

**Submission:
Discussion Paper on
Councillor Conduct and
meeting practices**

29 November 2024



Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

OVERVIEW OF THE LOCAL GOVERNMENT SECTOR



Local government in NSW employs **55,000 people**



Local government in NSW is responsible for about **90% of the state's roads and bridges**



Local government in NSW looks after more than **\$177 billion** of community assets



NSW councils manage an estimated **4 million tonnes of waste** each year



Local government in NSW spends more than **\$2.2 billion** each year on caring for the environment



NSW councils own and manage more than **600 museums, galleries, theatres and art centres**



NSW has more than **350 council-run libraries** that attract tens of millions of visits each year



NSW has more than **400 public swimming and ocean pools**

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Opening

Local Government NSW (“LGNSW”) welcomes the opportunity to provide a submission to the Office of Local Government (“OLG”) on the *Councillor Conduct and Meeting Practices Discussion Paper* (“Discussion Paper”). The submission is informed by the policy positions of LGNSW and consultation with member councils, county councils and joint organisations.

This Submission was endorsed by the Board on 6 December 2024.

Background

As it stands, the stated purpose of the Model Code of Conduct for Councils in NSW (“Code”) and the Procedures for the Administration of the Model Code of Conduct (“Procedures”) is to ensure that council officials (at page 5 of the Code):

- understand and comply with the standards of conduct that are expected of them,
- are able to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence, and
- act in a way that enhances public confidence in local government.

As the Hon. Ron Hoenig MP, Minister for Local Government, has pointed out, the Code is “too open to weaponisation” for political purposes. Although the abuse of the current instrument can often be attributed to a small portion of the collective, the actions of this minority have a profound impact in undermining public trust in local government.

Any changes to the Code and the Procedures should strive to build public trust in local government, minimise vexatious complaints, increase cost efficiency and ensure high standards of integrity and probity.

LGNSW support many of the proposed changes in the Discussion Paper, however, we have major concerns with the following:

1. The proposed ban on confidential briefings prior to Council meetings; and
2. Restrictions on how information will be able to be shared with councillors;
3. The composition and operation of the proposed Privileges Committee; and
4. The nature and timeliness of penalties and/or outcomes.

The above concerns are expanded upon below.

LGNSW Policy

As the OLG and Minister are aware, LGNSW Annual Conferences are the supreme policy-making body of LGNSW where mayors and councillors from across the state come together to share ideas and debate issues that shape the way LGNSW is governed and advocates on behalf of the local government sector.

The following Conference resolutions are specifically relevant to the issues raised in the Discussion Paper:

2024 Annual Conference (Item 9)

"That Local Government NSW write to the Minister for Local Government to:

- 1. Commend the Minister for prioritising the review of the Councillor Conduct Framework, as this is something that LGNSW has long been calling for;*
- 2. Request that the NSW Government consult with the local government sector on the guidelines for the selection and appointment of privileges committee members;*
- 3. Advocate that Privileges Committee members be required to come from the sector (local government experience) and have a limited term;*
- 4. Advocate that councils retain discretion to hold informal briefings and workshops with councillors as a supporting mechanism to formal meeting and committee structures; and*
- 5. Request that the Minister consult with the local government sector further on the powers proposed to be given to mayors to suspend councillors from council meetings, including implementing financial suspensions for similar periods."*

2023 Annual Conference (Item 23)

"That Local Government NSW formally requests the NSW Government to undertake comprehensive reform of the existing Code of Conduct complaint system with specific regard to:

- 1. Code of Conduct complaints about councillors to be lodged directly with an independent tribunal to centralise the code of conduct complaint system, increasing efficiency, transparency and fairness.*
- 2. An independent tribunal be created to assume full responsibility for the entire process of triaging complaints and managing or undertaking preliminary assessment and full investigation, to resolve complaints.*
- 3. That the Commissioner be required to maintain a central register of councillor conduct complaints and their management, and that a copy of all investigation reports are published for transparency, on the Commissioner's website."*

2023 Annual Conference (Item 19) and 2022 Special Conference (Item 16)

"LGNSW supports legislation to ban the following from serving as councillors, and increased penalties for false declarations on this matter:

- (a) Property developers and their relatives and close associates including investors, owners and beneficiaries*
- (b) Real estate agents (except in rural areas) and their relatives and close associates including investors, owners and beneficiaries."*

The principles of change

[Question] Are we missing anything in the principles of change?

LGNSW generally supports the principles outlined on page 7 of the Discussion Paper which have guided the discussion and intent of the proposed changes.

Further to these principles, there is a need for:

1. Greater clarity on the purpose of the Code (see ICAC's website for information on the purpose of a code of conduct),
2. Information about the rights of council officials who are the subject of code of conduct complaints (noting that the current and proposed principles are geared towards the protection of the person making the complaint, the principles should also enshrine the rights of persons whom the complaint is directed towards), and
3. Definitional clarification of certain principles, specifically:
 - The meaning of "significant" and "major" non-pecuniary conflicts of interest,
 - The meaning of "significant penalties",
 - The "Freedom of speech" principle of change should be amended to provide that *"as elected officials, councillors have the constitutional right and democratic responsibility to speak freely about issues affecting their local community and to advocate for the interests of that community, provided it is done in a lawful and respectful manner".*

In LGNSW's opinion, a major shortcoming of the current system is the absence of intervention by the regulator (or slow intervention by the regulator) and a noticeable absence of meaningful sanctions for obvious and serious breaches of the Code.

LGNSW has had the opportunity to review the submission made by the United Services Union ("USU") on approximately 6 November 2024. We agree with the following observation by the USU in relation to the principle "A strong and appropriate local government regulator":

"...We disagree with the underlying premise that intervention is inappropriate - regulators should be given power to intervene when necessary and with effect."
(emphasis added)

Potential changes to the code of conduct and oath of office

LGNSW does not oppose moving to a streamlined, aspirational Code of Conduct for elected representatives, provided it does not result in a dilution of meaningful sanctions for misbehaviour.

If implemented, the proposed (aspirational) Code should contain clear definitions to ensure the Code's requirements are unambiguous and easily understood.

[Question] What are the key elements of an aspirational Code of Conduct that should be enshrined?

LGNSW generally supports the key elements of an aspirational Code as proposed on page 8 of the Discussion Paper.

In addition to the elements referred to on page 8 of the Discussion Paper, an aspirational Code should:

1. contain a statement about its purpose (i.e. why does it exist),

2. allow elected representatives to speak freely about issues affecting their local community and to advocate for the interests of that community, provided it is done in a lawful and respectful manner, and
3. contain guidance for persons who are the subject of a code of conduct complaint, including but not limited to what support mechanisms are available, such as who they can go to for support and advice, and when.

In LGNSW's opinion, there should also be a requirement that mandatory training for mayors and councillors be completed within a prescribed time. Simply requiring the general manager to make training available to mayors and councillors, and reporting on those who don't complete the training, is insufficient.

[Question] What are your views about aligning the Oath of Office to the revamped Code of Conduct?

LGNSW supports aligning the Oath of Office with the revamped Code of Conduct.

Potential changes to the definitions and assessment of councillor misbehaviour

Pecuniary Conflicts of Interest:

[Question] Is the proposed pecuniary interest framework appropriate? Is anything missing?

LGNSW generally supports the proposed changes for pecuniary interests as outlined on page 10 of the Discussion Paper. However, LGNSW does not support the proposal that the interests for disclosure by councillors be extended to include the interests of a spouse or de-facto partner, relative, or partner or employer, or company or other body of which the councillor, or their nominee, partner or employer, is a shareholder or member. In our opinion, this would constitute an unnecessary and unjustifiable overreach into the private and personal affairs of persons who are not themselves elected representatives.

LGNSW would welcome more specific definitions (and/or examples) on what is meant by a "*pecuniary interest*" and "*significant financial impact or loss*".

LGNSW supports the proposal to extend investigation powers to the OLG to investigate and request information on corporate structures such as trusts or companies to determine whether elected representatives have any underlying beneficial ownership and interests.

Non-Pecuniary Conflicts of Interest

[Question] Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?

LGNSW generally supports the proposed principles on what constitutes a significant or major non-pecuniary interest, as outlined on pages 10 and 11 of the Discussion Paper. However, further definitional clarity is required on the meaning of 'significant' and 'major' in this context, as well as how to distinguish between the two. LGNSW would welcome further examples on how close a 'friendship' or "association" needs to be to give rise to a significant or major non-pecuniary interest?

Property developers and real estate agents

[Question] Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?

As a matter of policy, LGNSW supports legislation to ban the following from serving as councillors, and increased penalties for false declarations on this matter:

- (a) Property developers and their relatives and close associates including investors, owners and beneficiaries
- (b) Real estate agents (except in rural areas) and their relatives and close associates including investors, owners and beneficiaries.

LGNSW understands and supports the intent behind requiring councillors to divest themselves from real estate or development business activities and contractual obligations (except in relation to real estate agents in rural areas). We also note that legislation is being drafted to achieve this outcome. Noting that LGNSW has not seen the draft legislation, we are not currently able to provide further comment. We request that the NSW Government engage

further with LGNSW and the local government sector about this proposed reform, before it is implemented.

Councillor misbehaviour in public office

[Question] Is this the appropriate threshold to face a Privileges Committee?

LGNSW supports in general terms only the proposed three limbs of a misbehaviour definition (“threshold”), as outlined on page 12 of the Discussion Paper. By removing the current categories of behavioural standards as found in the current code, we are concerned that trying to determine what actions might be *‘outside the norms and expectations of a sitting councillor’* will be very hard to define and potentially very inconsistent in its application leading to partial outcomes.

[Question] How else can complaints be minimised?

While we support the reduction of complaints, it should be acknowledged that some complaints are necessary and need to be able to be brought forward in a safe and trusted environment and through this, improvements can be made across the sector and actions taken to address inappropriate behaviour or standards. However, more needs to be done to minimise frivolous and/or vexatious complaints. A potential option (for serious complaints brought before the Privileges Committee or equivalent body), is to empower the proposed Privileges Committee to require the payment of a complaint filing fee, perhaps similar to a GIPA application fee, and/or to recommend the OLG consider action potentially including either a suspension or costs order against complainants who are found to have made a frivolous and/or vexatious complaint.

There is a need to triage complaints based on their level of seriousness. With the removal of complaint investigation processes from any future code, and the Minister’s stated intent of removing external code of conduct investigators, it is unclear how any Privileges Committee would receive sufficient information to form either an initial view about a matter or to receive a sufficient level of detail to fully determine a matter.

A potential option is to adopt the system used by the Queensland Office of the Independent Assessor (“Office”). The Office undertakes an initial assessment of all complaints about

councillor conduct. It investigates misconduct complaints about mayors and councillors and, where appropriate, prepares applications for hearing by the independent Councillor Conduct Tribunal which determines the outcome. The Independent Assessor reports directly to the Minister for Local Government. The amended [Local Government Act 2009](#) states that the Independent Assessor is not subject to direction by another person in regard to exercising its powers.

Addressing inappropriate lobbying

[Question] What key features should be included in lobbying guidelines and a model policy?

LGNSW does not oppose lobbying guidelines and a model policy being applied to local government, subject to consideration being given to:

- (a) the unique local government context, the representative role of councillors and the importance of community consultation at a local level; and
- (b) the existing and extensive regulation of local government under mechanisms other than the LOGO Act, in order to avoid duplicative or unnecessary regulation.

Any guidelines and model policy must:

- be very clear about the difference between lobbying that is sanctioned as being part of the role of a councillor and lobbying that is improper.
- be proportionate to the risk, consider the regulatory and cost impact on councils.
- take into account that councillors receive much less administrative and financial support than State and Federal MPs.
- consider the voluntary and part-time nature of the office of a councillor and that many councillors are in full time employment in addition to being elected representatives.
- be guided by a principle of maximum transparency regarding the work of lobbyists.
- require lobbyist registration and near to real-time disclosure about when lobbyists meet with elected representatives.

Dispute resolution and penalty framework

Abolishing the 'two-step process' (removal of General Managers from the complaints process)

LGNSW strongly supports the minimisation of the role of the general manager in the complaints process.

Giving OLG the power to issue penalty infringement notices

[Question] What level of PIN is appropriate?

LGNSW generally supports giving the OLG the discretion to issue penalty infringement notices (PINs), however the reference to "*minor or insignificant breaches of the conflict of interest declarations*" on page 15 of the Discussion Paper requires clarification and definition. In LGNSW's opinion, PINs should not be issued for minor and inadvertent breaches if the elected member acts in a timely manner to rectify the breach.

LGNSW notes that NSW Parliament has an Independent Complaints Officer who has a similar remit, including for minor breaches of the pecuniary interest disclosure scheme. Where the Independent Complaints Officer finds that a breach has taken place, but it is minor or inadvertent, and the member has taken action to rectify the breach, the ICO will report on the breach confidentially. There are no PINs available to the Independent Complaint Officer for these kinds of circumstances, and it is appropriate that provisions for councillors mirror the provisions for MPs in this regard.

PINs should be focused on reforming the performance of the individual rather than a mere financial penalty.

NSW Local Government Privileges Committee

Proposed Local Government Privileges Committee

LGNSW does not oppose the concept of a Local Government Privileges Committee ("Committee"). However, we have several concerns about the proposed composition and operation of the Committee.

LGNSW strongly agrees that privileges committee members should come from the sector (local government experience) as contained in the motion to our recent 2024 Annual Conference (Item 9) which has been reproduced in full above. However, LGNSW shares the view of many of our members who have expressed concern over the potential for Committee decisions to involve (or to give rise to a perception that they involve) politically motivated outcomes, particularly where the committee members are currently serving as elected representatives. Appropriate checks and balances are needed to minimise political biases and prejudice influencing the outcome of Committee decisions.

LGNSW is also concerned that privileges committee members may have a dual role of being both the investigator and decision maker for alleged breaches of the Code. If this is the case, it raises serious questions about whether natural justice will be afforded to persons who are brought before the Committee.

If the role of privileges committee members is to involve undertaking investigations into alleged breaches of the Code, it is imperative that they be trained in conducting interviews and that they have a proper understanding of procedural fairness.

If the Government had a different view about the nature and makeup for alternative models for the Local Government Privileges Committee we would be pleased to participate in those discussions including drawing on our broad experience of investigation and dispute resolution, noting particularly our experience of industrial committees formed under section 198 of the Industrial Relations Act 1996.

We request that the OLG and NSW Government consult further with the local government sector on the guidelines for the operation of the Committee and the selection and appointment of privileges committee members. LGNSW would welcome the opportunity to further discuss:

- the appointment process,
- who can refer a matter to the privileges committee,
- what is the threshold for complaint to be referred to the privileges committee,
- will there be a right of appeal,
- whether committee members will be paid,
- whether committee members will receive training,

- whether committee members will be appointed for a fixed term,
- whether committee members will be required to undertake investigations, including interview witnesses and writing an investigation report,
- how will conflicts of interest be dealt with,
- will legal representation be permitted, and
- who will bear the cost.

[Question] Are the penalties proposed appropriate, and are there any further penalties that should be considered?

LGNSW generally supports the proposed penalties outlined on page 15 of the Discussion Paper. However, the penalties will be ineffective in deterring misbehaviour if they are sparingly or seldom imposed.

An example which demonstrates the current failings and inadequacies of the penalty system is the outcome of *Executive Director, Local Government, under delegation from the Secretary, Department of Planning, Industry and Environment v Hindi (No 2)*[2024] NSWCATOD 144. In that decision the complaint arose out of Mr Hindi's conduct during a council meeting in May 2021 where he was reported to have made several inappropriate comments towards council staff imputing improper conduct. This matter was not resolved until September 2024, whereby Mr Hindi was punished with a censure. This penalty does not seem commensurate with Mr Hindi's misconduct nor the amount of time this matter was with the Tribunal. Future penalties must be commensurate in our submission with the councillor's misconduct, and they must achieve something more substantial than a slap on the wrist so that they are taken seriously and act as an effective deterrent.

As mentioned earlier, more needs to be done to minimise and deter frivolous and/or vexatious complaints, such as by empowering the proposed Privileges Committee to require the payment of a complaint filing fee or to make/recommend a suspension or costs order against complainants who are found to have made a frivolous and/or vexatious complaint.

Referral of significant sanctions to appropriate tribunal or body

[Question] Are the existing sanctions available under the Local Government Act sufficient?

In LGNSW's opinion, the existing sanctions available under the Act are appropriate. However, what is missing is timely enforcement action where serious breaches of the Act and/or Code have occurred, and a failure to use the available penalties to deter future bad behaviour.

[Question] Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?

LGNSW supports the proposal that judgements for significant sanctions, such as suspension, significant fine or disqualification from office, be undertaken by an appropriate tribunal or body.

Restoring dignity to council meetings

Proposed reforms to the Model Code of Meeting Practice

[Question] Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?

LGNSW generally supports the proposed reforms to the Model Code of Meeting Practice, as outlined on page 17 of the Discussion Paper.

LGNSW members have expressed mixed views about the proposed requirement that persons in the chamber be required to stand when the mayor enters. If this proposed change proceeds, exceptions would need to be made for persons in wheelchairs and other persons who are unable to stand. General feedback is that each council should be able to use their own discretion in this area.

Banning briefing sessions

LGNSW strongly opposes the proposed ban on pre-meeting briefing sessions in the absence of the public.

LGNSW (and our members) appreciate that members of the public have a right to know what decisions are made by their elected representatives. Briefing sessions are not a decision-making forum and are not where decisions are made. The decisions are made during council meetings, in full view of the public.

Briefing sessions provide elected representatives an opportunity to ask questions of staff (some of whom may not attend council meetings) which may be too sensitive to ask or respond to in public. Banning these sessions will result in elected representatives being less informed, which will in turn lead to poorer decisions.

It is acknowledged that Councils have the ability to use formal committee structures or to resolve to go into closed (confidential) sessions of formal council meetings, however these formats are for distinctly different purposes and are not substitutes for briefing sessions.

By way of comparison, the NSW Government, Opposition and Crossbench are briefed on draft legislation before it's tabled in Parliament, and Ministers receive briefings from staff and departmental officers as part of the process of preparing draft bills and motions for consideration and before debating matters in Parliament. These private briefings lead to better informed MPs and more informed decision making once a matter comes to the public forum in Parliament.

LGNSW agrees that mayors may need to have candid conversations with the general manager outside of formal meetings. However, we have serious concerns with the proposal to specifically allow mayors to be provided with information that may affect or impact or be taken into account by the mayor in their deliberations or decisions, which is not also to be provided to other councillors. All councillors should continue to have a right to be provided with the same information that other councillors receive from their council, which may affect or impact or be taken into account in their deliberations or decisions.

[Question] Are there any other measures needed to improve transparency in councillor deliberations and decision making?

During our discussions with members, the following miscellaneous issues were raised which we agree are worthy of note:

1. Introducing conflict resolution training for mayors and councillors, with a focus on handling difficult conversations.
2. The process of a mayor managing the behaviour of a member of the public, particularly in a council meeting environment, including the possibility of issuing a PIN to a member of the public.

Conclusion

Thank you for the opportunity to make this submission. LGNSW would welcome the opportunity for ongoing dialogue on issues raised during the review. For further information in relation to this submission, please contact Chiara Napoli, Legal Officer on 02 9242 4058 or chiara.napoli@lgnsw.org.au.