From: [redacted]
To: OLG BS Office of Local Government Mailbox
Subject: MODEL MEETING CODE AMENDMENTS
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Council Governance Team
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18 January 2025

RE: MODEL MEETING CODE AMENDMENTS

Dear Sir or Madam,

I am writing to provide feedback on the Model Code of Meeting Practice in response to the letter from the minister to the General Manager of Bega Valley Shire Council dated 17 December 2024.

While the consultation draft outline provides some interesting and well-meant objectives the draft seems to overlook some of the key elements required for the operation of a successful council which in some cases could result in negative consequences.

The Local Government Act (233) places the responsibility of the council on the "governing body", the "governing body" as described in the Act (421B) as a "body comprised of individuals that are collectively responsible for managing the affairs of the entity".

For clarity, the Local Government Act mandates that ALL councillors are collectively responsible for the successful operation and finances of the Council. ALL COUNCILLORS! It is not only mandated by law, but a tenet of this form of government that a group of people chosen by their peers make decisions through a majority vote.

The role of the mayor, as described in the Act (226) is that of leadership and follow-up. The mayor as described throughout the Act is a councillor that is chosen to give the council a public face and represent the council at public events. Under the Act (sec226) the mayor's role in meetings is to preside over meetings by following procedures agreed to by the majority vote of councillors.

Elements of this draft document are at odds with the Act and move away from the authority of the governing body and move towards the autocratic rule of the mayor.

Local Government is a Democratic, not Autocratic system any changes to the code of meeting practice should be respectful to the Act, to the principles of democracy and to the governing body. The draft falls short in these areas.

Mayors are often the councillors who have been around for some time, while that means they have experience, they also carry baggage. Mayors can have personal agendas in pursuing an outcome; sometimes, it can be detrimental to the Council, another Councillor or a member of the community. The current system of a governing body in local government ensures that decision-making is spread across elected representatives, which maximises the potential for ethical decision-making,

The consequences of having a dictator-type authority without accountability on a single person, regardless of their position, are dangerous. Potentially, councillors with the same voting rights as the mayor could be muted by the mayor, forcing them to submit to the authority of the mayor or being outed. This polarisation of the chamber will reduce motivation, teamwork and effectiveness. Councillors are already treated as the poor cousins of elected government, but this hierarchy would take it to a new low and make it more difficult to recruit quality councillors.

The draft code needs to be rewritten with respect for the spirit of the Local Government Act, democracy and built-in accountability. Everything the minister wants to achieve can be achieved but it needs to be consistent with the structure of democracy in councils as mandated by the Act.

Briefings

Discontinuing "off the record" briefings aligns with best practices, mainly due to the lack of transparency. However, in reality, piling up councillors with documents before meetings without explanation or discussion will reduce their effectiveness and possibility reduce the chances of achieving the best outcomes. Councillors are not paid a full-time living wage; they are compensated an amount that is less than the minimum wage of any

Australian worker, so the expectation that councillors can read, research, digest and fully understand 800+ pages every few weeks while still holding down an occupation that feeds their family is untenable and highlights the huge expectations and poor compensation of councillors.
By removing "briefings" and leaving discussion about an agenda item until the formal council meeting creates the following consequences:

1. Debate under the formal meeting procedures does not allow for robust discussion, which occurs in an informal session.
2. Staff may not have information immediately available, by leaving questions to the last minute where staff cannot source an answer means items will be voted on with questions unanswered or Councillors will need to defer more items to future meetings with questions on notice, clogging up meeting agendas.
3. Councillors are often reluctant to ask a "silly" or repetitive question in a formal public meeting
4. Councillors cannot ask a question to "the room" only to certain people as required under the code, so information known by one councillor will not be shared unless they choose and are able to speak to the motion. Do we really want uninformed councillors to be making decisions?

As briefings with informal discussions prior to the council meeting are essential, they need to be conducted under a policy that esures the ministers concerns are resolved, this would likely include:

1. All briefings or workshops must be recorded and made available to councillors, transparency to the general public could be on request or through freedom of information request such as GIPA.
2. That all briefings or workshop meetings are focused on discussion and information sharing, not lobbying or decision making.
3. It is also important that all councillors have all the information, by recording the briefing, councillors who are unable to attend can gain the same level of knowledge through the recording of the briefing.

The OLG should be aware of the unintended consequences, that if the briefings are outlawed altogether, then a lot more informal discussion will occur in private or on the phone between councillors, this will have the adverse affect of increasing lobbying and reducing transparency, it also builds factions within the governing body, increasing the likelihood of a skewed vote or even caucusing based on incorrect information or misinformation sullying the ethical decision making process.

Agendas and Operation of the Meeting

As the council is a governing body made up of multiple people under the Act, actions of the council require a majority vote, or in case of an action such as a recission motion, several councillors to initiate actions within the meeting framework. This is a very simple way to create "checks and balances" in the framework that ultimately results in a good governance approach.
There would need to be substantial justification to remove existing "checks and balances", especially when they would be inconsistent with the Act and could open up the council to abuse or mistakes.

Extraordinary Meeting Request

The purpose of multiple signatures to call an extraordinary meeting is also a simple "check and balance", that exists to promote good governance and democratic principles. Removing the need for a counter signature only provides an extra pathway for abuse, misuse or mistake, without any upside. If a mayor is unable to get a single signature from another councillor (which is the requirement of the rest of the governing body) then either the justification for an extraordinary meeting is flawed, or there is something seriously wrong in that council. Either way the "check and balance" works. This should not be weakened.

General Manager Responding to Motions

We support the deletion of Paragraph 3.12 as the General Manager should be discussing these issues with the Councillor as part of the lodgement process or in the pre-meeting briefing rather than placing council staff in a combative situation with members of the governing body. It is the role of the General Manager and staff to provide facts not opinions. The general managers' report typically lobbies a "position of staff", however staff are neither elected or have voted on the position meaning the general manager is undemocratically claiming to represent the view of hundreds of people. It is therefore against the democratic principles of the governing body as legislated in the Local Government Act to have the vote swayed by a single person who is not elected and not part of the governing body to be manipulating the vote without accountability. We would go so far as to recommend that lobbying by the general manager be forbidden under the policy including use of the terms

"staff supports" / "staff does not support" and that the general manager and staff only supply factual information on request.

Asking Questions

We support the deletion of paragraph 3.13 (old 3.15) in the interests of transparency. The governing body must be free to ask any questions in the interest of the community and the governing body who is ultimately responsible for council, the governing body cannot be held responsible if their my fundamental right to information is hampered by censorship.

Definitions and subjective Language

Paragraph 3.9 refers to meeting of the council in cases of "emergency", whereas Paragraph 3.27 & other clauses refer to business that is "urgent"

1. Are they the same or different?
2. In a number of places it seems to refer to urgent as "requiring a decision before the next council meeting", is this the definition of urgent?
3. Is emergency the same definition or different?

Subjective language leaves itself open to manipulation or misinterpretation, if it is the OLG's desire for either of these terms to be subjective, then it should detail who makes the decision on that subjectivity. For example: "Agreed to by signature of 3 councillors that the meeting was deemed an emergency meeting". For good governance, it probably should not be defined as the view of a single person.

Attending by Audio Visual Link

Paragraph 5.19 of the draft states that a councillor can only attend by audio-visual link due to Medical or Caring responsibilities. We believe this should also include where immediate (def: needed to be done on that date) personal or business affairs required the councillor to be more than X00 km from the council chambers. Please remember councillors do not receive a living wage, the essential requirement for a councillor to have a primary source of income can sometimes involve work travel, we find this proposed clause is possibly discriminatory in preventing a councillor from performing word duties.

Joint Organisations

Paragraph 5.40 states that joint organizations not required to livestream? Why? Many councillors would like more transparency in relation to these discussions. There does not seem to be any reason why transparency should not be expected from these organizations or why councillors should not be better informed of the discussions.

Standing for the Mayor

Paragraph 7.1 suggests councillors stand for the mayor to enter the room, we <u>strongly</u> object to this, because:

1. It makes no sense, no value and no purpose to single out one of the governing body in this way just because they are presiding over the meeting.
2. It devalues the presence and vote of the Councillors.
3. It serves to publicly disrespect the governing body as an entity defined under the Act.
4. The mayor is still a councillor and a member of the governing body, the Councillors are his peers not his subordinates under the Act. Elevating individual members of the governing body by how many votes they got is divisive and counterproductive, the mayor is a leader within the governing body, not a ruler of the governing body. This would likely result in a violation by the majority of councillors at every meeting, again without any purpose.
5. When the Mayor enters the room the meeting is not yet open, the livestream has not started it may be 30 minutes before the meeting and sometime after the meeting before he or she leaves. In comparison to a court where everyone is present and then the tipstaff opens proceedings where they announce "the xxx court is now in session, all rise for his honour xxx", then the judge comes out of his chamber. This is simply not how it happens in a council and will only result in a shambles and reduction of unity. Many councillors would simply wait outside and enter the room after the mayor to avoid the situation.

If the Minister or the OLG wants to make meetings more formal in this way, then all councillors Including the Mayor should be outside the chambers and when the meeting starts the General Manager could ask the staff and public gallery to stand while the mayor and councillors enter the room and take their seats. The difference here is that it builds respect for the entire governing body and the council as an entity, the draft proposal of super-staring the mayor has the opposite effect.

Mayoral Minutes

We do not agree with the deletion of the Old Paragraph 9.9. Once again, this change fails to comply with the intention of the Act in that there is no justification for the mayor to be given a privileged position in presenting surprise motions by subverting due process. Paragraph 9.9 is a well-positioned mechanism to prevent abuse and it serves no purpose to remove it. Mayoral minutes should have a special status and not be simply a privileged pathway for one councillor to bypass the correct procedure, again disregarding good governance. Old paragraph 9.9 provided governance over misuse, and removal shows disrespect for the governing body of the council.

Foreshadowed Motions

We support the removal of old paragraph 10.17, removing foreshadowed motions from council meetings. This change will ensure proper debate on all aspects of each motion rather than a motion passing with flaws or failing because another motion is not yet explained. Amendments should be debated individually not on a wholesale basis.

Questions With and Without Notice

A "Questions without Notice" item should be at the end of the agenda, the GM can still take the question on notice so there is nothing lost in this. Members of the governing body must be able to ask questions in the public forum, often questions that have come about during the meeting and need further clarification, it is pointless to wait a month to ask the question and stands as a fundamental basis of transparency.

Disorderly Conduct

Paragraph 15.10 suggests that councillors do not use any language, words or gestures that would be regarded as disorderly in the NSW legislative assembly. We fail to understand how Councillors are qualified to judge what would be regarded as disorderly to the NSW Legislative Assembly and if this was challenged how would a dispute be resolved, we don't think the bad behaviour should be re-enacted in the legislative assembly to see if it complies. This measurement is not specific, not measurable and not enforceable.

Risky Assumptions

Paragraphs 15.10 to 15.23 relate to Acts of disorder and maintaining order at meetings. These paragraphs make the risky assumption that the mayor will always be the independent peacekeeper and the councillor the perpetrator, this may not be the case! There is a real risk of unintended consequences with this draft policy providing the tools for a mayor to weaponize his autocratic authority over councillors, especially in preparation for a contentious vote. This is not acceptable and not workable and needs a significant rewrite in line with the principles of the governing body and democracy as described in the Act.

Expulsion from Meetings

We disagree with the inclusion of Paragraph 15.15 and rely on clause 15.16. If a Councillor is performing an act of disorder, the chairman can put to a vote that the Councillor be expelled, it should not be possible for a chairperson or mayor to autocratically expel councillors in the heat of the moment. This is also not in line with the principles of the governing body and democracy as described in the Act.

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Council.

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