

Post-election guide

for councils, county councils and
joint organisations

2021



Office of Local Government, Department of Planning, Industry and Environment
5 O'Keefe Avenue Locked Bag 3015 Phone 02 4428 4100 olg@olg.nsw.gov.au
NOWRA NSW 2541 NOWRA NSW 2541 TTY 02 4428 4209 www.olg.nsw.gov.au

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At the first meeting after the election

It is a matter for each council and joint organisation to set the agenda for their first meeting following the elections.

There are a range of matters that councils and joint organisations may wish to include in the agenda for consideration at the first meeting.

However, there are several key items of business that must be dealt with at the first meeting.

For councils, these include the following:

- the administration of councillors' oath or affirmation of office
- a resolution declaring that casual vacancies in the office of councillors will be filled using a countback in the first 18 months following the election where the council wants to fill vacancies this way instead of a by-election, and
- the election of the mayor where the mayor is elected by councillors and a deputy mayor where the council has one.

For county councils, these include the following:

- the administration of members' oath or affirmation of office, and
- the election of a chairperson.

Joint organisations must elect a chairperson at their first meeting after the elections.

Oaths and affirmations of office

Under the *Local Government Act 1993*¹ (the Act) councillors (including mayors) are required to take an oath or make an affirmation of office.

The prescribed words of the oath and affirmation are provided below.

Oath

"I **[name of councillor]** swear that I will undertake the duties of the office of councillor in the best interests of the people of **[name of council area]** and the **[name of council]** and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the *Local Government Act 1993* or any other Act to the best of my ability and judgment."

Affirmation

"I **[name of councillor]** solemnly and sincerely declare and affirm that I will undertake the duties of the office of councillor in the best interests of the people of **[name of council area]** and the **[name of council]** and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the *Local Government Act 1993* or any other Act to the best of my ability and judgment."

¹ section 233A

Oaths or affirmations of office must be taken or made by each councillor at or before the first meeting of the council after being elected.

The oath or affirmation may be taken or made before the general manager of the council, an Australian legal practitioner, or a justice of the peace.

Councillors need to be physically present before the general manager, legal practitioner or justice of the peace when taking their oath or making their affirmation of office.

Councils will need to make arrangements for the oath or affirmation to be taken or made by each councillor at the first meeting.

Councillors should be made aware of this requirement prior to the first meeting.

An oath or affirmation should be taken or made by each councillor as the first item of business for the first meeting.

The general manager must ensure that a record is kept of the taking of the oath or making of the affirmation.

This can be done by way of a signed statement containing the oath or affirmation or by recording the taking of the oath or making of the affirmation by each councillor in the minutes of the council meeting.

If a councillor is not able to attend the first council meeting, they may take the oath or affirmation of office at another location in front of the general manager.

As noted above, the oath or affirmation of office may also be taken before an Australian legal practitioner or a justice of the peace.

The taking of the oath or making an affirmation of office outside a council meeting must be publicly recorded by the council.

Where an oath or affirmation is taken or made outside a council meeting, a council staff member should also be present to ensure that an accurate record can be kept by the council.

A councillor who fails, without a reasonable excuse, to take the oath or make an affirmation of office, will not be entitled to attend council meetings until they do so and will be taken to be absent without leave.

If a councillor is absent without leave for three consecutive ordinary council meetings their office is automatically declared vacant and a by-election or countback must be held.

These requirements also apply to members and chairpersons of county councils.

Decision on using countbacks to fill casual vacancies

Following the 2021 local government elections, councils will, for the first time, have the option of using a countback of votes cast at the last ordinary election to fill casual vacancies occurring in the offices of councillors in the first 18 months after the election.

This will allow councils to use a countback to fill vacancies at a lower cost than the cost of holding a by-election.

To exercise the option of using a countback to fill casual vacancies occurring in the first 18 months following the election, councils must resolve, at their first meeting after the election, to use a countback to fill casual vacancies.

If councils do not resolve this at the first meeting after the election, they will be required to fill casual vacancies through a by-election.

It is recommended that councils use the following resolution to exercise the option to use a countback to fill casual vacancies:

"Pursuant to section 291A(1)(b) of the *Local Government Act 1993* (the Act) **[name of council]** declares that casual vacancies occurring in the office of a councillor within 18 months after the last ordinary election of councillors for the Council on **[insert date of election]** are to be filled by a countback of votes cast at that election for the office in accordance with section 291A of the Act and directs the general manager to notify **[insert name of election manager]** of the Council's decision within 7 days of the decision."

Where councils resolve² to fill casual vacancies using a countback in the first 18 months of their terms, the general manager is required under the *Local Government (General) Regulation 2005*³ (the Regulation) to notify the election manager of the council's ordinary election of the council's resolution within 7 days of the resolution.

For all councils other than Fairfield and Penrith City Councils, the election manager is the NSW Electoral Commissioner.

Countbacks are not available to fill casual vacancies in the office of a councillor where:

- the councillor who vacated office was elected at an election using the optional preferential voting system (i.e. elections where only one civic office is required to be filled such as the election of popularly elected mayors), or
- the councillor was elected at an uncontested election.

A by-election must be used to fill these vacancies.

Mayoral elections

Under the Act⁴, the civic offices of mayors elected by councillors expire on the day of the council's ordinary election.

Councils that elect councillors must hold a mayoral election at a council meeting within three weeks of the declaration of the election⁵.

Councillors may also elect a deputy mayor.

The deputy mayor may be elected for the mayoral term or a shorter term.

The election of the mayor and the deputy mayor must be conducted in accordance with Schedule 7 of the Regulation.

Schedule 7 prescribes three methods of election of mayors:

- open ballot (eg a show of hands)
- ordinary ballot, or
- preferential ballot.

The Office of Local Government has prepared guidance to assist councils to conduct mayoral and deputy mayoral elections which is available [here](#).

Councillors need to be present at the meeting in person to participate in voting by means other than an open ballot.

Mayors elected by councillors normally hold their office for two years (unless a casual vacancy occurs)⁶. Because of the postponement of the ordinary council elections to 4 December 2021, mayors elected by councillors during the next term will have a shorter term than the usual two years.

Councils that elect their mayors are required under the Act⁷ to hold mid-term mayoral elections in the month of September. This means that the mid-term mayoral elections will need to be held in September 2023. The

² section 291A(1)(b)

³ clause 393C(3)

⁴ sections 234(5) and 233(2)(b)

⁵ section 290

⁶ section 230(1)

⁷ Section 290(1)(b)

mayor elected at the mid-term mayoral election will hold their office until the day of the council's next ordinary election in September 2024 when their civic office as a councillor and mayor will expire.

Deputy Mayors hold their office for the term specified in the council's resolution.

Elections of chairpersons of county councils

Under the Act⁸, the civic office of chairpersons of county councils expire on the election day for the constituent council they are a councillor on.

County councils will need to elect a chairperson at their first meeting after the ordinary local government elections⁹.

The election of the chairperson of a county council must be conducted in accordance with Schedule 9 of the Regulation.

The process for electing chairpersons of county councils is the same as the process for electing mayors of councils, and county councils can adapt the Office of Local Government's guidance on mayoral elections for this purpose.

That guidance is available [here](#).

County council members need to be present at the meeting in person to participate in voting by means other than open voting.

As with mayors elected by councillors, chairpersons of county councils hold their office for two years (unless a casual vacancy occurs)¹⁰.

Elections of chairpersons of joint organisations

Under the Act¹¹, the civic office of chairpersons of joint organisations also expire on the election day for the member council they are a councillor on.

Joint organisations will need to elect a chairperson at their first meeting after the ordinary local government elections¹².

The election of the chairperson of a joint organisation must be conducted in accordance with Schedule 7A of the Regulation.

The Office of Local Government has provided guidance to assist joint organisations to conduct elections for the chairperson in part 2.3 of the *Joint Organisation Implementation Guidelines*.

The Guidelines are available [here](#).

Voting representatives of the board need to be present at the meeting in person to participate in voting by means other than open voting.

As with mayors elected by councillors, chairpersons of joint organisations hold their office for two years (unless a casual vacancy occurs)¹³.

⁸ section 391(3)(b)(iii)

⁹ clause 1(b) of Schedule 9

¹⁰ section 391(2)

¹¹ section 400V(4)(b)(iii)

¹² clause 1(b) of Schedule 7A

¹³ section 400V(2)

Within three months of the election

Lodgement of written returns of interest

Under the *Model Code of Conduct for Local Councils in NSW*¹⁴ (Model Code of Conduct) all councillors, members of county councils and voting representatives of the boards of joint organisations must lodge a written return of interests with the general manager (or the executive officer in the case of joint organisations) within three months of their election or appointment unless they have submitted a return within the previous three months.

Returns of interests are an important accountability mechanism for promoting community confidence in decision making by councillors and others and for ensuring that they disclose and appropriately manage conflicts of interest they may have in matters dealt with by the council or joint organisation.

Among other things, councillors and others who are required to complete returns of interests must disclose the following types of interests in their returns:

- interests in real property
- gifts
- contributions to travel
- interests and positions in corporations
- whether they are a property developer or a close associate of a property developer
- positions in trade unions and professional or business associations
- dispositions of real property
- sources of income, and
- debts.

It is important that councillors and others complete their returns of interests correctly and disclose all relevant interests.

The Office of Local Government has issued a *Guide to Completing Returns of Interest* to assist in the completion of returns.

The Guide is available [here](#).

Under the Model Code of Conduct¹⁵, general managers and executive officers must maintain a register of returns of interests and returns must be tabled at the first meeting of the council or board of the joint organisation after they are required to be lodged.

Returns of interests must also be made publicly available free of charge on councils', county councils' and joint organisations' websites, unless there is an overriding public interest against disclosure of the information contained in them or to do so would impose unreasonable additional costs on the council or joint organisation.

For more information, see the Information and Privacy Commission's *Guideline 1: For local councils on the disclosure of information contained in the returns disclosing the interests of councillors and designated persons* which is available [here](#).

¹⁴ clause 4.21(a)

¹⁵ clauses 4.24 and 4.25

Within six months of the election

Completion of induction and refresher training for mayors and councillors

Under the Regulation¹⁶, the general manager must ensure that induction training is delivered to each councillor who has been elected to the council for the first time and refresher training to each councillor who is re-elected to the council, within 6 months of their election.

The general manager must also ensure that supplementary induction training is delivered to the mayor in addition to the training they receive as a councillor within 6 months of their election¹⁷.

Councillors and the mayor must make all reasonable efforts to participate in any induction, refresher or supplementary training offered to them.

Councils will be required to report in their 2021-22 annual reports the names of the mayor and councillors who completed induction, refresher and, in the case of mayor, supplementary training during the year¹⁸.

The general manager must also ensure that an ongoing professional development program is delivered to the mayor and each other councillor over the course of their terms on council.

Ongoing professional development programs delivered to the mayor and councillors must provide support and assistance to them in the development of the skills necessary to perform

their roles and ensure that they maintain those skills over the course of their terms of office¹⁹.

The content of the ongoing professional development program delivered to the mayor and each councillor must be developed in consultation with them, having regard to the specific skills required by the mayor and each individual councillor and the governing body as a whole to perform their roles effectively.

As with induction, refresher and supplementary training, the mayor and each councillor must make all reasonable efforts to participate in any ongoing professional development program delivered to them.

Councils must report the names of the mayor and councillors who participated in any ongoing professional development program in their annual reports and the number of seminars, circulars and other activities delivered as part of the ongoing professional development program²⁰.

The Office of Local Government has issued *Councillor Induction and Professional Development Guidelines* to assist councils to deliver induction, refresher and supplementary training for the mayor and councillors and to design and deliver an ongoing professional development program for them. The Guidelines are available [here](#).

These requirements also apply to county councils but not to joint organisations.

The Office of Local Government's Guidelines provide specific guidance to county councils on how they can comply with these requirements.

¹⁶ clause 183

¹⁷ clause 184

¹⁸ clause 186

¹⁹ clause 185

²⁰ clause 186

Before 30 June 2022

Review of the community strategic plan

Councils must review the community strategic plan before 30 June 2022.

Under the Act²¹, councils may endorse the existing plan, endorse amendments to the existing plan or develop and endorse a new community strategic plan.

The community strategic plan must identify the main priorities and aspirations for the future of the local government area for the next 10 years from when the plan is endorsed and establish strategic objectives together with strategies for achieving those objectives.

Councils must ensure that the community strategic plan:

- addresses civic leadership, social, environmental and economic issues in an integrated manner
- is based on social justice principles of equity, access, participation and rights
- is adequately informed by relevant information relating to civic leadership, social, environmental and economic issues, and
- is developed having due regard to the State government's State Plan and other relevant State and regional plans of the State government.

A draft community strategic plan or amendment of the community strategic plan must be placed on public exhibition for a period of at least 28 days and submissions received by the council must be considered before the plan or amendment is endorsed by the council.

Within 28 days after a community strategic plan being endorsed, the council must post a copy of the plan on the council's website and provide a copy or a link to the plan on the council's website to the Office of Local Government.

Further guidance on reviewing and endorsing community strategic plans is available [here](#).

Adoption of the delivery program

Under the Act²², councils must establish a new delivery program to cover their principal activities for the 4-year period commencing on 1 July 2022.

Councils' delivery programs must detail the principal activities to be undertaken by the council to implement the strategies established by the community strategic plan within the resources available under the council's resourcing strategy.

The delivery program must include a method of assessment to determine the effectiveness of each principal activity detailed in the delivery program in implementing the strategies and achieving the strategic objectives at which the principal activity is directed.

Before the delivery program is adopted by the council, the draft delivery program must be placed on public exhibition for a period of at least 28 days and submissions received by the council must be considered by it.

Further guidance on developing and adopting a new delivery program is available [here](#).

²¹ section 402

²² section 404

Within twelve months of the election

Review and adoption of local approvals and orders policies

Under the Act²³, councils' and county councils' local approvals and orders policies are automatically revoked 12 months after each ordinary election unless adopted after the election.

If councils and county councils have adopted local approvals and orders policies, they should review them after the election to ensure they are current and fit for purpose.

If the policies are still required and the council proposes to adopt them with or without amendment, it must first exhibit the draft policy for at least 28 days and invite submissions for a period of at least 42 days²⁴.

After considering submissions, councils may decide to amend the policy, adopt the policy without amendment or not to adopt the policy.

If the council decides to amend the draft policy, it may publicly exhibit the amended draft local policy or, if the council is of the opinion that the amendments are not substantial, it may adopt the amended draft policy without further public exhibition.

Adoption of councillors' expenses and facilities policy

Under the Act²⁵, councils, county councils and joint organisations must adopt a new policy on the payment of expenses and the provision of facilities to the mayor (or chairperson) and councillors (a section 252 policy) within 12 months of the election.

Before adopting a new section 252 policy, councils and joint organisations should review their existing policy to ensure it continues to be appropriate.

Recent amendments to the Regulation²⁶ now require policies adopted under section 252 to provide for the making of payment of expenses associated with carer responsibilities that are adequate or reasonable.

Councils should ensure when reviewing their policies that the policy makes adequate provision for meeting councillors' carer expenses.

Before adopting a new section 252 policy, councils must give public notice of their intention to adopt the policy and allow at least 28 days for the making of public submissions.

Councils must comply with this requirement even if they propose to adopt the same policy as the existing policy.

Under the Act, before adopting the policy, councils must consider any submissions and make any appropriate changes to the draft policy²⁷.

²³ section 165

²⁴ section 160

²⁵ section 252

²⁶ clause 403

²⁷ section 253

Joint organisations must consult with their member councils about the content of their section 252 policy before adopting it.

To assist councils and joint organisations in reviewing and adopting a section 252 policy, the Office of Local Government has issued *Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors in NSW* under section 23A of the Act.

The Guidelines are available [here](#).

Councils' policies must comply with the Guidelines²⁸.

The Office of Local Government has also issued a model expenses and facilities policy that councils may wish to use or adapt for their own purposes.

The model policy is available [here](#).

Specific guidance for joint organisations on the adoption of a section 252 policy is provided in part 2.6 of the *Joint Organisation Implementation Guidelines*.

The Guidelines are available [here](#).

Review of organisation structure

Under the Act²⁹, councils, county councils and joint organisations must review their organisation structure within 12 months of the election.

When reviewing the organisation structure, councils and joint organisations may re-determine the organisation structure but are not required to do so.

In determining the organisation structure, the governing body of the council or joint organisation must, after consulting the general manager (or the executive officer), determine:

- the senior staff positions within the organisation structure of the council or joint organisation
- the roles and reporting lines of holders of senior staff positions, and
- the resources to be allocated towards the employment of staff.

A council or joint organisation cannot determine a position to be a "senior staff" position unless:

- the responsibilities, skills and accountabilities of the position are generally equivalent to those applicable to the Executive Band of the *Local Government (State) Award*, and
- the total remuneration package payable with respect to the position is equal to or greater than the minimum remuneration package (within the meaning of Part 3B of the *Statutory and Other Offices Remuneration Act 1975*) payable with respect to senior executives whose positions are graded Band 1 under the *Government Sector Employment Act 2013*. As of 2020-21 this is \$192,600.

The general manager (or the executive officer in the case of a joint organisation), must, after consulting the governing body of the council or joint organisation, determine the positions (other than the senior staff positions) within the organisation structure of the council or joint organisation.

The positions within the organisation structure of a council must be determined to give effect to the priorities set out in the community strategic plan and the council's delivery program.

²⁸ section 252(5)

²⁹ section 333

Specific guidance for joint organisations on the determination of their organisation structure is provided in part 2.11 of the *Joint Organisation Implementation Guidelines*.

The Guidelines are available [here](#).

Adoption of a code of meeting practice

Under the Act³⁰, councils, county councils and joint organisations must adopt a code of meeting practice that incorporates the mandatory provisions of the *Model Code of Meeting Practice for Local Councils in NSW* (Model Meeting Code) prescribed by the Regulation within 12 months of the election.

Councils' and joint organisations' adopted codes of meeting practice must not contain provisions that are inconsistent with the mandatory provisions of the Model Meeting Code.

Councils' and joint organisations' adopted codes may also incorporate the non-mandatory provisions of the Model Meeting Code and other supplementary provisions.

Councils and joint organisations are not required to adopt the non-mandatory provisions of the Model Meeting Code and can adapt them to meet their own needs.

Before adopting a code of meeting practice, councils must prepare a draft code and exhibit it for at least 28 days and invite submissions for a period of at least 42 days³¹.

Councils must consider all submissions received and may, after considering submissions, decide to amend the non-mandatory provisions of its draft code, or to adopt the draft code.

If the council decides to amend its draft code, it may re-exhibit the amended draft or, if the council considers that the amendments are not substantial, it may adopt the amended draft code without public exhibition³².

The Regulation³³ prescribes that a joint organisation must consult with its member councils about the content of its proposed code of meeting practice before adopting it.

A new Model Meeting Code will be prescribed before the local government elections that will include non-mandatory provisions governing attendance at meetings by audio visual link.

This will allow councils and joint organisations to adopt the new provisions when they adopt their new codes of meeting after the election.

Further information about the Model Meeting Code is available [here](#).

Specific guidance for joint organisations on the adoption of a code of meeting practice is provided in part 2.8 of the *Joint Organisation Implementation Guidelines*.

The Guidelines are available [here](#).

Review of delegations

Under the Act³⁴, councils and county councils must review all their delegations within 12 months of election.

Councils may, by resolution, delegate to the general manager or any other person or body (but not an employee of the council other than the general manager) any of the functions of the council other than those referred to in section 377 of the Act³⁵.

³⁰ section 360

³¹ section 361

³² section 362

³³ clause 397C

³⁴ section 380

³⁵ section 377

The general manager may, in turn, sub-delegate a function delegated to them by the council to any person or body (including another employee of the council)³⁶.

Review of the code of conduct

Under the Act³⁷, councils, county councils and joint organisations must review their adopted codes of conduct within 12 months of the election and make such adjustments as they consider appropriate.

Councils, county councils and joint organisations must adopt a code of conduct that incorporates the provisions of the Model Code of Conduct prescribed by the Regulation.

A council's or joint organisation's adopted code of conduct may also include provisions that supplement the Model Code of Conduct and that extend its application to persons that are not "council officials" for the purposes of the Model Code of Conduct (e.g. volunteers, contractors and members of wholly advisory committees).

A council's or joint organisation's adopted code of conduct has no effect to the extent that it is inconsistent with the Model Code of Conduct.

However, a council's or joint organisation's adopted code of conduct may prescribe requirements that are more onerous than those prescribed in the Model Code of Conduct.

In other words, councils and joint organisations can strengthen but cannot dilute the provisions of the Model Code of Conduct in their adopted codes of conduct.

The Minister for Local Government has announced a review of the regulatory framework for dealing with councillor misconduct and councils and joint organisations may wish to consider deferring the review of their codes of conduct until the review has been completed and any outcomes of the review are implemented, provided this occurs within 12 months of the elections.

Further information on the Model Code of Conduct is available [here](#).

Specific guidance for joint organisations on the code of conduct is provided in part 2.5 of the *Joint Organisation Implementation Guidelines*.

The Guidelines are available [here](#).

Adoption of a statement of strategic regional priorities

Joint organisations must adopt a statement of strategic regional priorities within 12 months of the elections for their member councils³⁸.

The statement of regional priorities must set out the strategic regional priorities for the joint organisation's area and the strategies and plans for delivering them.

Joint organisations must consult with their member councils about the content of the proposed statement of strategic regional priorities.

Once adopted, the statement of regional priorities must be published on the joint organisation's website.

Specific guidance for joint organisations on the preparation of a statement of strategic regional priorities is provided in part 2.9 of the *Joint Organisation Implementation Guidelines*. The Guidelines are available [here](#).

³⁶ section 378

³⁷ section 440(7)

³⁸ clause 397H

