

XX November 2024

Office of Local Government
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NOWRA NSW 2541

To whom it may concern

Response to discussion paper - Councillor conduct and meeting practices – A new framework

Wagga Wagga City Council (WWCC) appreciates the opportunity to provide the following submission in response to the Office of Local Government's discussion paper titled "Councillor conduct and meeting practices – A new framework".

Overall, we welcome the recognition of challenges faced by local government under the existing councillor conduct framework. While there is general agreement regarding some of the intent outlined in the discussion paper, we have a number of concerns we would like to provide feedback on.

Council's feedback on the discussion paper has been made by responding to the key headings/subjects, rather than specifically answering the questions posed.

We thank you again for the opportunity to provide feedback.

Regards

Clr Dallas Tout
Mayor

Peter Thompson
General Manager

Principles of change

Council is generally supportive of the principles of change that have been prepared to guide discussion and the intention of changes.

Code of conduct and oath of office

The intent of this change appears to be ensuring that a code of conduct for Councillors will not be a document with any enforceable standards of conduct. Even if the approach is to dilute and disintegrate any notion of enforceable conduct standards from elected members, this same code of conduct is currently used to guide and enforce standards of behaviour from Council staff. It works very effectively in this regard.

The Local Government Act 1993 clearly defines councillor misconduct as a breach of the Act, the regulations, or the code. The code provides a detailed overview of the specific behaviour that constitutes misconduct. The proposed amendments to this framework will add complexity and is unlikely to result in a more streamlined and easily understood system.

It would be regressive to dilute standards of behaviour demanded of Councillors. The key issue for this question is not aligning the code to the oath – it is diluting the code to something that has no standard to which people can be held accountable and the follow on effect of that change in relation to staff standards of behaviour and accountability.

Where the discussion paper suggests enabling Councillors to be ‘critical’ of the decisions of the majority, consideration should be given to the potential risks, including how this might undermine community confidence in the Council as a whole. Recognising that Councillors have a right to speak publicly on matters pertaining to their Council – the debate in the Chamber and decision making process already provides that opportunity. Councillors should be empowered to justify and explain their reasons for voting, however, should remain respectful of Council’s final decision.

Conflicts of Interest

It is concerning that we see an intent to dilute the standards which apply to pecuniary conflict of interests. It would seem that it will be acceptable for Councillors to accept gifts of a cumulative value of \$499. This is not the standard that should apply to Councillors or staff. Again we have potential have a weakening of standards of conduct, gifts and benefits unfolding in NSW Local Government.

In relation to non significant interests, there would seem to be no particular benefit from the discussion paper commentary. Yes it is a grey area, but there has been a reasonable definition around the concept previously.

Real estate agents and developers

Requiring a particular cohort in our community, defined by their source of income and work, to be deprived of that income and work in order to serve the community which elected them to office should be rejected.

The concept has no merit in a democratic society. The answer to the conflict issue, which certainly exists, is that any councillor who has a pecuniary interest in the development industry (including through family members) must be excluded from every item of business that relates to development and building.

Councillor misbehaviour

Behaviour which is unacceptable in a professional workplace should not be considered appropriate for elected members. If poor behaviour is supported it starts us down a path where there is little or no respect for elected members in any tier of Government. Councillors should be held to the same behavioural standards expected of staff.

Privileges Committee

The proposal for current NSW Mayors and ex-Mayors to make up the Privileges Committee that addresses behavioural complaints may not be appropriate. Firstly, the political motivations or relationships of Mayors and ex-Mayors have the potential to influence decisions on councillor behaviour, which automatically strips the panel of its impartiality. Secondly, Mayors and ex-Mayors may not be suitably qualified or trained to pass judgement on their peers. The idea to have a single centrally managed panel (Privileges Committee) to focus on behavioural complaints is a good idea, especially from a cost perspective, however panels should be comprised of independent, suitably qualified individuals.

Regardless of its membership, the OLG should have an open and transparent process for the selection and appointment of committee members and ensure there is a regular cycle of membership renewal.

Addressing inappropriate lobbying

Wagga Wagga City Council already has a lobbying of Councillors policy in place to guide the conflict of roles that may arise when Councillors receive representations from special interest groups, individuals with a direct interest in a council decision or by advocates acting on behalf of others seeking the Councillor to represent their interests in a matter before the council.

Appropriate lobbying of Councillors is normal and is part of the democratic process. However, It is in the public interest that lobbying is fair and transparent and does not undermine public confidence in impartial decision-making. Councillors should take care that their duty to consider issues fairly and properly is not compromised by participating in lobbying practices that are outside the bounds of appropriate or lawful behaviour.

Abolishing the 'two step process'

The two areas of review and sanction have some merit noting the comments above in relation to the constitution of the Local Government Privileges Committee.

The distinction between conflicts of interest and misbehaviour is sensible. There is a third area where elected members have a workplace health and safety impact which should be addressed but it is not.

Again, this just reflects the lower standard of behaviour which is expected and supported from elected members. Hopefully in the future we can lift this bar and so lift the respect for elected members in the community.

Penalty infringement notices (PINs)

The suggestion of PINs is not supported. Government leadership should not be viewed like a personal area of endeavour like driving, business compliance or maintaining the peace.

A mistake should be treated as just that. Behaviour which engages conflicting interests or poor conduct in elected officials should result in suspension or removal from that office. It is that simple.

Referral of significant sanctions to appropriate tribunal or body

This point is supported provided that the Tribunal and the OLG is resourced to deal with the issue in a prompt manner and that the Councillor pays all the costs of the Tribunal if the requested sanction is opposed by the Councillor and they are unsuccessful.

Restoring dignity in Council meetings

Expulsion power by the Mayor is supported, however forfeiting the monthly fee is not supported. The requirement for apology and consequences is also supported.

Expelling members of the public is supported. Issuing a PIN to members of the public is not supported and this should be dealt with by police charges for an act of disorder.

The requirement to stand when addressing the meeting and /or when the mayor enters should be a matter to be determined by the Council – not required by mandate. It is difficult to contemplate how this would assist in restoring dignity.

Banning Briefing Sessions

This suggestion is not supported in the strongest possible terms.

Transparency in local government is critical to maintain trust within the community, however briefing sessions outside of the public meeting process should be permitted within a clear framework. It is important that Councillors feel safe to ask questions and understand alternate views or solutions to an issue. It is also important that Council officers can provide detailed background information to Councillors in relation to matters that may come before them. This process of becoming fully informed cannot be achieved within the formality of a Council Meeting and banning briefing sessions may ultimately delay timely decision making.

This single proposal will undermine and weaken government across NSW to the detriment of the people of NSW. It will deliver poor decisions and compromise good government. The express authorisation of the Mayor being briefed in direct contrast to other elected members simply punctuates the absurdity of the proposal.