

Circular Details	Circular No 18-45 / 18 December 2018 / A621294
Previous Circular	18-35 <i>The new Model Code of Meeting Practice for Local Councils</i>
Who should read this	Mayors / Councillors / General Managers / Joint Organisation Executive Officers / Council governance staff
Contact	Council Governance Team – (02) 4428 4100 / olg@olg.nsw.gov.au
Action required	Council to Implement

Commencement of the new Model Code of Meeting Practice for Local Councils in NSW

What's new or changing

- Amendments made to the *Local Government Act 1993* (LGA) in August 2016 by the *Local Government Amendment (Governance and Planning) Act 2016* (the Phase 1 amendments) provide for a model code of meeting practice (Model Meeting Code) to be prescribed by the Regulation.
- Following an extensive consultation process, a Model Meeting Code has been prescribed under the *Local Government (General) Regulation 2005* (the Regulation) and the existing meetings provisions of the Regulation have been repealed. The new Model Meeting Code is available on OLG's website.
- The Model Meeting Code has two elements:
 - It contains mandatory provisions (**indicated in black font**) that reflect the existing meetings provisions of the Act and update and enhance the meetings provisions previously prescribed under the Regulation to reflect contemporary meetings practice by councils.
 - It contains non-mandatory provisions (**indicated in red font**) that cover areas of meetings practice that are common to most councils but where there may be a need for some variation in practice between councils based on local circumstances. The non-mandatory provisions also operate to set a benchmark based on what OLG sees as being best practice for the relevant area of practice.
- The Model Meeting Code also applies to meetings of the boards of joint organisations and county councils. The provisions that are specific to meetings of boards of joint organisations are **indicated in blue font**. References to councils below also include references to joint organisations and county council unless otherwise specified.

What this will mean for your council

- Councils are required to adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code prescribed by the Regulation. A council's adopted meeting code must not contain provisions that are inconsistent with the mandatory provisions.
- A council's adopted meeting code may also incorporate the non-mandatory provisions of the Model Meeting Code and any other supplementary provisions adopted by the council.
- Councils and committees of councils of which all the members are councillors must conduct their meetings in accordance with the code of meeting practice adopted by the council.

Key points

- Under the transitional provisions of the LGA, councils must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code no later than 12 months after the next ordinary elections.
- Until a council adopts a new code of meeting practice, its existing code of meeting practice will remain in force up until six months from the date on which the new Model Meeting Code was prescribed, (**14 December 2018 – 14 June 2019**). If a council fails to adopt a new code of meeting practice within this period, under transitional provisions contained in the Regulation and the LGA, any provision of the council's adopted meeting code that is inconsistent with a mandatory provision of the Model Meeting Code prescribed under the Regulation will automatically cease to have any effect to the extent that it is inconsistent with the mandatory provision of the Model Meeting Code.
- Irrespective of whether councils have adopted a code of meeting practice based on the Model Meeting Code, all councils (but not joint organisations) will be required to webcast meetings of the council and committees of which all members are councillors from **14 December 2019**. The webcasting requirement may be met simply by posting an audio or video recording of the meeting on the council's website.
- Before adopting a new code of meeting practice, under section 361 of the LGA, councils are still required to exhibit a draft of the code of meeting practice for at least 28 days and provide members of the community at least 42 days in which to comment on the draft code. This requirement does not apply to joint organisations.
- In adopting the Model Meeting Code, joint organisations should adapt it to substitute the terms "board" for "council", "chairperson" for "mayor", "voting representative" for "councillor" and "executive officer" for "general manager".
- In adopting the Model Meeting Code, county councils should adapt it to substitute the term "chairperson" for "mayor" and "member" for "councillor".

Where to go for further information

- Further information is provided in the FAQ attached to this circular.
- The new Model Meeting Code is available on OLG's website at www.olg.nsw.gov.au.
- OLG will be providing further guidance and assistance to councils to support implementation of the new Model Meeting Code during the six month transitional timeframe.
- For more information, contact the Council Governance Team by telephone on 02 4428 4100 or by email at olg@olg.nsw.gov.au.



Tim Hurst
Chief Executive

Office of Local Government
5 O'Keefe Avenue NOWRA NSW 2541
Locked Bag 3015 NOWRA NSW 2541
T 02 4428 4100 F 02 4428 4199 TTY 02 4428 4209
E olg@olg.nsw.gov.au W www.olg.nsw.gov.au ABN 44 913 630 046

FREQUENTLY ASKED QUESTIONS

How is the Model Meeting Code prescribed?

Amendments made to section 360 of the LGA by the Phase 1 amendments provide as follows:

- The regulations may prescribe a model code of meeting practice for the conduct of meetings of councils and committees of councils of which all the members are councillors.
- The model meeting code may contain both mandatory and non-mandatory provisions.
- A council must, not later than 12 months after an ordinary election of councillors, adopt a code of meeting practice that incorporates the mandatory provisions of the model meeting code prescribed by the regulations. The adopted code may also incorporate the non-mandatory provisions and other provisions.
- A code adopted or amended by a council must not contain provisions that are inconsistent with the mandatory provisions.
- A council and a committee of a council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by it.

Councils continue to be required to consult with their communities prior to adopting a code of meeting practice (see section 361).

What is the status of the meetings provisions of the Regulation?

These have now been repealed and the prescription of meeting rules will now be done through the Model Code of Meeting Practice that is prescribed under the Regulation from time to time.

Why has a Model Meeting Code been prescribed?

Previously there was not a uniform set of meeting rules for councils beyond those prescribed under the LGA and the Regulation. In developing the Model Meeting Code, OLG identified significant variability in meeting practices and rules across councils. OLG's review of councils' codes of meeting practice noted the following:

- while there are a number of areas of commonality between councils in meetings practice there is significant variability in how this is prescribed in their codes of meeting practice
- a number of councils' codes of meeting practice contain provisions that are inconsistent with the LGA and the Regulation
- there is significant variation in the quality of the drafting of councils' codes of meeting practice
- a number of councils' codes of meeting practice appear to lose sight of the fact that the primary purpose of meetings is to make decisions and contained practices that are not consistent with the efficient conduct of meetings or effective and informed decision-making.

What outcomes does the new Model Meeting Code seek to achieve?

The Model Meeting Code has been designed to achieve a range of outcomes, including:

- promoting, as the principal object of meetings, the making of decisions by the governing bodies of councils that are in the best interests of the council and the community as a whole
- promoting more accessible, orderly, effective and efficient meetings and to provide councils with the tools to achieve these outcomes
- prescribing principles to inform the way in which meetings are conducted and to prescribe meeting rules that are consistent with these principles
- codifying areas of common practice across councils in a way that is clear, efficient, leads to better informed and more effective decision making and that is consistent with the requirements of the LGA
- promoting greater consistency between councils across the State in key areas of meetings practice without losing the ability to allow some variation in practice to meet local needs or expectations
- allowing greater flexibility in the conduct of meetings to accommodate a range of potential scenarios that were not addressed by the previous prescribed meeting rules
- simplifying the language used to make the prescribed meeting rules more accessible and easier to understand
- modernising the rules to accommodate current and emerging technologies (e.g. electronic notice, electronic voting systems and webcasting).

How was the Model Meeting Code developed?

OLG has consulted extensively in developing the new Model Meeting Code. There have been two rounds of public consultation:

- in late 2016, OLG invited submissions on how the meeting rules prescribed by the Regulation could be improved and any additional areas of meeting practice that should be prescribed
- based on the feedback received from the first round of consultation, a consultation draft of the proposed new Model Meeting Code was developed and issued for comment.

The final version of the Model Meeting Code has been informed by the comment received in response to the consultation draft.

What are the key changes made by the Model Meeting Code?

The Model Meeting Code contains the following new elements:

- new meetings principles
- optional rules for pre-meeting councillor briefings
- optional rules for public forums
- a new requirement for meetings to be webcast
- new rules limiting the use of mayoral minutes without notice to cases of urgency
- optional rules requiring a staff report for motions seeking decisions that do not align with councils' integrated planning and reporting (IP&R) objectives
- optional rules allowing multiple items to be adopted in a block
- optional rules allowing rescission motions to be dealt with at the same meeting in cases of urgency and allowing matters to be recommitted to correct an error
- optional rules placing time limits on meetings.

Are councils required to adopt the non-mandatory provisions of the Model Meeting Code?

No. The non-mandatory provisions are indicated in **red font** in the Model Meeting Code. The non-mandatory provisions cover areas of practice that are common to most councils but where there may be a need for some variation in practice between councils. These are designed to set a benchmark for what OLG considers to be best practice for these areas of practice.

While councils may incorporate these into their adopted codes of meeting practice, they are not required to do so. Councils may also adopt these in an amended form.

Are joint organisations and county councils required to adopt codes of meeting practice based on the mandatory provisions of the Model Meeting Code?

Yes. There are some provisions of the Model Meeting Code that are specific to meetings of boards of joint organisations and reflect the unique needs and operating environment of joint organisations. These are indicated in **blue font**. In adopting the Model Meeting Code, joint organisations should also adapt it to substitute the terms “board” for “council”, “chairperson” for “mayor”, “voting representative” for “councillor” and “executive officer” for “general manager”.

In adopting the Model Meeting Code, county councils should adapt it to substitute the term “chairperson” for “mayor” and “member” for “councillor”.

When must councils adopt a new code of meeting practice based on the Model Meeting Code?

Under the transitional provisions of the LGA, councils **must**, adopt a code of meeting practice that incorporates the mandatory provisions of the Model Meeting Code no later than 12 months after the next ordinary elections. However, for the reasons set out below, councils **should** adopt a new code of meeting practice based on the Model Meeting Code as soon as possible.

Until a council adopts a new code of meeting practice, its existing code of meeting practice will remain in force up until six months from the date on which the new Model Meeting Code was prescribed, (**14 December 2018 – 14 June 2019**). If a council fails to adopt a new code of meeting practice within this period, under transitional provisions contained in the Regulation and the LGA, any provision of the council’s adopted code that is inconsistent with a mandatory provision of the Model Meeting Code prescribed under the Regulation will automatically cease to have any effect to the extent that it is inconsistent with the mandatory provision of the Model Meeting Code.

Irrespective of whether councils have adopted a code of meeting practice based on the Model Meeting Code, all councils (but not joint organisations) will be required to webcast meetings of the council and committees of which all members are councillors from **14 December 2019**. The webcasting requirement may be met simply by posting an audio or video recording of the meeting on the council’s website.

Do councils still need to consult with their communities when adopting a new code of meeting practice based on the Model Meeting Code?

Yes. Before adopting a new code of meeting practice, under section 361 of the LGA, councils are still required to exhibit a draft of the code of meeting practice for at least

28 days and provide members of the community at least 42 days in which to comment on the draft code. This requirement does not apply to joint organisations.

Are councils required to adopt the provisions of the Model Meeting Code relating to public forums?

No. These have not been made mandatory in recognition of the fact that there will be a need for some variation in practice to suit local needs. Councils are able to adopt them, adapt or supplement them to meet local need, or to adopt their own provisions governing public forums. However, OLG would strongly recommend that councils make provision in their codes of meeting practice for some form of public access or input into council decision making.

The provisions governing public forums contained in the Model Meeting Code reflect what OLG sees to be best practice and have been informed by the following considerations:

- Councils should have a comprehensive community engagement strategy in place to ensure that the views of affected persons and (where relevant) the community as a whole are considered in council decision making. This will soon be a statutory requirement. Public forums at council meetings are not an appropriate substitute for effective community consultation and councils need to be mindful that the views expressed at public forums will not necessarily be representative of the views of other affected parties or the broader community.
- Public forums should operate as an input into council decision-making at meetings. This means that they should be focussed on the matters under consideration at a council meeting and not permit free ranging discussion of other matters that are not being dealt with at the meeting.
- In the interests of ensuring informed decision making, there should be a gap between the public forum and the meeting to allow councillors the time to properly consider matters raised at the public forum and, if necessary, to seek further input and guidance from staff before being required to make a decision on those matters.
- Council meetings should operate as a forum for debate and decision making by the community's elected representatives. Public forums should not operate in a way that displaces this as the principal purpose of council meetings nor operate as a platform for others to participate in debate with elected officials on matters under consideration at a meeting.
- Participation in a public forum is a privilege not a right. It should be within the discretion of a council to withdraw this privilege where a person fails to respect meeting rules or engages in disorderly conduct.

Why has the webcasting of meetings been made mandatory?

The Model Meeting Code provides that all meetings of councils and committees whose membership comprises only of councillors should be webcast to increase the transparency of council decision making and to allow access to those who may not be physically able to attend meetings.

However, following concerns raised by councils in response to the consultation draft of the Model Meeting Code, councils have been provided with an extended transitional period in which to implement the new requirements

Irrespective of whether they have adopted a code of meeting practice based on the Model Meeting Code, all councils will be required to webcast meetings of the council and committees whose membership comprises only of councillors from **14 December 2019**.

This gives councils 12 months in which to make the necessary arrangements to webcast their meetings. The requirement to webcast meetings may be met simply by posting an audio or video recording of the meeting on the council's website meaning that all councils, irrespective of their size, resources and location will be able to comply.

Joint organisations are not required to webcast board meetings.

Where can I get a Word© version of the Model Meeting Code?

If you require a Word© version of the Model Meeting Code, please contact OLG's Council Governance Team.