
Draft Submission New Model Code of Meeting Practice

28 February 2025

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Introduction

Thank you for the opportunity to make a submission in relation to the “New Model Code of Meeting Practice”. In making this submission Council reiterates its position, put forward in response to the September 2024 *Councillor Conduct and Meeting Practices Discussion Paper*, that we do not support:

- the proposed ban on Councillor briefings
- the proposed ability for Mayors to issue fines to members of the public.
- the proposal to give Mayors the power to remove a Councillor’s allowance, for any length of time.

1. Will the proposed amendments made in the consultation draft of the Model Meeting Code achieve the policy outcomes identified in this paper?

Proposed ban on Councillor briefings

If the proposed ban on Councillor briefings is adopted our position is that this will have little or no impact on the promotion of transparency or integrity, as the current framework requires that there can be no debate or preliminary decision making on matters in Councillor briefings. For Councils who are complying with the current framework, and it is presumed that this is the majority of Councils, the proposed ban on briefings will not improve transparency or integrity as:

- it will not change the level of detail in Council reports;
- it will not impact the debate on matters in Council meetings;
- it will not impact decision making in Council meetings (except that decision making may be less informed).

In addition, we submit that the proposed ban on Councillor briefings will not improve public participation or promote dignity of the Council Chamber as:

- background and learning information, that would normally be provided in Councillor briefings, will need to be undertaken via other channels, such as via memos, intermittent workshops, Committees etc. This is the only practical way for Councils to educate their elected representatives on matters of strategic importance or significant risk.

The briefing of all Councillors on matters proposed for the agenda of future Council meetings contributes in a positive way to Councillors’ understanding of the significant matters which they are required to make decisions on. We strongly believe that, used appropriately, the Councillors’ briefing process promotes a better understanding of the complex matters on which Councillors are required to make decisions and results in better decision making in the interests of the broader community.

The current framework is considered to be clear and concise and any Councils who are known to be not complying with these provisions should be dealt with in the same way that other non-compliance matters/complaints are dealt with by the OLG.

Proposal to provide Mayors with the power to remove a Councillor’s allowance and issue fines to members of the public will not promote dignity of the Council Chamber

Council opposes the proposal that Mayors be given the power to remove a Councillor’s allowance for any length of time. This proposal has the potential to generate disorder, based on political alignments

or perceived political alignments, and we do not believe this will promote the dignity of the Council Chamber.

The Council Chamber is a political environment, often where parties disagree, certainly where robust debate is encouraged. The Mayor's role in managing Council meetings is already demanding given the environment and the complexity of rules around Council meetings. The use of the proposed power to remove a Councillor's allowance is likely to be perceived as politically motivated, no matter what the circumstances or how apolitical the decision might be.

We reiterate our position that we do not support the proposed ability for Mayor to issue fines to members of the public. We assert that this proposal is impractical and unworkable. It will have potential negative impacts on the working relationship between Mayors and certain sectors of the local community and will do little to deter bad behaviour. Perhaps for this reason, it will be a little used provision. The current process of issuing a warning and then removing any offenders with the assistance of the local Police, if required, is considered appropriate.

Proposed requirement that the Council determines what staff should attend Council meetings + proposal that the Mayor, not the General Manager, has discretion on whether Council staff should respond to questions with notice.

We submit that neither of these provisions will serve to depoliticise the role of the General Manager. The General Manager's role by statutory definition is not a political role. The General Manager is responsible for all Council staff and for the day-to-day operation of the Council. It is, and should remain, a matter for the General Manager to determine what staff should attend Council meetings and which staff should answer questions at Council meetings.

The Council is responsible for the performance of the General Manager and any matters in dispute related to staff attendance at Council meetings or staff answering questions at Council meetings should be dealt with between the Mayor and the General Manager (outside of the Council meeting process) and, if required, at General Manager performance reviews.

These provisions have the potential to create confusion and undermine the role of the General Manager and will not assist with depoliticising the role of the General Manager.

Proposal to limit the circumstances in which Councillors can attend meetings by audio-visual link

The proposal to only allow Councillors to attend meetings by audio-visual link in very limited circumstances does not promote inclusivity for Councillors. There are many reasons why Councillors may not be able to attend meetings in person. These could be due to work commitments, travel for work, personal reasons other than illness or unplanned carer responsibilities. These provisions, if adopted, may serve to further limit an already limited pool of candidates who have the time and capacity to fulfil the role of Councillor.

This may also have a flow on effect for members of the public who are currently able to address Council via audio-visual link, as it is not equitable to say that Councillors cannot attend meetings via audio-visual link but members of the public can address via audio-visual link.

This proposal will not result in more inclusive Council meetings.

2. Are there any other amendments you would suggest that will achieve these policy outcomes?

Although we support the continuation of Councillor briefings under the existing framework, if this cannot be supported, then perhaps Councillor briefings could be required to be open to the public. While we do not believe that this is necessary or ideal, it would at least provide an option for Councils to consider. Members of the public could attend briefings (except for confidential matters) and listen to presentations and discussion but not address the briefing or be involved in the briefing in any way other than observation. This would ensure transparency and still provide for Councillors to be adequately informed.

Alternatively, address the matter of any Councils who are not complying with the current requirements or who have been subject to complaints in relation to the current requirements.

The current provisions in relation to disorder at meetings in conjunction with the proposed amendments to Code of Conduct complaints administration framework are considered adequate. We would suggest no amendments to the Code of Meeting Practice in relation to the disorder provisions.

3. Will the proposed amendments have any unintended consequences?

We submit, for consideration, the following unintended consequences of the proposed amendments:

Proposed amendment	Consequence
Removal of pre-meeting Councillor briefings	<p>The proposal to ban Councillor briefings is not supported. We reiterate our position in response to the September 2024 Discussion Paper, that we strongly believe that, used appropriately, the Councillors briefing process promotes a better understanding of the complex matters on which Councillors are required to make decisions and results in better decision making at Council meetings in the interest of the broader community.</p> <p>Banning Councillor briefings is likely to result in more lengthy meetings and less informed decision making.</p>
Proposed new disorder provisions	<p>Council opposes:</p> <ul style="list-style-type: none"> - the proposal that Mayors be given the power to remove a Councillor’s allowance for a month or any length of time. - the proposed ability for the Mayor to issue a fine to members of the public. <p>We assert that these proposals are impractical and unworkable.</p> <p>The proposed disorder provisions have the following unintended consequences for Mayors:</p> <ul style="list-style-type: none"> - Removing a Councillor’s allowance will be politicised. There is likely to be a perception, regardless of the circumstances, that Mayors are using these provisions for political purposes

Proposed amendment	Consequence
	<ul style="list-style-type: none"> - Rather than resolving disorder – these provisions are likely to create more disorder and conflict - Have potential negative impacts on the working relationship between Mayors and certain sectors of the local community and will do little to deter bad behaviour.
<p>Providing that the Mayor, not the General Manager has discretion as to whether Council staff should respond to questions with notice</p>	<p>The provisions of the Local Government Act and the current Code of Conduct are clear in that staff report to the General Manager and are not subject to the direction of the Council. It should, therefore, be the General Manager’s call as to whether staff respond to questions.</p> <p>This proposal will blur the lines of responsibility and may lead, unintentionally, to a misunderstanding of Councillor-staff relationships.</p>
<p>Conferring responsibility on the Council to determine staff attendance at meetings</p>	<p>Staff report to the General Manager and, therefore, staff attendance at Council meetings should be determined by the General Manager not the Council.</p> <p>There are avenues for the Mayor and the Council to discuss and resolve any issues in relation to matters of this nature with the General Manager.</p> <p>This proposal could undermine the position of the General Manager as the leader of staff and create confusion as to the role of Councillors in relation to directing staff.</p>
<p>Removing the requirement for General Managers to prepare reports for notices of motion with financial implications or to identify sources of funding where a notice of motion proposes expenditure that has not been budgeted for</p>	<p>General Managers not commenting on Motions where there are budget implications could result in unintended budget deficits or overruns. Council could commit itself to unbudgeted expenditure without proper consideration of the consequences or the long-term sustainability of such commitments.</p> <p>The current system does not prevent Council from making expenditure decisions, it simply provides for informed decision making.</p>
<p>Proposed new provisions in relation to Questions with notice:</p> <p>The proposed changes to the Model Meeting Code include removing the following clause under the sub-heading “Questions with notice”: “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.”</p>	<p>The reporting of (or questions in relation to) matters that are breaches (or potential breaches) of the Code of Conduct or relate to the Public Interest Disclosures should not be dealt with at public Council meetings. This clause should remain in the Model Meeting Code as Council meetings are not the forum to raise matters of complaint or wrongdoing in relation to the General Manager or staff.</p> <p>An unintended consequence of the deletion of the provision in question could be a breach of legislation.</p>
<p>Proposed changes around attendance by Councillors at meetings by audio-visual link</p>	<p>This proposal does not address the diverse needs and interests of Councillors who, for example, may need to travel for their work.</p> <p>In addition, it could have a negative impact on residents who wish to address the Council by audio visual link as this method of conducting meetings is clearly being discouraged.</p>

Proposed amendment	Consequence
<p>Refining the definitions of disorder to remove phrases that could be weaponised to impede debate.</p>	<p>The changes to the disorder provisions are proposed to include, as an act of disorder, a Councillor who “uses any language, words or gestures that would be regarded as disorderly in the NSW Legislative Assembly”.</p> <p>In order to remove any ambiguity, the behaviours referred to need to be specified clearly in the Code rather than referencing another forum (ie. The NSW Legislative Assembly).</p>
<p>Closed session provisions</p>	<p>The proposed new closed session provisions are not practical as confidentiality on reports will expire at varying intervals. There could be a number of reports on the one confidential business paper and, therefore, business papers will need to be published and republished a number of times. This will create confusion for the public and be challenging administratively.</p> <p>In addition, there is likely to be very little interest in confidential reports once the confidentiality expires, which could be years after the matter is reported to Council</p> <p>Members of the public are currently able to apply for access to confidential reports via the Government Information (Public Access) Act. This would require Council to conduct a public interest test and make a decision about access on each matter based on the circumstances at the time.</p> <p>When significant timeframes are in play, changes in technology and software systems could also make this proposal very time consuming, with very little public benefit.</p>

