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24 February 2025

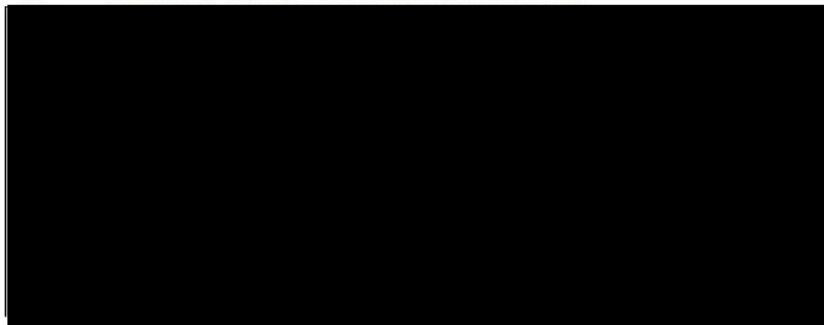
Re: Model Meeting Code Amendments- Submission by Narrabri Shire Council

Dear Colleagues,

Please find attached Narrabri Shire Council's submission in relation to the proposed changes to Council meeting practices.

These submissions were endorsed and adopted by Council's Elected Body at its February Ordinary Council Meeting per the below resolution.

15.5 SUBMISSION - REFORMS TO COUNCIL MEETING PRACTICES



If you require further information or assistance in relation to this submission, please contact [redacted] Narrabri's Manager Governance and Risk at [redacted] or at 02 6799 6883.

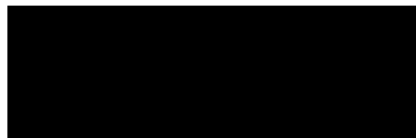


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Yours faithfully,



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Submission: Draft Model Code of Meeting Practice for Local Councils in New South Wales

Executive Summary

Narrabri Shire Council supports many of the proposed changes to Council meeting practice represented in the consultation draft of the Model Code of Meeting Practice.

At the same time, Narrabri Shire Council opposes and holds deep concerns regarding several of the proposed changes to the Model Code, specifically:

1. Removal of the prohibition on using Council meetings as a venue for airing unsubstantiated allegations of misconduct by other Councillors and Staff;
2. Illusory cross-references to NSW Legislative Assembly behavioural norms;
3. Removing briefing sessions in their entirety;
4. Removing a statement of ethical obligations from Council meetings;
5. Diminishing elected Councils' discretion regarding Councillors attending via AVL;
6. Diminishing the General Manager's advisory function for the elected body at meetings and their operational functions in the management of staff; and
7. The requirement for persons present to stand when the Mayor enters the meeting or when addressing the meeting.

Introduction

Narrabri Shire Council staff and Councillors have reviewed the consultation draft of the revised Model Code of Meeting Practice for Local Councils in NSW. While NSC supports some of the proposed changes to meeting practice, its staff and Elected Body have deep concerns regarding other proposed changes.

This submission explains Council's concerns in more detail below, but broadly they fall into three categories: (1) Removal of protections for staff and Councillors from unsubstantiated allegations at meetings, (2) Removal of avenues for the Elected Body to receive key information from staff, (3) Fettering the Elected Body's discretion.

This submission was adopted by the Elected Body at its February Ordinary Council Meeting.

Submission

Removing protection from misconduct and unsubstantiated allegations

1. Clauses 3.13, 9.17, and 15.10 of the consultation draft cause Narrabri Shire Council Councillors and Staff deep concern.

2. The proposed amendments to Clauses 3.13 and 15.10(d) will permit Councillors to air unsubstantiated and untested allegations of misconduct against other Councillors, the General Manager, and Council Staff in a public Council Meeting and in its business papers. Amendments to clause 9.17 remove a responsibility for Councillors to ask questions "respectfully". This is dangerous and problematic, particularly when it comes to allegations about the General Manager and staff members. Narrabri Shire Council emphatically opposes the proposed amendments.
3. Council meetings are not a proper venue for airing unsubstantiated and untested allegations of misconduct. The purpose of a Council meeting is for the Elected Body to publicly make decisions in relation to Council's functions. A Council meeting is not a trier of fact, nor is it an adjudicator or arbiter of misconduct allegations. Permitting such allegations to be raised at these meetings will have several negative ramifications for Councils and their people.
4. The ability for Councillors to make unsubstantiated and untested allegations of misconduct against the General Manager and Council Staff is dangerous and problematic firstly because of the apolitical nature of those roles. General Managers and Council Staff are expected to be apolitical in carrying out their official duties. Furthermore, at public Council meetings, their ability to address the meeting is limited to answering questions asked of them, at the discretion of the Mayor. This means that if, during a meeting, a Councillor alleges that the General Manager or a member of staff has engaged in misconduct, that person is denied any right to reply in the same forum. Any unsubstantiated and untested allegations made at a Council meeting will remain unsubstantiated, untested, and without reply. But it will be public. Even if the allegation was followed up by a formal complaint, the outcomes of those complaints remain private and confidential. The Councillor's allegation would be the only thing public on the matter.
5. Furthermore, once an unsubstantiated and untested allegation of misconduct is made in public, without any right or ability to reply, it will be subject to presumption, manipulation, and distortion by the media, the general public, and those who stand to politically gain from it. Some will accept it, some might reject it, and/or some may distort it into something entirely different to what it actually is. This necessarily prejudices the proper investigation and adjudication of any allegation. Witnesses, participants, decision-makers, and other stakeholders will likely be affected by this discourse and distortion, impacting the quality and truthfulness of their participation. In doing so, the integrity of Councils' conduct framework for Councillors and Staff and their implementation would be jeopardised.
6. Beyond the integrity of Councils' conduct frameworks and their implementation, the amendments pose a significant Work Health and Safety risk. Council has a legal duty to ensure the Health and Safety of its workers. This includes their psychosocial and psychological health and wellbeing. Currently, prohibitions on public unsubstantiated allegations in the Code of Meeting Practice, and those contained in clauses 9.9 to 9.11 of the current Model Code of Conduct, are Councils' only control for the risk of bullying and/or harassment by Councillors against people in the organisation, including other Councillors, through public misconduct allegations. This is not a minor or theoretical risk. Psychosocial injury is the fastest growing form of workplace injury, and one of the most devastating and expensive. Permitting

Councillors to use the court of public opinion and Council meetings to prosecute or persecute staff and General Managers without any right to reply will open the flood gates on such injuries in Councils, leading to an exponential increase in harm to Councils' people, reduction in capability, and cost to Councils.

7. Additionally, the proposed amendments pose a significant risk of aggrieved Councillors, staff, or General Managers bringing successful proceedings against Councils for defamation. Councils publish their meetings and business papers. If a Councillor makes such an allegation against another Councillor, member of staff, or General Manager, and that allegation is untrue, Councils' exposure to defamation proceedings is significantly heightened.
8. Putting aside the above risks, there is no benefit to permitting Councillors or anybody from publicly making unsubstantiated and untested allegations of misconduct at Council meetings. It does not advance Councils' functions, nor does it promote open debate of issues by the elected body. In fact, it risks stifling debate through the weaponisation of such allegations to silence critics and de-legitimise advice and information offered by the General Manager and/or staff. Similarly, it does not promote transparency or accountability, because it permits only one side to be heard and prejudices proper processes for accountability. The proposed amendment does not promote good order at Council meetings. Instead, it jeopardises good order.
9. Furthermore, the amendment to clause 9.17, removing a requirement for Councillors to ask questions "respectfully", is bizarre, especially in light of one of the reform projects objectives as being to ensure debate is fair *and respectful* (emphasis added). It amplifies the risks explained above. The amendment serves no good purpose. It does not promote open debate, but rather stifles it. It does not promote good order, but rather jeopardises it. It does not promote transparency or accountability, but rather fear of incurring wrath and disrespect. It means that not only can Councillors level unfounded allegations of misconduct against those who cannot respond, they can do so with impunity in a toxic, bullying, and disrespectful manner.
10. Council acknowledges that the intent of this reform is to mitigate the risk of "weaponising" conduct rules to stifle debate. Unfortunately, the proposed amendments myopically and ham-fistedly push the dial too far, and create a new and much greater risk of Councillors weaponising allegations to bully, harass, and ultimately silence staff and the General Manager, and other Councillors.
11. While Council respects and embraces the democratic role of elected Councillors and their right to political speech, there are permissible limits to that speech. In this instance, there are no good reasons for the amendments, and many reasons against it. In addition to the above, there is a significant risk that the ultimate outcome of such changes will be a culture in which Council Staff and General Managers do not feel comfortable to offer frank and honest advice to the elected body for fear of accusations, bullying, and harassment.
12. Council therefore emphatically opposes the proposed amendments to these clauses. The adopted Model Code must include prohibitions on making allegations of misconduct against Councillors, General Managers, and Staff.

Cross Reference to NSW Legislative Assembly Conduct Norms

13. The consultation draft amends clause 15.10 to add a reference to the conduct norms in the NSW Legislative Assembly. This is problematic for several reasons.
14. Firstly, NSW Local Councils and the NSW Legislative Assembly are neither directly nor closely analogous. They have different roles, different functions, and different compositions. Furthermore, the community has different levels of expectation for behaviour in both. What the community may find acceptable in one, it would find unacceptable in the other. The kind of behaviour that might be commonplace in Parliament often creates local scandals when replicated or imitated in Councils. Those instances erode trust and faith in Local Government and are counterproductive to the business and functions of Councils.
15. Secondly, a simple cross reference to conduct "that would be regarded as disorderly in the NSW Legislative Assembly" is so vague that it would be illusory and incapable of application. "Disorderly" conduct is not defined anywhere in the NSW Legislative Assembly's Standing or Sessional Orders. While some elements of Standing and Sessional Orders identify certain behaviours as disorderly, many of those do not or cannot translate to the Local Government context. For example, rule 73 of the Rules of Debate and Privilege in the Standing Orders states that it would be disorderly to impute improper motives or personal reflections on members of either house. If that were to apply directly to the Local Government context with "Members" being replaced with "Councillors", it would prohibit Councillors from imputing improper motives or personal reflections on other Councillors, while providing open season for Councillors to do so towards the General Manager and Staff (who, as stated above, cannot publicly defend themselves).
16. Furthermore, enforcing this clause when (not if) it does arise in Councils will require the Mayor or Chairperson to locate and cross reference NSW Legislative Assembly Orders and Rules in the high tempo environment of a Council meeting and in circumstances where those Orders and Rules will be of little assistance or utility, as detailed above. In a practical sense, it would be unworkable, inefficient, and futile.
17. Put simply, the Legislative Assembly's Standing and Sessional Orders and its other norms and practices are insufficient and incapable of translation to the Local Government context. Narrabri Shire Council therefore opposes such a cross-reference and maintains that there should be conduct rules specific to the Local Government context to prevent disorderly and psychosocially unsafe conduct.

Briefing Sessions

18. The Consultation draft proposes to remove pre-meeting briefing sessions from the Code. Narrabri Shire Council agrees with the principle public Council meetings are that the only place Councils should deliberate on and make decisions, subject to the circumstances set out in s10A of the Act. However, Council opposes removing and prohibiting briefing sessions altogether.

19. Briefing sessions provide a necessary avenue for General Managers and Council staff to provide Councillors with information relating to business that is or will come before them. They further provide an avenue for Councillors to seek clarification or further information in an informal setting that will result in them being more informed when they are eventually called upon to deliberate, debate, and decide on matters. This means that when an item of business comes before a Council meeting, the Councillors are more likely to focus on the key issues relating to the business, rather than spending significant time at that meeting on tangents.
20. Narrabri Shire Council acknowledges that there is an inherent risk that some Councils may use briefing sessions to deliberate and pre-determine business in a setting that is not bound by procedural rules and not open to the public. However, that risk can be effectively mitigated without throwing the baby out with the bathwater.
21. Council therefore suggests that, rather than removing briefings altogether, Council briefings be subject to the following controls:
 - (a) They must be open to the public unless one of the exceptions in s10A applies in the same way it would in a Council meeting or unless there is another reasonable basis for the meeting being held in closed session;
 - (b) They must be recorded through audio/audiovisual means; and
 - (c) Councils must not use briefings to pre-determine the business of Council. They are to be used for information and advice purposes only.
22. These controls will maintain the core benefits of briefing sessions, ensure their transparency, and will mitigate the risk of pre-determined outcomes at Council meetings.

Statement of Ethical Obligations

23. The proposed removal of clause 3.23 is bizarre and appears to lack any good reason. Councillors are under obligations arising from their oath or affirmation and to disclose and appropriately manage conflicts of interest. Presumably, the Local Government sector wants to promote integrity in its decision-making. Reminding Councillors of their obligations in this respect is a good thing. It serves as a reminder that they are, first and foremost, public officials with duties to the public good. Secondly, it prevents a “bad actor” from stating that they were not aware, or they had simply forgotten their obligations. Conversely, removing the statement serves no good purpose.
24. The only rational conclusion one can draw from its deletion is that it might be perceived to upset Councillors as being “in need of a reminder”. Narrabri Shire Council respectfully submits that integrity in Local Government is more important than the feelings of some Councillors. Council therefore opposes the deletion of clause 3.23.

Fettering Council Discretion relating to Audio Visual Link

25. The proposed amendment to clause 5.19 permits Councillors to attend meetings with Council/Committee approval in only two circumstances: (1) ill-health or medical reasons or

- (2) unforeseen caring responsibilities. In doing so, it removes a discretion for Councils to determine (1) whether Councillors could attend by AVL at all, and (2) the circumstances under which Councils would permit a Councillor to attend by AVL.
26. This proposed amendment is antithetical to the elected body's role as a democratically elected and democratically functioning body, as well as the intent of the reform to the Code of Meeting Practice. One of the stated intentions of reform to the Code of Meeting Practice is to emphasise and enhance the Elected Body's decision-making power over Councils. Other proposed amendments to the code get rid of code-driven restrictions on Council discretion. In doing so, they return decision-making to the Elected Body. This proposed amendment removes a discretion on the part of Councils to determine for themselves when attending by AVL will be permissible or not. Councils are democratically elected, and they operate according to democratic principles. Each Council operates within its own circumstances and Elected Bodies must be able to establish rules and practices according to those circumstances. After all, the community that elected a Councillor is entitled to expect that that Councillor will be enabled to fulfil their duty according to the determination of their Elected Body, not restricted from doing so by dogma.
27. That being said, Council acknowledges the risk of Councils becoming wholly or significantly virtual if there are no restrictions on Councillors attending by AVL. Such a result would harm Councils by making them less accessible to the public and introduce risks around managing confidentiality in closed sessions. The latter risks can be mitigated by additional measures to ensure confidentiality, and Council would direct the Office to review Narrabri's Code of Meeting Practice 2023 in that regard. In relation to the former, there may be a middle ground between absolute discretion, and the overly restrictive nature of the proposed amendment.
28. Council therefore opposes the proposed amendment to clause 5.19. At the same time, Council suggests that the addition of the words "or for another acceptable unforeseen reason as determined by Council" with an additional clarification that work commitments, holidays etc would not constitute acceptable unforeseen reasons. That way, Councils retain discretion, but that discretion is not absolute, maintaining the democratic nature of Councils while mitigating risks to transparency.

The General Manager and Staff at Meetings

29. The consultation draft removes clauses 3.12, 3.13, 9.10, and clause 10.9 of the current Model Code. These clauses, in essence, provide avenues for the General Manager to provide advice to Council on proposed decisions that involve expenditure of unbudgeted funds or have some other legal, strategic, financial, or policy implications. While clauses 3.13, 9.10, and 10.9 currently require the matter be deferred to another meeting for that advice, clause 3.12 permits the General Manager to offer the advice in a report to the meeting at which the business is brought.
30. The removal of all of these clauses limits the General Manager's ability to provide information and advice to the Council. While that necessarily diminishes their role, it also negatively affects the Council, by denying them advice and insight from the person they employed to execute

the Council's operations. This risks negatively impact Council decision-making, because Councillors may not have all of the relevant information.

31. That being said, Council acknowledges that clauses 3.13, 9.10, and 10.9 cause delay.
32. A possible solution may be to retain clause 3.12, opened up to include mayoral minutes as well as notices of motion. That way, the mandatory delay associated with clauses 3.13, 9.10, and 10.9 will be avoided, but there will still be a formal avenue for Councillors to receive important advice from the General Manager and staff.
33. Clause 5.44 in the consultation draft moves the authority to determine which Council staff may attend in their official capacity from the General Manager to the Elected Body. This diminishes the role of the General Manager as being responsible for the staff of Council and for directing Council staff, as set out in the Act. Furthermore, it could similarly deny the Council the opportunity to receive vital advice and information from subject matter experts within Council.
34. Council accepts that Council meetings are a venue for the Elected Body to make decisions, however there may be a solution that acknowledges that without diminishing the General Manager's role. Council proposes that the amendment be that the attendance of other Council staff at a meeting (other than as members of the public) shall be with the approval of the General Manager AND the Mayor (or chairperson in the Mayor's absence). This maintains the Mayor's control of the meeting and the General Manager's role.

Requirement to Stand

35. The consultation draft inserts a new clause 7.1, requiring Councillors and staff to stand when the Mayor enters the chamber and when addressing the meeting. Narrabri Shire Council opposes this addition for several reasons.
36. Firstly, it is antidemocratic. The Mayor is a "first among peers" elected by the people. They are not a representative of the Crown, nor are they a judicial officer. They have no executive powers. Furthermore, standing for the entry of the mayor is not something that has been traditionally done in the Local Government sector in New South Wales. Requiring people to stand for the mayor would anachronistically introduce an archaic practice that is incompatible with the notion of Councillors as community representatives.
37. Secondly, it not being a tradition at Councils, requiring all people to stand when addressing the meeting would require some Councils to make changes to their chambers and their Audio-Visual recording equipment.
38. Finally, it serves no purpose. The office of Mayor can have and maintain dignity and gravity without requiring a performative deferential action by all people present at the meeting. Similarly, the meeting can maintain its decorum and operate just as well without arbitrarily requiring people to stand up. Requiring people to stand up does not improve Council decision-making and it does not improve order or decorum at meetings. Put simply, it achieves nothing beyond requiring an anachronistic performative action that skews the role of the Council and Mayor.

39. Narrabri Shire Council therefore opposes the introduction of the proposed clause 7.1 in its entirety.

Remaining Changes

- 40. Generally speaking, Narrabri Shire Council either supports or takes no view on the remaining changes.
- 41. Council welcomes changes to the procedure for dealing with matters of great urgency where all Councillors are present.
- 42. Council welcomes the increase in discretion for Councils for the time/dates of meetings, order of meetings, time for completion of meetings, and to set the parameters around the public forum.
- 43. Council also welcomes increased powers for the Mayor to deal with disorderly conduct in Council Meetings. However, disorderly conduct must be adequately defined in the Local Government context, and not simply cross referenced to NSW Legislative Assembly norms, in order to prevent weaponisation and abuse of this power.
- 44. Otherwise, Council makes no other comment in relation to the proposed changes in the consultation draft.

Council thanks the Minister for their time to consider this submission.

Yours sincerely,

