model Meeting Code is prescribed under the *Local Government Act 1993* (the Act) and the Local Government (General) Regulation 2021 (the Regulation).

Section 360 of the Act provides that:

- The regulations may prescribe a model code of meeting practice for the conduct of meetings of councils and committees of councils of which all the members are councillors.
- The Model Meeting Code may contain both mandatory and non-mandatory provisions.
- A council must, not later than 12 months after an ordinary election of councillors, adopt a code of meeting practice that incorporates the mandatory provisions of the model meeting code prescribed by the regulations. The adopted code may also incorporate the non-mandatory provisions and other provisions.
- A meeting code adopted or amended by the council must not contain provisions that are inconsistent with the mandatory provisions.
- A council and a committee of the council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by it.

The current version of the Model Meeting Code was prescribed in 2021.

What policy objectives inform the proposed amendments?

The proposed amendments to the Model Meeting Code have been foreshadowed in the discussion paper OLG issued in September, "Councillor conduct and meeting practice: a new framework" (the September discussion paper).

A council chamber is a chamber of democracy, and the mayor as figurehead represents the authority of that council.

A key focus of the Government's reform agenda for the regulation of council meetings, is to promote community confidence in councils' decision making by ensuring that the forum in which decisions are made is conducted in a way that is befitting to a democratic institution comprising of elected representatives.

As observed in the September discussion paper, council meetings can be conducted without the appropriate level of dignity or reverence that suggests the importance of the debate and the need for civility. Councillors are not expected to agree with each other. In fact, debate is encouraged, but the debate should be fair and respectful.

The September discussion paper proposed the following reforms to the way council meetings are conducted:

- Conferring power on mayors to expel councillors for acts of disorder and to remove a councillor's entitlement to receive a fee for the month in which they have been expelled from a meeting.
- Requiring councillors to apologise for an act of disorder at the meeting at which it occurs and, if they fail to comply at that meeting, at each subsequent meeting until they comply. Each failure to apologise becomes an act of misbehaviour and may see the councillor lose their entitlement to receive their fee for a further month.
- Expanding the grounds for mayors to expel members of the public from the chamber for acts of disorder and enable the issuing of a penalty infringement notice where members of the public refuse to leave a meeting after being expelled.
- Promoting transparency and addressing corruption risks by banning councillor briefing sessions. The community has the right to understand the mode of reasoning behind council decisions without material being provided to councillors by council staff behind closed doors.

The proposed amendments to the Model Meeting Code give effect to many of these reforms and expand upon them. They are designed to deliver the following outcomes:

- promoting transparency, integrity and public participation
- promoting the dignity of the council chamber
- depoliticising the role of the general manager
- simplifying the Model Meeting Code.

The amendments to the Model Meeting Code will be given legal force through an update to the reference to the code in the Regulation. These amendments will also prescribe the restrictions on briefing sessions.

What changes are being proposed?

A brief overview of the proposed changes is provided below. This is not a complete or detailed summary of the proposed changes.

Councils and others should review the accompanying draft Model Meeting Code for a more complete and detailed view of the proposed changes. These are made in track changes in the document.

Promoting transparency, integrity and public participation

The proposed amendments will promote greater transparency and public participation by:

- Removing pre-meeting councillor briefings. It is the Government's expectation that any material provided to councillors, other than the mayor, that will affect or impact or be considered by councillors in their deliberations or decisions made on behalf of the community must be provided to them in either a committee meeting or council meeting. The restriction on briefing sessions will be prescribed in the Regulation.
- Requiring information considered at closed meetings to be made public after it ceases to be confidential, as recommended by ICAC. The general manager will, after consulting with the council, be required to publish business papers for items considered in closed meetings on the council's website after the information in them ceases to be confidential.
- Requiring recordings of meetings to be published on council websites for longer. Recordings must be published on council websites for the balance of the council term, or, in the case of an election year, for at least 12 months.
- Providing that councils must not make final planning decisions without a staff report containing an assessment and recommendation, as recommended by ICAC.
- Requiring councils to give reasons where they make a decision on a planning matter that departs from the staff recommendation, as recommended by ICAC.

Promoting the dignity of the council chamber

The proposed amendments will promote the dignity of the council chamber by:

- Enhancing the authority of the mayor. The mayor will be permitted to call extraordinary meetings without a request and the restrictions on mayoral minutes will be removed.
- Requiring councillors to stand when a councillor addresses the meeting, or when the mayor enters the chamber, as well as by mandating modes of address at meetings.
- Removing the option for councils to reduce the duration of speeches, to ensure all councillors may have their say on important community issues.
- Making clear to the community that decisions are made in council meetings and not in other forums that the community can't access, like briefing sessions.
- Refining the definitions of disorder to remove phrases that could be weaponised to impede debate.
- Providing as a default that councillors are to attend meetings in person. Councillors will only be permitted to attend meetings by audio visual link where they are prevented from attending a meeting in person because of ill health or another medical reason or unforeseen caring responsibilities. Councillors will not be permitted to participate in meetings at which a mayoral election is being held by audio visual link. To facilitate this, the rules governing attendance at meetings by audio visual link will be mandated.
- Restricting the circumstances in which the council may withhold a leave of absence. Where a councillor gives an apology from attending a meeting, the council will be deemed to have accepted the apology and granted a leave of absence from the meeting unless the council resolves otherwise and gives reasons for its decision.
- Removing the option for staff to attend meetings by audio visual link.
- Strengthening the deterrence against disorder by codifying the common law position that allows councillors to be expelled from successive meetings where they fail to apologise for an act of disorder at an earlier meeting.

Depoliticising the role of the general manager

The proposed amendments will depoliticise the role of the general manager by:

- Removing the requirement for general managers to prepare reports for notices of motion. General managers will no longer be required to prepare reports on notices of motions with financial implications or to identify sources of funding where a notice of motion proposes expenditure that has not been budgeted for. These will be matters for the council to determine.
- Providing that the mayor, not the general manager has discretion on whether council staff should respond to questions with notice. It will be open to the mayor to rule a question with notice out of order at the meeting if it breaches the disorder provisions of the council's code of meeting practice.
- Conferring responsibility on the council to determine staff attendance at meetings. Because councillors are best placed to determine what support they require from staff at meetings, it will be a matter for the council to determine which staff attend meetings.

Simplifying the Model Meeting Code

The proposed amendments will simplify the Model Meeting Code by:

- Streamlining the code by removing unnecessary provisions.
- Removing the non-mandatory rules governing public forums. Councils will be free to determine their own rules for public forums.
- Simplifying the rules governing public representations to the council on the closure of meetings to the public.
- Simplifying the rules for dealing with urgent business without notice at meetings.
- Simplifying the rules of debate by removing the provisions allowing motions to be foreshadowed.
- Mandating some current non-mandatory provisions including those allowing meetings to be cancelled or held by audio visual link in the event of natural disasters and public health emergencies and those governing councillors' attendance at meetings by audio visual link.

Restricting councils from holding briefing sessions

Proposed amendments to the Regulation will restrict councils from holding briefing sessions. The amendments will establish the appropriate ways councillors are to make decisions and receive information based on the following principles:

- Decision making by councillors must be through a resolution adopted at a council or committee meeting.
- Information is to be provided to councillors through clear and established channels:
  - information may be provided to councillors by staff in response to a request for information or action made through the councillor request system,
  - general information to assist councillors' understanding of sector wide issues (e.g. legislative changes), should be received from the general manager (and other external sources),
  - training materials to meet learning and development requirements come through established training programs,
  - information to enable councillors to understand the function, service delivery standards, strengths, weaknesses, threats and opportunities of council operations should be provided in periodic workshop format (e.g. an annual strategic planning workshop), and
  - information requiring a specific decision or resolution of council is to be provided by the general manager as a part of a report prepared for the business papers of a council or committee meeting.
- The distribution of information in a meeting or format that is not consistent with the above pathways (e.g. through briefing sessions), is not permitted.
- The mayor will not be subject to these restrictions and may receive information in order to undertake their functions under the Act.

What are the next steps?

After reviewing submissions received on the consultation draft of the Model Meeting Code, the Minister's approval will be sought for the prescription of the new Model Meeting Code. If approved, it will be prescribed by Regulation.

The amendment Regulation prescribing the new Model Meeting Code will also contain provisions that will amend the Regulation to give effect to some of the proposed new measures contained in it, including:

- changes to the definitions of acts of disorder,
- a requirement for recordings of meetings to be retained on council websites for at least 12 months or for the balance of the council term, whichever is the longer period, and
- the pathways in which councillors can receive information and the restriction on briefing sessions.

As noted above, the proposed amendments to the Model Meeting Code are the first tranche of the Government's reform agenda for the regulation of council meetings.

In 2025, the Government will be introducing legislation to implement the reforms to the regulation of councillor conduct foreshadowed in the September discussion paper. These will have a particular focus on behaviour at meetings and will complement the proposed amendments to the Model Meeting Code.

The proposed amendments to the Act will:

- empower mayors to expel councillors from meetings for acts of disorder
- remove a councillor's entitlement to receive a fee for a month in which they have been expelled from a meeting
- confer a right of review on councillors in relation to a decision to expel them from a meeting and the resulting loss of their entitlement to receive a fee.

Amendments will also be made to the Act and Regulation (as required) to empower councils to issue penalty infringement notices to members of the public who disrupt meetings.

Submissions

Have your say

We now want to hear from you.

Key questions to consider:

- Will the proposed amendments made in the consultation draft of the Model Meeting Code achieve the policy outcomes identified in this paper?
- Are there any other amendments you would suggest that will achieve these policy outcomes?
- Will the proposed amendments have any unintended consequences?
- Are there any other amendments the Government should consider?

How to make a submission

Submissions can be made using the online form available on OLG's website at www.olg.nsw.gov.au.

OR

By email: olg@olg.nsw.gov.au

OR

By post: Office of Local Government
Locked Bag 3015 NOWRA NSW 2541

Submissions should be labelled "Model Meeting Code amendments" and marked to the attention of OLG's Council Governance Team.

Closing date

COB Friday 28 February 2025

Privacy Notice

When you give us your feedback, OLG will be collecting some personal information about you, in particular:

- your name
- your email address
- the name of your organisation (if provided).

All feedback received through this consultation process may be made **publicly available**. Please do not include any personal information in your feedback that you do not want published.

As part of the consultation process, we may need to share your information with people outside OLG, including other public authorities and government agencies. We may also use your email contact details to send you notifications about further feedback opportunities or the outcome of the consultation.

You should also be aware there may be circumstances when OLG is required by law to release information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*. There is also a privacy policy located on OLG's website that explains how some data is automatically collected (such as your internet protocol (IP) address) whenever you visit OLG's website. The link to that policy is https://www.olg.nsw.gov.au/about-us/privacy-policy/

Further information

For more information, please contact OLG's Council Governance Team on (02) 4428 4100 or via email at olg@olg.nsw.gov.au.

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