



**W A V E R L E Y**  
COUNCIL

## **COUNCIL MEETING**

## **URGENT BUSINESS**

**7.00 PM, TUESDAY 26 NOVEMBER 2024**

Waverley Council  
PO Box 9  
Bondi Junction NSW 1355  
DX 12006 Bondi Junction  
Tel. 9083 8000  
E-mail: [info@waverley.nsw.gov.au](mailto:info@waverley.nsw.gov.au)

## URGENT BUSINESS

### 10. Urgent Business

CM/10.1/24.11 Councillor Conduct and Meeting Practices - Submission .....	3
---	---

**REPORT**  
**CM/10.1/24.11****Subject:** Councillor Conduct and Meeting Practices - Submission**TRIM No:** A24/0899**Manager:** Richard Coelho, Executive Manager, Governance**Director:** Tara Czinner, Director, Corporate Services

---

**RECOMMENDATION:**

That Council approves the submission to the Office of Local Government attached to the report (Attachment 2) on the Councillor Conduct and Meeting Practices Discussion Paper.

**1. Executive Summary**

In September 2024, the Office of Local Government (OLG) released a discussion paper (Attachment 1) on Councillor conduct and meeting practices. This report is a response to the discussion paper with Council's draft submission. OLG has extended the deadline for submissions to 29 November 2024.

**2. Introduction/Background**

OLG's discussion paper proposes a number of changes to the Model Code of Conduct, the management of complaints against Councillors, the penalty framework and the Model Code of Meeting Practice.

**3. Relevant Council Resolutions**

Nil.

**4. Discussion**

According to OLG, the current Councillor Conduct Framework 'is not delivering on the needs for transparency or the necessary degree of respect in the community for the role that councillors have.' Some of the issues raised in the paper include:

- Poor councillor behaviour, particularly at meetings.
- A large volume of frivolous complaints, which are often weaponised for political reasons.
- An unsatisfactory and protracted complaints management process.
- A lack of transparency in council decision-making.

Officers have prepared a draft submission (Attachment 2) to the questions posed in the discussion paper. Councillors and members of the public can also make submissions.

**5. Financial impact statement/Time frame/Consultation****Financial impact statement**

There is no unbudgeted cost to Council in preparing the submission.

**Time frame**

OLG has extended the deadline for submissions from 15 November 2024 to 29 November 2024. If approved by Council, officers will forward the submission to OLG before the deadline.

**Consultation**

Officers advised Councillors of the discussion paper, and Councillors were consulted on the draft submission. The Executive Leadership Team also considered the discussion paper at its meeting on 19 September 2024.

**6. Conclusion**

It is recommended that Council approves the submission to OLG on the Councillor Conduct and Meeting Practices Discussion Paper.

**7. Attachments**

1. OLG - Councillor Conduct and Meeting Practices - Discussion Paper - September 2024 [↓](#)
2. Draft submission [↓](#) .

---

Office of Local Government



# Councillor conduct and meeting practices

A new framework

September 2024

[olg.nsw.gov.au](http://olg.nsw.gov.au)



# Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

Published by NSW Department of Planning, Housing and Infrastructure

[dphi.nsw.gov.au](http://dphi.nsw.gov.au)

Councillor conduct and meeting practices

First published: September 2024

More information

Office of Local Government

Locked Bag 3015 NOWRA NSW 2541

Ph (02) 4428 4100

[olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)

Copyright and disclaimer

© State of New South Wales through the Department of Planning, Housing and Infrastructure 2024. Information in this publication is based on knowledge and understanding at the time of writing, September 2024, and is subject to change. For more information, please visit [nsw.gov.au/copyright](http://nsw.gov.au/copyright)

# Contents

<b>The need for change – returning local democracy to councils</b>	<b>4</b>
The weaknesses of existing frameworks	5
Options for a better approach	6
Seeking your views	6
<b>What are the principles of change?</b>	<b>7</b>
<b>Potential changes to the code of conduct and oath of office</b>	<b>8</b>
<b>Potential changes to the definitions and assessment of councillor misbehaviour</b>	<b>9</b>
Conflicts of interest	9
Councillor misbehaviour in public office	12
Addressing inappropriate lobbying	13
<b>Dispute resolution and penalty framework</b>	<b>14</b>
Abolishing the ‘two step process’	14
Giving OLG the power to issue penalty infringement notices	15
NSW Local Government Privileges Committee	15
Referral of significant sanctions to appropriate tribunal or body	16
<b>Restoring dignity to council meetings</b>	<b>17</b>
Proposed reforms to the Model Code of Meeting Practice	17
Banning briefing sessions	18
<b>How to provide feedback?</b>	<b>19</b>
<b>Next Steps</b>	<b>19</b>

# The need for change – returning local democracy to councils

Strong and thriving communities need effective local government. No other level of government is as close to the issues and people.

Effective local government comes when councillors are visibly in control of their councils. How councillors act and how appropriately and transparently decisions are made at meetings is critical in demonstrating to the community that their elected representatives understand the consequences of their decisions, and then make the best possible decisions they can for their community as a whole.

Unfortunately, the existing councillor conduct framework is not delivering on the need for transparency or the necessary degree of respect in the community for the role that councillors have.

Closed council briefing sessions are being used to make decisions away from the public view. Council debates on issues are too often personal slanging matches, rather than forums for robust but respectful discussions on what is best for the community.

Similarly, we have seen a growth in the number of complaints, often over trivial issues. Data from the Office of Local Government (OLG) has shown there has been 4289 complaints over the last 3 years (2020/21 to 2022/23) through the code of conduct process. Overall:

- 420 were referred for preliminary enquiries and then discontinued
- 136 were investigated as potential pecuniary interest matters
- 102 were investigated as potential misconduct (not pecuniary interest)
- 36 related to public interest disclosures, and
- 2 related to political donations

But of these thousands of complaints, in the years since 2020/21 OLG has:

- taken action against 14 councillors by way of a suspension or reprimand
- referred 4 councillors to the NSW Civil and Administrative Tribunal (NCAT) for misconduct, and
- disqualified and dismissed one councillor on the basis of Independent Commission Against Corruption (ICAC) recommendations

The volume of frivolous complaints is crowding out the ability of the OLG and the sector to adequately deal with councillors who abuse their office or cause serious governance problems. It is critical the framework that governs both the behaviour and meeting practices of councillors ensures the community can observe and comment on the behaviour of councillors, instead of inhibiting the operation and function of local democracy.



## The weaknesses of existing frameworks

The simple, but compelling premise is local councils should be accountable to their community with council staff being accountable to their councillors, through the General Manager. The best way to achieve this aim is for councils to provide strong and effective representation, leadership, planning and decision making. Unfortunately, this simple concept has been lost.

How councillors behave, how they deliberate and the responsibilities they hold should be modelled on how members of Parliament are expected to behave and act. As the governing body, councillors should act fairly, ethically and without bias in the interests of the local community, and they should be responsible employers and provide a consultative and supportive working environment for staff. A criticism made about the current framework for councillor conduct or meeting practices is that they do not reflect local government's status as an independent third tier of government: it allows an unelected State Government official to determine penalties and guilt thus undermining the status of local government.

While most local councils and local councillors do the right thing with the best intent, there are some councillors who are not so motivated. In these cases, the current councillor behavioural framework, as implemented in NSW, does not facilitate the best outcomes or resolve issues.

In relation to complaint management, it is not considered acceptable to create better complaint management pathways for the processing of code of conduct complaints. The current code of conduct simply enables too many complaints about councillors, all too often for political or vexatious reasons.

It is for this reason that the Government has embarked upon a new approach that refocuses the limited resources of the State on those concerns that matter most: serious misbehaviours and attempts by councillors to enrich themselves through their office.

Weaknesses of the current framework include:

- The councillor conduct framework distracts from, rather than enhances, robust democratic debate. Complaints are weaponised for political reasons, or to silence dissent from other elected representatives.
- Councillors and community members report dissatisfaction with the process for resolving code of conduct complaints – being expensive, overly legal, prone to political sparring and not timely, with average timeframes exceeding 12 months and more than 24 months if they are then referred to OLG for further investigation.
- Issues are not being addressed and resolved at the local level – instead complaints are escalated unnecessarily to the State Government to resolve because of the view that public censure from the local council is not a 'strong enough' punishment.
- Communities and councillors report that council decision making is not transparent – with decisions being seen as made behind closed doors, information not being provided or withheld, too much use of closed to the public briefings or councils going into closed sessions for no adequate rationale.
- Bad councillor behaviour is not considered to have been addressed quickly enough and when sanctions are imposed it is too late or of little consequence.
- There is a lack of clarity around OLG's role as the sector regulator – taking too long to resolve matters and not focussing on the important financial and government concerns in the sector, instead spending time focussed on individual councillor behaviour.
- OLG reports challenges in relying on the reports of council conduct reviewers – investigations into councillors need to be done afresh, the process is cumbersome with multiple feedback loops and serious sanctions can only come from suspensions handed down by NCAT.

With so much focus on the bad behaviour of a limited number of councillors there is not enough attention given to the good work that councillors do. The role of a councillor is a noble public service, and the local government behavioural framework should support those who seek to do the right thing and punish those that are not so motivated.

## Options for a better approach

Improving the councillor conduct framework and the meeting practices of councils can be achieved but will require changes to the Local Government Act 1993 (the Local Government Act), as well as updating the various regulations, codes and policies that apply. Some of the work to update the regulations and codes can be done quickly, while others requiring legislative change will take some time.

This paper provides an overview of the proposed new approach to both the councillor conduct framework and meeting practices. The proposals are to:

- Make OLG directly responsible for dealing with pecuniary interest and significant non-pecuniary conflicts of interest, with sanctions (suspensions and loss of pay) being determined by an appropriate tribunal or body,
- Refer behavioural based concerns about councillor conduct to a State-wide panel of experienced councillors to judge their peers,
- Reset the code of conduct to be similar to Parliamentary Codes, making it clear the expected patterns of councillor behaviour,
- Ensure the community can observe local democratic processes by banning closed to the public briefing sessions, while at the same time restoring the dignity and prestige of the council chamber.

These changes are only proposed for councillors and there is no change proposed for the code of conduct for Local Government staff. Feedback from stakeholders is that the existing code of conduct of staff remains fit for purpose and is largely effective.

## Seeking your views

This discussion paper has been prepared to seek the views of the community, key stakeholders and the local government sector about the proposed changes.

Submissions will be accepted to **COB Friday 15 November 2024**.

All input received through this consultation process **may be made publicly available**. Please let us know in your submission if you **do not want** your name and personal details published.

As part of the consultation process, we may need to share your information with people outside OLG, including other public authorities and government agencies. We may also use your email to send you notifications about further feedback opportunities or the outcome of the consultation.

There may also be circumstances when OLG is required by law to release information (for example, in accordance with the requirements of the Government Information (Public Access) Act 2009). There is a privacy policy located on OLG's website that explains how some data is automatically collected (such as your internet protocol (IP) address) whenever you visit OLG's website. The link to that policy is <https://www.olg.nsw.gov.au/about-us/privacy-policy/>.

Further information about how to make a submission is provided at section 7 of this paper.

# What are the principles of change?

In preparing the proposed reforms the following principles have guided the discussion and the intent of the changes:

- **Council leadership and decision making is paramount** – it is critical that the sector, as the third tier of government, is given independence to make decisions in the best interests of the community
- **Freedom of speech** – 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
- **Transparency and accountability** – as a democracy councils need to hear, consider and debate issues in an open manner
- **Significant penalties should only be imposed by a judicial or quasi-judicial body** – to ensure procedural fairness and thorough testing of allegations, significant penalties should be given by bodies such as the NSW Civil and Administrative Tribunal
- **A strong and proportionate local government regulator** – the role of OLG should be to create the framework for local government, ensure councils, joint organisations (JOs), and county councils have the capacity to operate within the framework so that the regulator intervenes as rarely as needed
- **Subsidiarity** – decisions are made at the level closest to those impacted by those decisions
- **Justice is timely and proportionate** – where allegations are made, they should be heard, tested and dealt with as quickly as possible.

## Question

Are we missing anything in the principles of change?

# Potential changes to the code of conduct and oath of office

The key proposed reform for the councillor behavioural framework is to move to a streamlined, aspirational Code of Conduct. This is equivalent to the Code of Conduct framework for NSW Members of Parliament available [here](#) and [here](#).

The aspirational Code of Conduct would clearly and succinctly outline the behavioural expectations of local councillors (approximately 2-3 pages) in easy-to-understand language. It would then be supported by a clearer framework and definitions for misbehaviour of elected officials.

The aspirational Code of Conduct would not set out the definitions of misbehaviour as these would be legislated as explained in later sections of this discussion paper.

Separating the behavioural expectations in a Code of Conduct from definitions of misbehaviour reflects a positive approach to councillor behaviour. The separation also recognises that the majority of councillors want to do the right thing and they should have easy access to the standards expected of them.

The revamped Code of Conduct could also be aligned to the Oath of Office for local councillors ensuring that the behavioural standards and expectations are clear and understood when a councillor takes office. The existing framework can make it difficult to understand the behavioural expectations and standards upon councillors.

Importantly, the revamped Code of Conduct will not seek to restrain the ability of a councillor to speak publicly on matters pertaining to their council, even when that councillor is disagreeing with, or being critical of, the decisions of the majority.

It is proposed to make the new Code of Conduct an aspirational code of expected behaviours instead of enforceable for local councillors.

## Question

**What are the key elements of an aspirational Code of Conduct that should be enshrined?**

## Question

**What are your views about aligning the Oath of Office to the revamped Code of Conduct?**

































