

Draft submission in response to consultation paper:

Remote attendance by councillors at council meetings

May 2021

Opening

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.

LGNSW welcomes the opportunity to make a submission in response to the NSW Government's consultation paper, *Remote Attendance by Councillors at Council Meetings*.

This is a draft submission awaiting review by the LGNSW Board. Any amendments will be forwarded in due course.

Overview of proposal

In March 2021 the NSW Government published a consultation paper, *Remote Attendance by Councillors at Council Meetings*, proposing to make permanent the temporary arrangements that permitted councillors to participate in meetings by audio-visual link in response to the COVID-19 pandemic.

The NSW Government is proposing to amend the Model Code of Meeting Practice for Local Councils in NSW (Model Meeting Code) to include non-mandatory provisions that allow councils to permit councillors to attend council and committee meetings remotely by audio-visual link in certain circumstances.

Under the consultation paper's proposed amendments, a councillor will be permitted to attend a meeting of the council or a committee of the council by audio-visual link with the prior approval of the council or the committee, or approval granted by the council or committee at the meeting concerned, where they are prevented from attending the meeting in person because of:

- ill health
- disability
- carer responsibilities
- natural disaster, or
- their absence from the local area due to a prior work commitment (up to three occasions in each year).

Where a councillor is proposing to seek the council's or a committee's approval to attend a meeting by audio-visual link at the meeting concerned, they **must first give the general manager at least 5 working days' notice** that they will be seeking the council's or committee's approval, to allow sufficient time for the necessary arrangements to be made for them to attend the meeting remotely, should the council or committee give its approval.

Where attending a meeting by audio-visual link, councillors will be required to do so from a location **within NSW or within 100km of the NSW border**.

As with decisions to grant a leave of absence under the existing provisions of the Model Meeting Code, the decision to permit a councillor to attend a meeting by audio-visual link is proposed to be one that will be **at the council's or committee's discretion**.

The council or committee will be **required to act reasonably** when considering whether to grant a councillor's request to attend a meeting by audio-visual link.

However, the council or committee will be permitted to refuse a councillor's request to attend a meeting by audio-visual link, where the councillor has, on one or more previous occasions when attending a meeting by audio-visual link, failed to:

- appropriately declare and manage conflicts of interest,
- observe confidentiality, or
- comply with the council's code of meeting practice.

LGNSW position

In summary, LGNSW is broadly supportive of the proposed amendments to the Model Meeting Code but recommends that the amendments be simplified to provide councils with greater flexibility.

Since remote attendance was first permitted in response to the COVID-19 pandemic, many councils have made use of and appreciated the increased flexibility and accessibility of audio-visual meetings.

A resolution of the 2020 LGNSW Annual Conference called on the NSW Government to make permanent the temporary arrangements for remote attendance:

2020 Resolution 121: That Local Government NSW calls on the NSW Government to amend the Model Code of Meeting practice for local councils in NSW to permit attendance and participation of councillors at council meetings and at meetings of committees of council by audio-visual link.

When appropriately managed, remote meeting provisions support a greater diversity of people to participate in council meetings and may encourage a greater diversity of candidates to stand for election to local government. Remote meeting provisions may ease participation of people with caring responsibilities, people with disability and people that need, on occasion, to travel for work.

Remote meeting provisions also reflect contemporary expectations and understanding about effective attendance at and participation in meetings in ways other than solely in-person attendance.

LGNSW also supports councils having available to them the option to allow *all* councillors to participate remotely, to flexibly respond to circumstances that may require it such as future pandemic or natural disaster.

LGNSW does acknowledge that the technology required for a reasonable standard of audio-visual connectivity can be expensive and may pose challenges that are difficult to overcome, particularly in rural and regional areas. For this reason, LGNSW supports the proposal for councils to retain control over whether remote attendance is appropriate.

LGNSW also supports the discussion paper's sensible proposals around meeting rules, managing conflicts and confidentiality.

Recommendation 1: LGNSW supports the proposed amendments to the Model Code of Meeting Practice for remote attendance at council and committee meetings, but recommends the amendments be less prescriptive and non-mandatory.

Grounds for remote attendance

The consultation paper proposes limiting remote attendance only to where the councillor is prevented from attending the meeting because of ill health, disability, carer responsibilities, natural disaster or, on a limited number of occasions in each year (maximum of three occasions), because they are absent from the local area due to a prior work commitment.

It is LGNSW's view that these limited grounds unnecessarily complicate remote attendance and should not be mandated. Further, there may be other, additional reasonable grounds (such as lack of available transport, or particularly long travel distances in rural areas) to permit remote attendance.

The maximum of three occasions of remote attendance per year for reasons of work commitments should not be mandated, but rather left to each council to determine.

It is appropriate that each council determines appropriate grounds and limitations for remote attendance that are relevant to that council's circumstances.

Recommendation 2: Amendments to the Model Code of Meeting Practice should permit councils the flexibility to voluntarily insert appropriate grounds and limitations for remote attendance into their own codes, as relevant to each council's circumstances.

Proximity requirement

The consultation paper proposes requiring any councillor attending a meeting by audio-visual means to do so from either within NSW or within 100km from the NSW border. No rationale for this limitation has been included within the discussion paper and it is LGNSW's view that this restriction unnecessarily complicates remote attendance and would be difficult for councils to enforce. It should not matter whether a councillor is participating from Wodonga or Warrnambool if remote attendance has been permitted by the council.

Indeed, this requirement would preclude participation from every capital city of Australia, apart from Canberra. Given councillors often combine other full or part time work with their council responsibilities, this limitation may needlessly restrict occasional, necessary interstate travel for work, for no appreciable benefit.

If the intention behind this proximity limitation is instead to ensure that councillors live and work in the communities they represent, then the NSW Government should consult with councils and communities on whether and how this policy intent may be implemented via other regulatory requirements or instruments.

Recommendation 3: Where remote attendance is permissible, it should be permissible from anywhere within Australia.

Advance request for approval to participate by audio-visual link

The consultation paper proposes requiring that councillors must first give the general manager at least five working days' notice that they will be seeking permission to attend a meeting remotely and approval for remote attendance must be granted by the council or the committee.

LGNSW does not support this requirement as it is unnecessarily restrictive and impractical. Many of the grounds for remote attendance (such as ill-health, carer responsibilities or natural disaster) are likely to arise at short notice. If a council has appropriate technology in

place to accommodate remote attendance at short notice and has previously resolved to support remote attendance, it is more appropriate for a councillor to simply notify the mayor and general manager that they will be attending remotely, and for this remote attendance to be automatically accepted where it is in line with the council's previously adopted grounds for remote attendance and where the councillor has not previously failed to uphold audio-visual link meeting requirements (e.g. managing conflicts of interest, observing confidentiality etc).

Recommendation 4: There should not be a mandated minimum notice period for a councillor's notification that they will attend a meeting remotely. Any notice period should remain a matter for each council.

Recommendation 5: Requests to attend remotely should be notified to the mayor and general manager and automatically accepted where the request is in line with a council's adopted grounds for remote attendance.

Suggested procedures and minor clarifications

While not included in the discussion paper, there has been some confusion in the sector around whether councils are required or just encouraged to adopt procedures for attendance by councillors at meetings by audio-visual link as part of the recent regulatory amendments permitting remote meeting attendance.

Office of Local Government [Circular 21-02](#) states:

Councils are not required to amend their codes of meeting practice to allow councillors to attend meetings remotely by audio-visual link while the Regulation amendment is in force but should adopt procedures governing attendance by councillors at meetings by audio-visual link to supplement their codes of meeting practice. Suggested procedures are attached to this circular.

Councils would welcome clarity on whether they *must* supplement their codes of meeting practice with procedures, or whether the 'should' indicates best practice but is not mandatory. Councils would also welcome clarity on whether or not councillors are able to attend meetings by audio-visual link unless and until the suggested procedures are adopted.

Recommendation 6: The Office of Local Government should clarify whether councils must supplement their codes of meeting practice with procedures for remote attendance.

Recommendation 7: The Office of Local Government should clarify whether councillors are able to attend meetings by audio-visual link unless and until the suggested procedures are adopted.

The consultation paper proposes that a council or committee will, at the commencement of each meeting, vote on whether to permit a councillor to attend by audio-visual link. As set out in recommendation 5, LGNSW does not support councils voting on whether a councillor should be permitted to attend remotely. Where a request is in line with a council's previously adopted grounds for remote attendance, this should be automatically accepted by the mayor and general manager. However, should the NSW Government proceed with the requirement for councils to vote on each occasion, to avoid confusion that may arise with existing temporary changes to the Local Government Regulation and the process by which leave is granted, it would be helpful if the Model Code of Meeting Practice clearly sets out whether or

not all councillors, including those seeking approval to participate remotely, are able to vote on approval being granted.

Finally, the order of business set out in chapter 8 of the Model Code of Meeting Practice would also need to be amended to include consideration of applications to attend meetings remotely.

Recommendation 8: While LGNSW does not support councils voting on whether to accept individual requests for remote attendance, if this arrangement is anyway introduced then:

- a) The Model Code of Meeting Practice should clearly set out whether or not all councillors, including those seeking permission to participate remotely, are able to vote on permission being granted, and
- b) The order of business set out in chapter 8 of the Model Code of Meeting Practice will also need to be amended to include consideration of applications to attend meetings remotely.

Recommendations

In summary, LGNSW makes the following recommendations:

Recommendation 1: LGNSW supports the proposed amendments to the Model Code of Meeting Practice for remote attendance at council and committee meetings, but recommends the amendments be less prescriptive and non-mandatory.

Recommendation 2: Amendments to the Model Code of Meeting Practice should permit councils the flexibility to voluntarily insert appropriate grounds and limitations for remote attendance into their own codes, as relevant to each council's circumstances.

Recommendation 3: Where remote attendance is permissible, it should be permissible from anywhere within Australia.

Recommendation 4: There should not be a mandated minimum notice period for a councillor's notification that they will attend a meeting remotely. Any notice period should remain a matter for each council.

Recommendation 5: Requests to attend remotely should be notified to the mayor and general manager and automatically accepted where the request is in line with a council's adopted grounds for remote attendance.

Recommendation 6: The Office of Local Government should clarify whether councils must supplement their codes of meeting practice with procedures for remote attendance.

Recommendation 7: The Office of Local Government should clarify whether councillors are able to attend meetings by audio-visual link unless and until the suggested procedures are adopted.

Recommendation 8: While LGNSW does not support councils voting on whether to accept individual requests for remote attendance, if this arrangement is anyway introduced then:

- a) The Model Code of Meeting Practice should clearly set out whether or not all councillors, including those seeking permission to participate remotely, are able to vote on permission being granted, and

- b) The order of business set out in chapter 8 of the Model Code of Meeting Practice will also need to be amended to include consideration of applications to attend meetings remotely.

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LGNSW would welcome the opportunity to provide further information during this review.

To discuss this submission further, please contact LGNSW Strategy Manager Damian Thomas at damian.thomas@lgnsw.org.au or on 02 9242 4063.