

26 February 2025

Attention: Office of Local Government's Council Governance Team
Office of Local Government
Via Email: olg@olg.nsw.gov.au

Dear Minister

MODEL MEETING CODE AMENDMENTS – SUBMISSION FROM DUBBO REGIONAL COUNCIL:

Please accept the following submission from Dubbo Regional Council in respect of the Model Meeting Code Amendments:

Removal of Clause 3.15 – Not Supported

~~3.1⁶³ A councillor is not permitted to ask a question with notice under clause 3.14 that comprises a complaint against the general manager or a member of staff of the council, or a question that implies wrongdoing by the general manager or a member of staff of the council.~~

The removal of this clause unnecessarily exposes Council staff below senior staff to a lack of procedural fairness. Whilst the Minister is known for espousing the constitutional implied right of free speech for elected officials, there is the matter of the significant right for Council staff to have procedural fairness.

In the short history of Dubbo Regional Council there has been significant bullying and harassment of staff by members of the elected body to the point of the then Minister for Local Government issuing a Performance Improvement Notice. This is a particular issue in regional communities where staff live with their families in the same community they service and in which a Councillor would now be empowered to belittle staff via a Question on Notice. The Office of Local Government unfortunately would have records across the sector of this type of behaviour. Whilst the clause can be reworded to be more effective in allowing free speech and procedural fairness, its complete removal is unwarranted based on the behaviour of elected body members in the past across the sector.

Council staff want to be held to account but it needs to be done professionally by the elected body – unfortunately the sector has shown that there are sometimes gaps in the understanding of individual elected officials in how to behave this way. This then also puts at risk staff retention for key roles where the greater anonymity of public service roles at State and Federal levels becomes more attractive despite intrinsic motivators to serve community.

Removal of Pre-Meeting briefings – Not Supported

~~3.33 Prior to each ordinary meeting of the council, the general manager may arrange a pre-meeting briefing session to brief councillors on business to be considered at the meeting. Pre-meeting briefing sessions may also be held for extraordinary meetings of the council and meetings of committees of the council.~~ 3.35 Pre-meeting briefing sessions may be held by audio-visual link.

There are no mandatory qualifications required to run as a candidate for Local Government and successful candidates are not expected to have an extensive understanding of the functions within Council. This means that an elected body are making decisions on planning matters, strategic issues, budgets, policy and much more, and are doing so without the relevant experience or background.

Pre meeting briefings are a valuable opportunity for the elected body to ensure they have all the information they need to participate in informed debate and decision making in the Chamber. Pre meeting briefings are run by the General Manager at DRC and keep to the provision of clarity and informative comments only; there is no debate in pre meeting briefings. These briefings also allow for formal processes and rules under the Code of Meeting Practice to be questioned and clarified to ensure the effective running of meetings.

Councillors often hold full-time employment, have family/sporting/community/personal obligations and then perform their civic role on top of their other responsibilities. Significant preparation can be required for Council and Committee meetings with large and complex business papers and pre meeting briefings have proven to be very helpful to Councillors in general.

Removal of uniform Public Forum rules – Not Supported

~~4.2 The council may determine the rules under which the public forum is to be conducted.~~

The removal of sector wide ground rules as to how Public Forum is to be managed and administered is a backward step. Local Government has many boundaries that are somewhat arbitrary i.e. they don't reflect communities' social connection, and they are separated by an administrative boundary only. Ideally, there would be sector wide ground rules for Public Forum as a foundation as to how all Council meetings operate thus providing clarity to all on how to participate in the open democratic process and decision making at the local level. Bespoke conditions can then be applied at the individual Council level.

Good governance needs a strong platform of rules and accountability. What is this proposed change trying to achieve or address (by removing the rules as to how a Council operates a Public Forum)? This is unclear in any commentary previously issued by the Department and/or Minister.

Limiting audio-visual participation – Not Supported

Attendance by councillors at meetings by audio-visual link

5.1919 Councillors may attend and participate in meetings of the council and committees of the council by audio-visual link with the approval of the council or the relevant committee where they are prevented from attending the meeting in person because of ill-health or other medical reasons or because of unforeseen caring responsibilities.

The addition of a qualification is unnecessary. Dubbo Regional Council covers approximately 7,500km and Councillors typically have full time employment and many private responsibilities as well. Sometimes travel distances within an LGA mean a Councillor is unable to get to a Council or Committee meeting in person because of those non-Councillor commitments but can attend on time via an audio-visual link. The qualification also imposes a potentially uncomfortable and/or unfair onus on Councillors to disclose personal information.

Dubbo Regional Council has used audio-visual links on a number of occasions, even when Councillors are overseas:

- In 2022 there were 9 attendances online
- In 2023 there were 19 attendances online
- In 2024 there were 4 attendances online

Given that modern workplaces are accustomed to audio-visual meetings and business papers are readily available electronically, it seems unnecessary to restrict Councillors' ability to participate in person or virtually. Council firmly believes that effective and valuable contributions are made through audio-visual participation and urges the Minister to retain these provisions. The addition to the clause contradicts the flexibility outlined in the proposed changes to the Code of Meeting Practice, which allow local Councils to make their own rules (e.g., proposed cuts to Public Forum rules). It is noted that the Minister seeks to restore the gravitas of the Council Chamber, which aligns with DRC's operating principles. However, limiting democratic participation would discourage individuals from diverse backgrounds, especially those with familial and personal commitments, from pursuing a Councillor role. The ability for dial-in participation may be a deterrent from potential candidates running for election due to the challenges of balancing employment, community obligations and family life. This proposal seems overly metro-centric and does not reflect the realities of modern society, the lessons learned from the pandemic, or the needs of a large regional Council like DRC. As such, it is not supported by DRC.

Further, the timing of this change has been questioned by recently elected Councillors. They have stood for election knowing that there is the ability to participate very effectively via audio visual link enabling them to balance their professional, personal and Councillor roles. It would be unethical to change these particular conditions so soon after an election held so recently.

Councillors determining staff attendance at Meetings – Not Supported

~~5.434 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 as determined by the council from time to time.~~

~~5.44 The general manager and other council staff may attend meetings of the~~

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~~council and committees of the council by audio visual link. Attendance by council staff at meetings by audio visual link (other than as members of the public) shall be with the approval of the general manager.~~

This clause change ignores the reality as to what Councillors know of the detailed operations of Local Government and who is the right staff member to present information or be available for questioning during debate. The General Manager, as part of their contractual and regulatory obligations to the elected body, is best placed to determine the correct staff member to be available at Council meetings as well as requiring senior staff to be present at Council meetings as a matter of course as the experts in their areas of control and responsibility. This proposed clause change ignores that a General Manager and relevant senior staff understand their teams very well including the dynamic that a technical expert may not be the best positioned to talk publicly on a matter in a public forum that is the Council meeting.

DRC seeks clarification as to what industrial relations instrument the elected body is being empowered to require an individual Council staff member to attend a meeting. In this regard, DRC trusts that the Minister/OLG have consulted with unions and staff representatives on this proposed change, and requests evidence to that effect (having not seen any at this point).

Is there an example of any dysfunction or lack of accountability of staff that the Minister/OLG can provide to the sector showing why this change is required? Without such evidence, DRC does not support this change.

As stated previously, in the short history of (the amalgamated) Dubbo Regional Council, a Performance Improvement Order has been placed on the elected body because of Councillor treatment of staff (and dysfunction). A General Manager is recompensed to manage such matters but staff at differing levels in the organisational hierarchy are not, and should not, be placed in a position where an elected body resolves to have them singled out to attend a Council meeting. This is concerning as this is potentially exposing Council staff to bullying and harassment. This will then impact the ability to recruit people to roles in Local Government as was also the related experience of Dubbo Regional Council during a period of dysfunction.

The proposal is a poorly constructed clause and there is no evidence to show it serves a valuable purpose. Further, it will potentially have costly impacts at a staffing level with likely industrial relations action and could destroy the employment culture, along with staff retention/deterrents.

The greatest risk is that the proposed clause change undermines the legislated split between the elected body and the organisation. The elected body employs one person and that is the General Manager and that should not be undermined by changes in regulation and Codes.

Changes to Leave of Absence – Supported

5.6 The council must not act unreasonably when considering whether to grant a councillor's request for a leave of absence.

5.7 Clause 5.4 does not prevent a councillor from making an apology if they are unable to attend a meeting. Where a councillor makes an apology, the council will be deemed to have accepted the apology and granted them a leave of absence for the meeting for the purposes of section 234(1)(d) of the Act unless the council resolves not to accept the apology or to grant a leave of absence for the meeting. Where the council resolves not to accept an apology and to

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grant a leave of absence it must state the reasons for its decision in its resolution.

The proposed changes and additions represented in the draft clauses 5.6 and 5.7 are supported as they are consistent with how DRC has operated in good faith to all individual Councillors seeking a Leave of Absence.

Staff standing to speak in the Chamber – Not Supported

7 MODES OF ADDRESS

7.1 Where they can, councillors and staff must stand when the mayor enters the chamber and when addressing the meeting.

This is not significant for DRC as each elected body has decided whether this rule operates or not. It has proven immaterial in its effect on the decision making of DRC.

There is a change in that staff have not previously stood to speak to the Council meeting. Whilst not stated formally there is the understanding from historical practices at Dubbo Regional and Dubbo City Councils that this was avoiding the perception that staff were participating in the debate. Rather they are providing information as requested by Councillors through the Chair and by not standing it is clear as to their subservient role in the Chamber. It is immaterial in decision making processes of Council but worth considering against the stated ambition of the Minister to depoliticise the staff role of General Manager.

Questions through the Mayor to the General Manager – Supported

- 9.165 A councillor may, through the ~~mayor~~general manager, put a question to ~~a council employee~~the general manager about a matter on the agenda. The general manager may request another council employee to answer the question. Council employees are only obliged to answer a question put to them through the general manager at the direction of the general manager.

This change is supported as it is the way DRC operates its Council meetings.

Reasons for Planning decisions – Supported

Voting on planning decisions

- 11.12 The council or a council committee must not make a final planning decision without receiving a staff report containing an assessment and recommendation in relation to the matter put before the council for a decision.
- 11.13 Where the council or a council committee makes a planning decision that is inconsistent with the recommendation made in a staff report, it must provide reasons for its decision and why it did not adopt the staff recommendation.

These additional clauses are supported as transparent and good governance. It is the way DRC operates in Council meetings in regard to decision making on planning matters, with the exception that the reason for a decision against staff advice has not previously been recorded in the minutes, whilst the reasons were always available in the recording of the debate at the meeting of Council.

Yours faithfully, 