



RESPONSE
Proposed
Amendments to the
Model Code of
Meeting Practice

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Introduction

The Country Mayors Association of NSW (CMA) represents 89 councils located in remote, rural and regional NSW as well as five associate members. The CMA's goal is to promote and advocate for our Member Councils and the communities they represent across a broad range of matters as well as for Local Government as a sector.

In operation for over 45 years, the CMA looks to create genuine, respectful and productive relationships with State Government to empower, engage, promote and deliver positive outcomes for regional NSW.

The CMA supports the Government's outcomes for the amended Code of Meeting Practice:

- Promoting transparency, integrity and public participation;
- Promoting the dignity of the council chamber;
- Depoliticising the role of the general manager; and
- Simplifying the Model Meeting Code.

However, in reviewing the proposed amendments, our Members are very mindful of the way State Government conducts its own decision-making. While there may be debates in Parliament usual practice is for the important decisions to be made by the Executive behind closed doors without the media or the public sitting in on the meetings. The heated debates on the floor of Parliament, we suggest with respect, make little impact on a decision the Government has already made, regardless of their political persuasion.

It is not unreasonable for our Members to question the double standard that the new Code will apparently mandate. We question why councillors appear to be held to a higher level of transparency than their State counterparts. The new Code proposes that every discussion councillors have, as a group, will now be held in public, a situation that our Members recognise will be a barrier to informed decision-making.

It is generally agreed that Local Government is "government at the grassroots", there is no other level of government that bears the intense scrutiny of voters the way that councils do. Nevertheless, the Government is arguing that further scrutiny is essential to promote transparency and address

corruption. Our Members remain unconvinced that removing their ability to be briefed on specific matters behind closed doors, thus enabling them to make well-informed decisions will result in better outcomes for the communities they represent.

We provide our comments on the proposed amendments to the Code of Meeting Practice below:

Promoting Transparency, Integrity and Public Participation

- ***Removing pre-meeting councillor briefings***

Many of our Members value the pre-meeting briefings as an opportunity to touch base on issues prior to a Council meeting. It must be remembered that for many rural councils, councillors can live hundreds of kilometres apart, consequently, opportunities for in-person conversations can be few and far between. It is highly likely that for many the council meeting is the first time the councillors have seen each other since the previous council meeting.

Pre-meetings provide an informal opportunity for councillors to reconnect, to discuss issues that are impacting on their communities and to talk about what is happening across the State more generally.

It is convenient and cost-effective to hold these informal meetings prior to the council meeting. It would be an unfair burden on councillors who represent large rural communities to increase their obligations in relation to meeting attendance.

We want to attract the best and brightest to the role of councillor, to do this we need to ensure that council obligations are, as much as they can be, work and family friendly. Losing the opportunity for pre-meeting briefings will increase the burden on councillors to attend other meetings to make up for the loss of opportunity, creating yet another barrier to participation in Local Government as a councillor.

The pre-meetings also provide an opportunity for councillors to ask questions, some of which may require confidentiality or perhaps require a councillor to admit to a lack of knowledge in a specific area. Councillors are able to do this without the media and the public in the room, ensuring that responses to questions are provided without the need to “censor” them for public consumption.

As stated above, we note that every day, State Government Ministers receive confidential briefings on any number of issues without the public or the media being in the room. The Ministers are not lacking in integrity nor transparency but merely ensuring that they make the best decision after weighing up information and competing priorities. No-one is watching when a Minister admits to a bureaucrat that he or she does not completely understand the issue or problem.

Local Government is simply asking for a similar opportunity, and providing that these meetings remain informal, perhaps led by the General manager and Directors to underscore that informality, then there should be no reason for councillors to lose the many benefits that the meetings provide.

- ***Information considered at closed meetings to be made public after it ceases to be confidential***

The CMA supports this proposed amendment.

- ***Recording of council meetings to be published on council websites for the balance of the council term***

The CMA has no objections to this proposal.

- ***Council does not make final planning decisions without a staff report containing an assessment***

The CMA supports this proposed amendment.

- ***Councils to give reasons where they make a decision on a planning matter that departs from the staff recommendation***

The CMA supports this proposed amendment.

Promoting the Dignity of the Council Chamber

- ***Enhancing the Authority of the Mayor***

The CMA supports the proposal that the Mayor be permitted to call extraordinary meetings.

In relation to the requirement that councillors stand when the Mayor enters the room, the CMA believes that this is a matter that should be decided by individual councillors, not an action imposed by the State on councillors.

While we appreciate that the goal of the amendments is to promote dignity, forcing anyone to address someone in a specific way or stand when someone enters the room does not by extension result in greater respect for the person or the position. It could in fact be counterproductive, breeding resentment amongst councillors that they are being forced to stand for one of their peers.

- ***Requiring councillors to stand when a councillor addresses the meeting or when the mayor enters the chamber***

In the main, the CMA believes that rural and regional councils already conduct dignified meetings. Therefore, CMA does not believe that this proposal will add any significant benefit to the manner in which council meetings are delivered, at least for our Members.

Our Members are concerned that depending on a councillor's demeanour and the nature of the debate, standing could be found to be an intimidating act by other councillors, because the councillor would quite literally be talking down to his or her fellow councillors. During a very vigorous debate it could be perceived as an aggressive action.

In addition, we do not believe it is appropriate to require councillors to stand when addressing the meeting during a Committee of the Whole session. The Committee of the Whole allows for extended debate and conversation, standing may detract from those discussions by disrupting the natural flow of discussion.

Finally, from a practical perspective, standing while speaking may compromise audio recordings for some councils as councillors will be much further away from their microphones.

The CMA again believes the requirement to stand when addressing the meeting should be a matter for the councillors themselves to decide, after all it is their meeting, not a matter to be mandated by the State. At the very least this proposal should be amended so that it does not apply to sessions where council is meeting as a Committee of the Whole.

Notwithstanding the above, the CMA would support protocols that allow the Mayor to stand during a meeting in response to unruly behaviours, or where the Mayor believes the action is required to bring a meeting to order.

- ***Refining Definitions of Disorder***

The CMA supports refining the definitions of disorder, however, is concerned with the inclusion of the following *“uses any language, words or gestures that would be regarded as disorderly in the NSW Legislative Assembly”* as a standard. This appears to be quite subjective and we are unsure as to whether it will be of practical use.

The CMA believes that it is more appropriate for councils to adhere to their council’s Code of Conduct which the councillors themselves have voted to adopt, it is a clearer and less subjective standard than the one proposed.

- ***Councillors must attend meetings in person***

The CMA agrees that wherever possible councillors should attend meetings in person, however, we also recognise that there are times when councillors through no fault of their own may not be able to attend, fire and floods being a case in point, a death in the family or major illness (where the councillor does not have caring responsibilities).

The reasons for permitting attendance via Audio Visual Link (AVL), as proposed in Clause 5.19 are far too narrow, and will act as a barrier to participation in council meetings when councillors have very valid reasons for not attending in person. The CMA believes that the council should have the power to determine whether or not it is appropriate, given the councillor’s circumstances (which may be personal and confidential), for the councillor to attend the meeting remotely.

We note that Clause 5.16 does allow the Mayor to hold a council meeting by AVL where there is a natural disaster or public health emergency, but this is the entire council meeting. It does not factor in a scenario where a single councillor may be impacted by a natural disaster and therefore unable to attend in person.

This is not an issue where a one-size-fits-all approach should apply; therefore, we do not agree with this amendment being mandated as is currently proposed.

- ***Restricting the circumstances in which the council may withhold a leave of absence***

The CMA does not oppose this amendment.

- ***Removing the option for staff to attend meetings by audio visual link***

It is our understanding that Member Councils have rarely utilised this clause in the Code. However, they believe it should not be withdrawn, it should be a matter for the council to determine if it is appropriate for a staff member to participate in a council meeting by AVL.

As stated above in relation to councillors' attendance, unforeseen circumstances arise. The use of AVL can be of great assistance in ensuring that council business is not delayed because a key staff member could not be there in person due to a natural disaster or other personal circumstance that could not be avoided.

- ***Strengthening the deterrence against disorder by allowing expulsion from successive meetings.***

Our Members are concerned about the potential for this power to be weaponised, particularly where there is interpersonal conflict between the mayor and a councillor.

We are also concerned about the possibility of the power being misused when there is a contentious vote before council. In highly politicised councils, there may be an incentive to remove councillors from the chamber in order to ensure the numbers needed to pass a resolution.

Our Members believe that councillors should work as a team and therefore recommend that the decision to expel a councillor should be a collective decision of the council, made by way of resolution, with the Mayor holding the power to move a motion to expel.

Depoliticising the Role of General manager

- ***Removing the requirement for general managers to prepare reports for notices of motion***

The CMA supports this amendment except where the Notice of Motion has significant financial, resourcing and/or WHS implications. These implications could include additional demands on staff time, additional workload outside normal parameters, or placing staff or councillors in danger of physical or psychological injury where this could occur then the Notice should include a report from the general manager.

The general manager should make the final decision on whether a report is required.

- ***Withdrawal of Notices of Motion***

The CMA agrees that councillors should be able to withdraw their notices of motion at any time.

- ***The Mayor whether staff respond to questions without notice***

The CMA supports this amendment.

- ***Conferring responsibility on the council to determine staff attendance at meetings***

This proposal is contrary to the employment arrangements within council, whereby the responsibility for staff rests with the general manager.

The general manager should have the ultimate decision on which staff members attend a council meeting. The council should not be able direct staff members to attend council meetings without approval of the general manager, the messaging becomes confusing as to who the staff answer to.

The utilisation of staff resources is an operational matter. Therefore it is appropriate that the general manager in consultation with the directors decides the most appropriate staff members to attend considering their skills, alignment with their position description and the expertise they are able to share with the councillors.

Where applicable, the general manager should be supported by subject matter experts able to provide clarification on their reports. Consequently the general manager must be able to determine which staff attend council meetings to provide that expert advice.

Finally, requiring staff to attend meetings, where it is outside their usual working arrangements has the potential to increase labour costs through the requirement to pay overtime or leave in lieu.

Simplifying the Model Meeting Code

The CMA supports actions that would simplify the Code.

- ***Public Forums***

The CMA supports the proposal that councils will be free to determine their own rules for public forums and public representations.

- ***Simplifying the rules governing public representations***

We have had feedback from our Members that Clause 14.11 is confusing and that more clarity is required.

Restricting Council from Holding Briefing Sessions

Our Members agree that decision-making in councils should be transparent and made in open council meetings. However, our Members strongly oppose the proposal to ban councillor briefing sessions, which we assume includes councillor workshops. We do not support the proposal that all matters be dealt with by council committees, for the reasons stated below.

If we want effective, evidence-based decision-making from our councillors we must be able to provide them with the opportunity to better understand the complex subjects they are required to deal with. Briefing sessions and workshops enable councillors to hear from Subject Matter Experts as well as council staff about complex matters that may be beyond a councillor's field of experience. It allows councillors to ask questions that openly display their limited knowledge about a topic without the press and public there to witness it.

Where councillors have insufficient knowledge about an issue it is sometimes easier "to decide not to decide". Well-constructed briefing sessions and workshops minimise the likelihood of this outcome and provide professional development opportunities that many councillors embrace.

In addition, briefing sessions and workshops are used to develop the strategic direction of a council, to sift through the multitude of ideas that come from the Community Strategic Planning process and prioritise them into achievable community goals. In these instances, councillors benefit from the free, frank, open and honest discussion of community priorities that occurs because the press and the public are not watching and passing judgement. The sessions provide opportunities to work through solutions, strategic opportunities and directions and to obtain feedback that will inform final decision-making in the chamber.

Councils also use workshops to consider competing alternative solutions to problems, including solutions that require the acquisition of land, investments in infrastructure or changing zoning. These are matters that need to be canvassed without the public watching as ideas and alternatives are considered and rejected. One of our Members provided an example of a workshop where council considered a decision to invest in a new childcare centre. Discussions centred around the best location for the centre with six separate locations under consideration, all of which required the purchase of land. Councillors were able to take advantage of the informality that a workshop provides, to freely discuss the alternatives and determine a pathway forward.

Our Members agree that these sessions should not devolve into pseudo-council meetings where decisions could mistakenly be made. Therefore, we are recommending that the OLG provide Guidelines for the delivery of briefing sessions and workshops. We suggest that one of the requirements be that these sessions are always led by the general manager and that the mayor does not chair the meeting but is merely a councillor for the duration of the session. In our opinion, if the Mayor is at the head of the table during a briefing session or workshop, then the session's demeanour can more easily take on the character of a council meeting. Consequently, it is important that council staff take the lead to ensure that the character of the sessions remains one of information sharing and discussion only.

Finally, our Members are concerned that the inability to hold these sessions is expected to result in longer council meetings and more closed sessions as councillors consider alternative solutions that include proposals that might advantage or disadvantage sectors of their community. Our Members are concerned that longer council meetings will not result in better decision-making, nor encourage people to stand for local government.

Conclusion

The CMA welcomes the opportunity to provide a response to the proposed amendments. We want to reiterate the importance of councillors being able to make decisions about how their council meetings operate. While it is important to have the guidance that the Code of Meeting Practice provides, the Code should not override the power of councillors to make decisions that accommodate their unique circumstances.

We are very concerned that the Code will mandate matters that should be left to councillors to determine. The one-size-fits-all approach is not appropriate, councils in rural and regional areas manage vastly different challenges to our metropolitan counterparts. We are far more impacted by

natural disasters, in the main there is no public transport and many of our councillors reside a significant distance from the council chamber. These issues must be taken into account when determining how council meetings will run.

Across the board our Members are strongly opposed to amendments that would force every meeting they have to be under public scrutiny. The approach will not result in better governance outcomes. In fact, the CMA believes that councillors who are no longer afforded the opportunity to ask questions about council proposals, whether they be strategic, financial or operational without the press and the public watching will result in poorer, less informed decision making. As stated above State Government Ministers are permitted to receive briefings from their staff and third parties on all manner of topics, behind closed doors, our Member Councils are asking that they be afforded the same opportunity.

The CMA would welcome the opportunity to work with the Minister and the OLG on the final Code and would be happy to meet to discuss this response.