

# CODE OF CONDUCT POLICY



**Responsible Department:** Corporate Services  
**Responsible Section:** Corporate Services  
**Responsible Officer:** Director of Corporate Services

## Objective

This Part of the Model Code establishes the purpose and principles that are used to interpret the standards in the Code. This Part does not constitute separate enforceable standards of conduct. This Code must be published and maintained as a current document and must be noted in accordance with Council's Complaints Handling Policy and Procedure.

## Policy

### The Model Code of Conduct

#### Part 1:

This Model Code of Conduct for Local Councils in NSW ("the Model Code of Conduct") is made for the purposes of section 440 of the *Local Government Act 1993* ("the Act"). Section 440 of the Act requires every council to adopt a code of conduct that incorporates the provisions of the Model Code. For the purposes of section 440 of the Act, the Model Code of Conduct comprises all Parts of this document.

Councillors, administrators, members of staff of council, independent conduct reviewers, members of council committees including the conduct review committee and delegates of the council must comply with the applicable provisions of council's code of conduct in carrying out their functions as council officials. It is the personal responsibility of council officials to comply with the standards in the code and regularly review their personal circumstances with this in mind. Council contractors and volunteers will also be required to observe the relevant provisions of council's code of conduct.

Failure by a councillor to comply with the standards of conduct prescribed under this code constitutes misconduct for the purposes of the Act. The Act provides for a range of penalties that may be imposed on councillors for misconduct, including suspension or disqualification from civic office.

Failure by a member of staff to comply with council's code of conduct may give rise to disciplinary action.

A better conduct guide has also been developed to assist councils to review and enhance their codes of conduct. This guide supports this code and provides further information on the provisions in this code.

## **Part 2: Purposed of the Code of Conduct**

The Model Code of Conduct sets the minimum requirements of conduct for council officials in carrying out their functions. The Model Code is prescribed by regulation.

The Model Code of Conduct has been developed to assist council officials to:

- Understand the standards of conduct that are expected of them
- Enable them to fulfil their statutory duty to act honestly and exercise a reasonable degree of care and diligence (section 439)
- Act in a way that enhances public confidence in the integrity of local government.

## **Part 3: General Conduct Obligations**

### **General Conduct**

- 3.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holders of civic office into disrepute. Specifically, you must not act in a way that:
- a) contravenes the Act, associated regulations, council's relevant administrative requirements and policies.
  - b) is detrimental to the pursuit of a charter of a council
  - c) is improper or unethical
  - d) is an abuse of power or otherwise amounts to misconduct.
  - e) causes, comprises or involves intimidation, harassment or verbal abuse
  - f) causes, comprises or involves discrimination, disadvantage or adverse treatment in relation to employment
  - g) causes, comprises or involves prejudice in the provision of a service to the community. (Schedule 6A)
- 3.2 You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act. (*section 439*)
- 3.3 You must treat others with respect at all times.

### **Fairness and Equity**

- 3.4 You must consider issues consistently, promptly and fairly. You must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- 3.5 You must take all relevant facts known to you, or that you should be reasonably aware of, into consideration and have regard to the particular merits of each case. You must not take irrelevant matters or circumstances into consideration when making decisions.

## **Harassment and Discrimination**

- 3.6 You must not harass, discriminate against, or support others who harass and discriminate against colleagues or members of the public. This includes, but is not limited to harassment and discrimination on the grounds of sex, pregnancy, age, race, responsibilities as a carer, marital status, disability, homosexuality, transgender grounds or if a person has an infectious disease.

## **Development Decisions**

- 3.7 You must ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly. You must avoid any occasion for suspicion of improper conduct in the development assessment process.
- 3.8 In determining development applications, you must ensure that no action, statement or communication between yourself and applicants or objectors conveys any suggestion of willingness to provide improper concessions or preferential treatment.

## **Binding Caucus Votes**

- 3.9 You must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.
- 3.10 For the purpose of clause 3.9, a binding caucus vote is a process whereby a group of councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the council or committee irrespective of the personal views of individual members of the group on the merits of the matter before the council or committee.
- 3.11 Clause 3.9 does not prohibit councillors from discussing a matter before the council or committee prior to considering the matter in question at a council or committee meeting or from voluntarily holding a shared view with other councillors on the merits of a matter.
- 3.12 Clause 3.9 does not apply to a decision to elect the Mayor or Deputy Mayor or to nominate a person to be a member of a council committee.

## **Part 4: Conflict of Interests**

- 4.1 A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
- 4.2 You must avoid or appropriately manage any conflict of interests. The onus is on you to identify a conflict of interests and take the appropriate action to manage the conflict in favour of your public duty.
- 4.3 Any conflict of interests must be managed to uphold the probity of council decision-making. When considering whether or not you have a conflict of interests, it is always important to think about how others would view your situation.
- 4.4 Private interest can be of two types: pecuniary or non-pecuniary.

### **What is a pecuniary interest?**

- 4.5 A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. *(section 442)*
- 4.6 A person will also be taken to have a pecuniary interest in a matter if that person's spouse or de facto partner or a relative of the person or a partner or employer of the person, or a company or other body of which the person, or a nominee, partner or employer of the person is a member, has a pecuniary interest in the matter. *(section 443)*
- 4.7 Pecuniary interests are regulated by Chapter 14, Part 2 of the Act. The Act requires that:
- a) councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (section 449).
  - b) councillors and members of council committees disclose an interest and the nature of that interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter (section 451).
  - c) designated persons immediately declare, in writing, any pecuniary interest. (section 459).
- 4.8 Designated persons are defined at section 441 of the Act, and include, but are not limited to, the General Manager and other senior staff of the council.
- 4.9 Where you are a member of staff of council, other than a designated person (as defined by section 441), reporting of the conflict of interest or to the Public Officer in compliance with the Conflict Of Interest Policy is required.

### **What is a non-pecuniary conflict of interests?**

- 4.10 Non-pecuniary interests are private or personal interests the council official has that do not amount to a pecuniary interest as defined in the Act. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature.
- 4.11 The political views of a councillor do not constitute a private interest.

### **Managing non-pecuniary conflict of interests**

- 4.12 Where you have a non-pecuniary interest that conflicts with your public duty, you must disclose the interest fully and in writing, even if the conflict is not significant. You must do this as soon as practicable.
- 4.13 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing for the purposes of clause 4.12.
- 4.14 How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant.

- 4.15 As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:
- a) a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person's spouse, current or former spouse or partner, de facto or other person living in the same household.
  - b) other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship.
  - c) an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong.
- 4.16 If you are a council official, other than a member of staff of council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:
- a) remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another council official.
  - b) have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in section 451(2) of the Act apply.
- 4.17 If you determine that a non-pecuniary conflict of interests is less than significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances.
- 4.18 If you are a member of staff of council, reporting of the conflict of interest to the Public Officer in compliance with the Conflict of Interest Policy is required.
- 4.19 Despite clause 4.16(b), a councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate council's decision-making role to council staff through the General Manager, or appoint another person or body to make the decision in accordance with the law. This applies whether or not council would be deprived of a quorum if one or more councillors were to manage their conflict of interests by not voting on a matter in accordance with clause 4.16(b) above.

### **Reportable political donations**

- 4.20 Councillors should note that matters before council involving political or campaign donors may give rise to a non-pecuniary conflict of interests.
- 4.21 Where a councillor has received or knowingly benefitted from a reportable political donation:
- a) made by a major political donor in the previous four years, and
  - b) where the major political donor has a matter before council,

then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interests in accordance with clause 4.16(b).

- 4.22 For the purposes of this Part:
- a) a “reportable political donation” is a “reportable political donation” for the purposes of section 86 of the Election Funding, Expenditure and Disclosures Act 1981,
  - b) a “major political donor” is a “major political donor” for the purposes of section 84 of the Election Funding, Expenditure and Disclosures Act 1981.
- 4.23 Councillors should note that political donations below \$1,000, or political donations to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.
- 4.24 If a councillor has received or knowingly benefitted from a reportable political donation of the kind referred to in clause 4.21, that councillor is not prevented from participating in a decision to delegate council’s decision-making role to council staff through the general manager or appointing another person or body to make the decision in accordance with the law (see clause 4.19 above).

#### **Loss of quorum as a result of compliance with this Part**

- 4.25 Where a majority of councillors are precluded under this Part from consideration of a matter the council or committee must resolve to delegate consideration of the matter in question to another person.
- 4.26 Where a majority of councillors precluded under this Part from consideration of a matter and the matter in question concerns the exercise of a function that may not be delegated under section 377 of the Act, the councillors may apply in writing to the Chief Executive to be exempted from complying with a requirement under this Part relating to the management of a non-pecuniary conflict of interests.
- 4.27 The Chief Executive will only exempt a councillor from complying with a requirement under this Part where:
- a) compliance by councillors with a requirement under the Part in relation to a matter will result in the loss of a quorum, and
  - b) the matter relates to the exercise of a function of the council that may not be delegated under section 377 of the Act.
- 4.28 Where the Chief Executive, exempts a councillor from complying with a requirement under this Part, the councillor must still disclose any interests they have in the matter the exemption applies to in accordance with the requirements of this Part.
- 4.29 A councillor, who would otherwise be precluded from participating in the consideration of a matter under this Part because they have a non-pecuniary conflict of interests in the matter, is permitted to participate in consideration of the matter, if:
- a) the matter is a proposal relating to:
    - i) the making of a principal environmental planning instrument applying to the whole or a significant part of the council’s area, or

- ii) the amendment, alteration or repeal of an environmental planning instrument where the amendment, alteration or repeal applies to the whole or a significant of the council's area, and
- b) the councillor declares any interest they have in the matter that would otherwise have precluded their participation in consideration of the matter under this Part.

### **Other business or employment**

- 4.30 If you are a member of staff of council considering outside employment or contract work that relates to the business of the council or that might conflict with your council duties, you must notify and seek the approval of the general manager in writing through the Conflict of Interest Policy and forms.
- 4.31 As a member of staff, you must ensure that any outside employment or business you engage in will not:
- a) conflict with your official duties.
  - b) involve using confidential information or council resources obtained through your work with the council.
  - c) require you to work while on council duty.
  - d) discredit or disadvantage the council.

### **Personal dealings with council**

- 4.32 You may have reason to deal with your council in your personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a consent granted by council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead members of the public to believe that you are seeking preferential treatment.

## **Part 5: Personal Benefit**

For the purposes of this section, a reference to a gift or benefit does not include a political donation or contribution to an election fund that is subject to the provisions of the relevant election funding legislation.

### **Gifts and Benefits**

- 5.1 You must avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from you or from the council.
- 5.2 You must take all reasonable steps to ensure that your immediate family members do not receive gifts or benefits that give rise to the appearance of being an attempt to secure favourable treatment. Immediate family members ordinarily include parents, spouses, children and siblings.

## **Token gifts and benefits**

5.3 Generally speaking, token gifts and benefits include:

- a) free or subsidised meals, beverages or refreshments provided in conjunction with:
  - i) the discussion of official business.
  - ii) council work related events such as training, education sessions, workshops.
  - iii) conferences.
  - iv) council functions or events.
  - v) social functions organised by groups, such as council committees and community organisations.
- b) invitations to and attendance at local social, cultural or sporting events.
- c) gifts of single bottles of reasonably priced alcohol to individual council officers at end of year functions, public occasions or in recognition of work done (such as providing a lecture/training session/address).
- d) ties, scarves, coasters, tie pins, diaries, chocolates or flowers.
- e) prizes of token value.

## **Gifts and benefits of value**

5.4 Notwithstanding clause 5.3, gifts and benefits that have more than a token value include, but are not limited to, tickets to major sporting events (such as state or international cricket matches or matches in other national sporting codes (including the NRL, AFL, FFA, NBL)), corporate hospitality at a corporate facility at major sporting events, discounted products for personal use, the frequent use of facilities such as gyms, use of holiday homes, free or discounted travel.

## **How are offers of gifts and benefits to be dealt with?**

5.5 You must not:

- a) seek or accept a bribe or other improper inducement
- b) seek gifts or benefits of any kind
- c) accept any gift or benefit that may create a sense of obligation on your part or may be perceived to be intended or likely to influence you in carrying out your public duty
- d) accept any gift or benefit of more than token value
- e) accept an offer of money, regardless of the amount.

5.6 For the purposes of clause 5.5, a “cash-like gift” includes but is not limited to gift vouchers, credit cards, debit cards with credit on them, prepayments such as phone or internal credit, memberships or entitlements to discounts.

5.7 Where you receive a gift or benefit of more than token value that cannot reasonably be refused or returned, this must be disclosed promptly to your supervisor, the Mayor or the General Manager. The recipient, supervisor, Mayor or General Manager must ensure that any gifts or benefits of more than token value that are received are recorded in a Gifts Register. The gift or benefit must be surrendered to council, unless the nature of the gift or benefit makes this impractical.



## **Improper and undue influence**

- 5.8 You must not use your position to influence other council officials in the performance of their public or professional duties to obtain a private benefit for yourself or for somebody else. A councillor will not be in breach of this clause where they seek to influence other council officials through the appropriate exercise of their representative functions.
- 5.9 You must not take advantage (or seek to take advantage) of your status or position with or of functions you perform for council in order to obtain a private benefit for yourself or for any other person or body.

## **Part 6 Relationship Between Council Officials**

### **Obligations of councillors and administrators**

- 6.1 Each council is a body politic. The councillors or administrator/s are the governing body of the council. The governing body has the responsibility of directing and controlling the affairs of the council in accordance with the Act and is responsible for policy determinations, for example, those relating to workforce policy.
- 6.2 Councillors or administrators must not:
- a) direct council staff other than by giving appropriate direction to the General Manager in the performance of council's functions by way of council or committee resolution, or by the Mayor or administrator exercising their power under section 226 of the Act (section 352)
  - b) in any public or private forum, direct or influence or attempt to direct or influence, any other member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate (Schedule 6A of the Act)
  - c) contact a member of the staff of the council on council related business unless in accordance with the policy and procedures governing the interaction of councillors and council staff that have been authorised by the council and the General Manager
  - d) contact or issue instructions to any of council's contractors or tenderers, including council's legal advisers, unless by the Mayor or administrator exercising their power under section 226 of the Act. This does not apply to council's external auditors or the Chair of council's audit committee who may be provided with any information by individual councillors reasonably necessary for the external auditor or audit committee to effectively perform their functions.

### **Obligations of staff**

- 6.3 The General Manager is responsible for the efficient and effective operation of the council's organisation and for ensuring the implementation of the decisions of the council without delay.
- 6.4 Members of staff of council must:
- a) give their attention to the business of council while on duty
  - b) ensure that their work is carried out efficiently, economically and effectively
  - c) carry out lawful directions given by any person having authority to give such directions

- d) give effect to the lawful decisions, policies, and procedures of the council, whether or not the staff member agrees with or approves of them
- e) ensure that any participation in political activities outside the service of the council does not conflict with the performance of their official duties.

(Note: With respect to giving effect to Council policies, specific mention is made of bypassing or contravening Council's purchasing policy and/or procedures, which is considered a breach of this Code. Such a breach may give rise to disciplinary action and other consequences, possibly including termination of employment.)

### **Obligations during meetings**

- 6.5 You must act in accordance with council's Code of Meeting Practice, if council has adopted one, and the *Local Government (General) Regulation 2005* during council and committee meetings.
- 6.6 You must show respect to the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council.

### **Inappropriate interactions**

- 6.7 You must not engage in any of the following inappropriate interactions:
  - a) Councillors and administrators approaching staff and staff organisations to discuss individual staff matters and not broader industrial policy issues.
  - b) Council staff approaching councillors and administrators to discuss individual or operational staff matters and not broader workforce policy issues.
  - c) Council staff refusing to give information that is available to other councillors to a particular councillor.
  - d) Councillors and administrators who have lodged a development application with council, discussing the matter with council staff in staff-only areas of the council.
  - e) Councillors and administrators being overbearing or threatening to council staff.
  - f) Councillors and administrators making personal attacks on council staff in a public forum.
  - g) Councillors and administrators directing or pressuring council staff in the performance of their work, or recommendations they should make.
  - h) Council staff providing ad hoc advice to councillors and administrators without recording or documenting the interaction as they would if the advice was provided to a member of the community.
  - i) Council staff meeting with developers alone AND outside office hours to discuss development applications or proposals.
  - j) Councillors attending on-site inspection meetings with lawyers and/or consultants engaged by council associated with current or proposed legal proceedings unless permitted to do so by council's general manager or, in the case of the Mayor or administrator, exercising their power under section 226 of the Act.

## **Part 7: Access to Information and Council Resources**

### **Councillor and administrator access to information**

- 7.1 The General Manager and public officer are responsible for ensuring that members of the public, councillors and administrators can gain access to the documents available under the Government Information (Public Access) Act, 2009.
- 7.2 The General Manager must provide councillors and administrators with information sufficient to enable them to carry out their civic office functions.
- 7.3 Members of staff of council must provide full and timely information to councillors and administrators sufficient to enable them to carry out their civic office functions and in accordance with council procedures.
- 7.4 Members of staff of council who provide any information to a particular councillor in the performance of their civic duties must also make it available to any other councillor who requests it and in accordance with council procedures.
- 7.5 Councillors and administrators who have a private (as distinct from civic) interest in a document of council have the same rights of access as any member of the public.

### **Councillors and administrators to properly examine and consider information**

- 7.6 Councillors and administrators must properly examine and consider all the information provided to them relating to matters that they are dealing with to enable them to make a decision on the matter in accordance with council's charter.

### **Refusal of access to documents**

- 7.7 Where the General Manager and public officer determine to refuse access to a document sought by a councillor or administrator they must act reasonably. In reaching this decision they must take into account whether or not the document sought is required for the councillor or administrator to perform their civic duty (see clause 7.2). The General Manager or public officer must state the reasons for the decision if access is refused.

### **Use of certain council information**

- 7.8 In regard to information obtained in your capacity as a council official, you must:
  - a) only access council information needed for council business.
  - b) not use that council information for private purposes.
  - c) not seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for yourself, or any other person or body, from any information to which you have by virtue of your office or position with council.
  - d) only release council information in accordance with established council policies and procedures and in compliance with relevant legislation.

## **Use and security of confidential information**

- 7.9 You must maintain the integrity and security of confidential documents or information in your possession, or for which you are responsible.
- 7.10 In addition to your general obligations relating to the use of council information, you must:
- a) protect confidential information.
  - b) only release confidential information if you have authority to do so.
  - c) only use confidential information for the purpose it is intended to be used.
  - d) not use confidential information gained through your official position for the purpose of securing a private benefit for yourself or for any other person.
  - e) not use confidential information with the intention to cause harm or detriment to your council or any other person or body.
  - f) not disclose any information discussed during a confidential session of a council meeting.

## **Personal information**

- 7.11 When dealing with personal information you must comply with:
- a) the *Privacy and Personal Information Protection Act 1998*.
  - b) the *Health Records and Information Privacy Act 2002*.
  - c) the Information Protection Principles and Health Privacy Principles.
  - d) council's privacy management plan.
  - e) the Privacy Code of Practice for Local Government.

## **Use of council resources**

- 7.12 You must use council resources ethically, effectively, efficiently and carefully in the course of your official duties, and must not use them for private purposes (except when supplied as part of a contract of employment) unless this use is lawfully authorised and proper payment is made where appropriate.
- 7.13 Union delegates and consultative committee members may have reasonable access to council resources for the purposes of carrying out their industrial responsibilities, including but not limited to:
- a) the representation of members with respect to disciplinary matters.
  - b) the representation of employees with respect to grievances and disputes.
  - c) functions associated with the role of the local consultative committee.
- 7.14 You must be scrupulous in your use of council property, including intellectual property, official services and facilities, and must not permit their misuse by any other person or body.

- 7.15 You must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for your benefit or the benefit of any other person or body.
- 7.16 You must not use council resources, property or facilities for the purpose of assisting your election campaign or the election campaign of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.
- 7.17 You must not use council letterhead, council crests and other information that could give the appearance it is official council material for:
- a) the purpose of assisting your election campaign or the election campaign of others, or
  - b) for other non-official purposes.
- 7.18 You must not convert any property of the council to your own use unless properly authorised.
- 7.19 You must not use council's computer resources to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature.

#### **Councillor access to council buildings**

- 7.20 Councillors and administrators are entitled to have access to the council chamber, committee room, mayor's office (subject to availability), councillors' rooms, and public areas of council's buildings during normal business hours and for meetings. Councillors and administrators needing access to these facilities at other times must obtain authority from the General Manager. In addition, the councillors' rooms are available for reasonable use at any time, including weekends and outside of business hours.
- 7.21 Councillors and administrators must not enter staff-only areas of council buildings without the approval of the general manager (or delegate) or as provided in the procedures governing the interaction of councillors and council staff.
- 7.22 Councillors and administrators must ensure that when they are within a staff area they avoid giving rise to the appearance that they may improperly influence council staff decisions.

#### **Part 8: Maintaining the Integrity of this Code**

- 8.1 You must not conduct yourself in a manner that is likely to undermine confidence in the integrity of this code or its administration.

#### **Complaints made for an improper purpose**

- 8.2 You must not make a complaint or cause a complaint to be made under this code for an improper purpose.

- 8.3 For the purposes of clause 8.2, a complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:
- a) to intimidate or harass another council official.
  - b) to damage another council official's reputation.
  - c) to obtain a political advantage.
  - d) to influence a council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions.
  - e) to influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions.
  - f) to avoid disciplinary action under this code.
  - g) to take reprisal action against a person for making a complaint under this code except as may be otherwise specifically permitted under this code.
  - h) to take reprisal action against a person for exercising a function prescribed under the procedures for the administration of this code except as may be otherwise specifically permitted under this code.
  - i) to prevent or disrupt the effective administration of this code.

#### **Detrimental action**

- 8.4 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made under this code except as may be otherwise specifically permitted under this code.
- 8.5 You must not take detrimental action or cause detrimental action to be taken against a person substantially in reprisal for a complaint they have made under this code except as may be otherwise specifically permitted under this code.
- 8.6 For the purposes of clauses 8.4 and 8.5 detrimental action is an action causing, comprising or involving any of the following:
- a) injury, damage or loss.
  - b) intimidation or harassment.
  - c) discrimination, disadvantage or adverse treatment in relation to employment.
  - d) dismissal from, or prejudice in, employment.
  - e) disciplinary proceedings.

#### **Compliance with requirements under this code**

- 8.7 You must not engage in conduct that is calculated to impeded or disrupt the consideration of a matter under this code.
- 8.8 You must comply with a reasonable and lawful request made by a person exercising a function under this code.

- 8.9 You must comply with a practice ruling made by the Division of Local Government.
- 8.10 Where you are a councillor or the general manager, you must comply with any council resolution requiring you to take action as a result of a breach of this code.

#### **Disclosure of information about the consideration of a matter under this code**

- 8.11 You must report breaches of this code in accordance with the reporting requirements under this code.
- 8.12 You must not make allegations of suspected breaches of this code at council meetings or in other public forums.
- 8.13 You must not disclose information about the consideration of a matter under this code except for the purposes of seeking legal advice unless the disclosure is otherwise permitted under this code.

#### **Complaints alleging a breach of this part**

- 8.14 Complaints alleging a breach of this Part (Part 8) by a councillor, the general manager or an administrator are to be made to the Division of Local Government.
- 8.15 Complaints alleging a breach of this Part by other council officials are to be made to the general manager.

#### **Part 9: Definitions**

In the Model Code of Conduct the following definitions apply:

<b>the Act</b>	the Local Government Act 1993
<b>act of disorder</b>	see the definition in clause 256 of the <i>Local Government (General) Regulation 2005</i>
<b>administrator</b>	an administrator of a council appointed under the Act other than an administrator appointed under section 66
<b>Chief Executive</b>	Chief Executive of the Division of Local Government, Department of Premier and Cabinet
<b>committee</b>	a council committee
<b>conflict of interests</b>	a conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.
<b>Council committee</b>	a committee established by resolution of council
<b>“council committee member”</b>	a person other than a councillor or member of staff of a council who is a member of a council committee

<b>council official</b>	includes councillors, members of staff of council, administrators, council committee members, conduct reviewers and delegates of council
<b>councillor</b> <b>delegate of council</b>	a person elected or appointed to civic office and includes a Mayor a person (other than a councillor or member of staff of a council) or body, and the individual members of that body, to whom a function of council is delegated
<b>designated person</b>	see the definition in section 441 of the Act
<b>election campaign</b>	includes council, State and Federal election campaigns
<b>personal information</b>	information or an opinion about a person whose identity is apparent, or can be ascertained from the information or opinion
<b>the Regulation</b>	the <i>Local Government (General) Regulation 2005</i>

The term “you” used in the Model Code of Conduct refers to council officials.

The phrase “this code” used in the Model Code of Conduct refers also to the procedures for the administration of the Model Code of Conduct prescribed under the Local Government (General) Regulation 2005.

### **Narrabri Shire Council’s Corporate Values**

Narrabri Shire Council’s Code of Conduct incorporates the following corporate values:

**Consultation & Facilitation** – To deliver services to, and represent the interests of the whole community and provide a quality living environment within available resources.

**Innovation** – Council will always endeavour to be innovative and will follow a path of creative and lateral thinking.

**Leadership and Teamwork** – To provide leadership and to evoke a spirit of teamwork within the community and the Council.

**Effective Communication** – Effective communication between the Council, the community and staff will, at times be of paramount importance.

**Value for Money** – The provision of Council services will always be cost effective and efficient.

**Exemplary Customer Service** - Council will endeavour to provide the highest level of service to all its customers.

**Uncompromising Integrity** – Council’s integrity will be maintained at the highest level at all times.

**Continuous Review and Development** - All of Council’s operations will be continually reviewed and quality management practices and state of the art technology will be used where appropriate.



## Guide to ethical decision making

If you are unsure about the ethical issues around an action or decision you are about to take, you should consider these five points:

- Is the decision or conduct lawful?
- Is the decision or conduct consistent with council's policy and with council's objectives and the code of conduct?
- What will the outcome be for the employee or councillor, work colleagues, the council, persons with whom you are associated and any other parties?
- Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?

## Conflict of interests

If you are unsure as to whether or not you have a conflict of interests in relation to a matter, you should consider these six points (staff refer to Conflict Of Interest Policy):

- Do you have a personal interest in a matter you are officially involved with?
- Is it likely you could be influenced by a personal interest in carrying out your public duty?
- Would a reasonable person believe you could be so influenced?
- What would be the public perception of whether or not you have a conflict of interests?
- Do your personal interests conflict with your official role?
- What steps do you need to take and that a reasonable person would expect you to take to appropriately manage any conflict of interests?

## Political donations and conflict of interests

Councillors should take all reasonable steps to identify circumstances where political contributions may give rise to a reasonable perception of influence in relation to their vote or support.

## Seeking advice

Remember – you have the right to question any instruction or direction given to you that you think may be unethical or unlawful. If you are uncertain about an action or decision, you may need to seek advice from other people. This may include your supervisor or trusted senior officer, your union representatives, the Department of Local Government, the Ombudsman's Office and the Independent Commission Against Corruption.

**Independent Commission Against Corruption**  
**NSW Ombudsman**  
**NSW Office of Local Government**

**(02) 8281 5999**  
**(02) 9286 1000**  
**(02) 4428 4100**

# Procedures for the Administration of the Model Code of Conduct

## Part 1:

These procedures (“the Model Code Procedures”) are prescribed for the purposes of the administration of the Model Code of Conduct for Local Councils in NSW (“the Model Code”). The Model Code and Model Code Procedures are made under sections 440 and 440AA respectively of the *Local Government Act 1993* (“the Act”) and the *Local Government (General) Regulation 2005* (“the Regulation”).

Sections 440 and 440AA of the Act require every council to adopt a code of conduct and procedures for the administration of the code of conduct that incorporate the provisions of the Model Code and Model Code Procedures respectively.

In adopting procedures for the administration of their adopted codes of conduct, councils may supplement the Model Code Procedures. However, provisions of a council’s adopted procedures that are not consistent with those prescribed under the Model Code Procedures will have no effect.

## Part 2 Definitions

For the purpose of the procedures, the following definitions apply:

“the Act”	the <i>Local Government Act 1993</i>
“administrator”	an administrator of a council appointed under the Act other than an administrator appointed under section 66
“code of conduct”	a code of conduct adopted under section 440 of the Act
“code of conduct complaint”	a complaint that alleges conduct on the part of a council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council’s code of conduct
“complainant”	a person who makes a code of conduct complaint
“complainant councillor”	a councillor who makes a code of conduct complaint
“complaints coordinator”	a person appointed by the general manager under these procedures as a complaints coordinator
“conduct reviewer”	a person appointed under these procedures to review allegations of breaches of the code of conduct by councillors or the general manager
“council committee”	a committee established by resolution of council
“council committee member”	a person other than a councillor or member of staff of a council who is a member of a council committee
“councillor”	a person elected or appointed to civic office and includes a Mayor

“council official”	includes councillors, members of staff of council, administrators, council committee members, conduct reviewers and delegates of council
“delegate of council”	a person (other than a councillor or member of staff of a council) or body and the individual members of that body to whom a function of the council is delegated
“the OLG”	the Office of Local Government
“investigator”	a conduct reviewer or conduct review committee
“the Regulation”	the <i>Local Government (General) Regulation 2005</i>
“subject person”	a person whose conduct is the subject of investigation by a conduct reviewer or conduct review committee under these procedures

### **Part 3: Administrative Framework**

#### **The establishment of a panel of conduct reviewers**

- 3.1 The council must by resolution establish a panel of conduct reviewers.
- 3.2 The council may by resolution enter into an agreement with one or more other councils to share a panel of conduct reviewers.
- 3.3 The panel of conduct reviewers is to be established following a public expression of interest process.
- 3.4 An expression of interest for members of the council’s panel of conduct reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.
- 3.5 To be eligible to be a member of a panel of conduct reviewers, a person must, at a minimum, meet the following requirements:
  - a) an understanding of local government, and
  - b) knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the Public Interest Disclosures Act 1994, and
  - c) knowledge and experience of one or more of the following:
    - i) investigations, or
    - ii) law, or
    - iii) public administration, or
    - iv) public sector ethics, or
    - v) alternative dispute resolution, and
  - d) meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.

- 3.6 A person is not eligible to be a member of the panel of conduct reviewers if they are:
- a) a councillor, or
  - b) a nominee for election as a councillor, or
  - c) an administrator, or
  - d) an employee of a council, or
  - e) a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
  - f) a nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
  - g) a person who has a conviction for an indictable offence that is not an expired conviction.
- 3.7 A person is not precluded from being a member of the council's panel of conduct reviewers if they are a member of another council's panel of conduct reviewers.
- 3.8 A panel of conduct reviewers established under this Part is to have a term of up to four years.
- 3.9 The council may terminate the panel of conduct reviewers at any time by resolution.
- 3.10 When the term of the conduct reviewers concludes or is terminated, the council must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
- 3.11 A person who was a member of a previous panel of conduct reviewers established by the council may be a member of subsequent panels of conduct reviewers established by the council.

#### **The appointment of complaints coordinators**

- 3.12 The general manager must appoint a member of staff of the council to act as a complaints coordinator. Where practicable, the complaints coordinator should be a senior and suitably qualified member of staff.
- 3.13 The general manager may appoint other members of staff to act as alternates to the complaints coordinator.
- 3.14 The general manager must not undertake the role of complaints coordinator.
- 3.15 The person appointed as complaints coordinator or alternate complaints coordinator must also be a nominated disclosures coordinator appointed for the purpose of receiving and managing reports of wrongdoing under the *Public Interest Disclosures Act 1994*.
- 3.16 The role of the complaints coordinator is to:
- a) coordinate the management of complaints made under the council's code of conduct.
  - b) liaise with and provide administrative support to a conduct reviewer or conduct review committee,
  - c) liaise with the Office of Local Government, and
  - d) arrange the annual reporting of code of conduct complaints statistics.

## **Part 4: How may code of conduct complaints be made?**

### **What is a “code of conduct complaint”?**

- 4.1 For the purpose of these procedures, a code of conduct complaint is a complaint that alleges conduct on the part of a council official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the council’s code of conduct.
- 4.2 Only code of conduct complaints are to be dealt with under these procedures. Complaints that do not satisfy the definition of a “code of conduct complaint” are to be dealt with under council’s routine complaints management processes.

### **When must a code of conduct complaint be made?**

- 4.3 A code of conduct complaint must be made within three months of the alleged conduct occurring or within three months of the complainant becoming aware of the alleged conduct.
- 4.4 A complaint made after three months may only be accepted if the general manager, or, in the case of a complaint about the general manager, the Mayor, is satisfied that there are compelling grounds for the matter to be dealt with under the code of conduct.

### **How may a code of conduct complaint about a council official other than the general manager be made?**

- 4.5 All code of conduct complaints other than those relating to the general manager are to be made to the general manager in writing.
- 4.6 Where a code of conduct complaint about a council official other than the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.7 In making a code of conduct complaint about a council official other than the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.8 The general manager or, where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant’s preferences in deciding how to deal with the complaint.
- 4.9 Notwithstanding clauses 4.5 and 4.6, where the general manager becomes aware of a possible breach of the council’s code of conduct, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

### **How may a code of conduct complaint about the general manager be made?**

- 4.10 Code of conduct complaints about the general manager are to be made to the Mayor in writing.
- 4.11 Where a code of conduct complaint about the general manager cannot be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.12 In making a code of conduct complaint about the general manager, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.

- 4.13 The Mayor, or where the complaint is referred to a conduct reviewer, the conduct reviewer, must consider the complainant's preferences in deciding how to deal with the complaint.
- 4.14 Notwithstanding clauses 4.10 and 4.11, where the Mayor becomes aware of a possible breach of the council's code of conduct by the general manager, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

## **Part 5: How are code of conduct complaints to be managed?**

### **How are code of conduct complaints about staff (other than the general manager) to be dealt with?**

- 5.1 The general manager is responsible for making enquiries or causing enquiries to be made into code of conduct complaints about members of staff of council and for determining the outcome of such complaints.
- 5.2 Where the general manager decides not to make enquiries into a code of conduct complaint about a member of staff, the general manager must give the complainant reasons in writing for their decision.
- 5.3 Without limiting clause 5.2, the general manager may decide not to enquire into the matter on grounds that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 5.4 Enquiries made into staff conduct that might give rise to disciplinary action must occur in accordance with the relevant industrial instrument or employment contract and make provision for procedural fairness including the right of an employee to be represented by their union.
- 5.5 Sanctions for staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

### **How are code of conduct complaints about delegates of council and council committee members to be dealt with?**

- 5.6 The general manager is responsible for making enquiries or causing enquiries to be made into code of conduct complaints about delegates of council and council committee members and for determining the outcome of such complaints.
- 5.7 Where the general manager decides not to make enquiries into a code of conduct complaint about a delegate of council or a council committee member, the general manager must give the complainant reasons in writing for their decision.
- 5.8 Without limiting clause 5.7, the general manager may decide not to enquire into the matter on grounds that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 5.9 Sanctions for delegates of council and/or members of council committees depend on the severity, scale and importance of the breach and may include one or more of the following:
- a) censure,
  - b) requiring the person to apologise to any person or organisation adversely affected by the breach,
  - c) prosecution for any breach of the law,

- d) removing or restricting the person's delegation, or
- e) removing the person from membership of the relevant council committee.

5.10 Prior to imposing a sanction against a delegate of council or a council committee member under clause 5.9, the general manager or any person making enquiries on behalf of the general manager must comply with the requirements of procedural fairness. In particular:

- a) the substance of the allegation (including the relevant provision/s of council's code of conduct that the alleged conduct is in breach of) must be put to the person the subject of the allegation, and
- b) the person must be given an opportunity to respond to the allegation, and
- c) the general manager must consider the person's response in deciding whether to impose a sanction under clause 5.9.

#### **How are code of conduct complaints about conduct reviewers to be dealt with?**

- 5.11 The general manager must refer all code of conduct complaints about conduct reviewers to the OLG for its consideration.
- 5.12 The general manager must notify the complainant of the referral of their complaint in writing.
- 5.13 The general manager must implement any recommendation made by the Division as a result of its consideration of a code of conduct complaint about a conduct reviewer.

#### **How are code of conduct complaints about administrators to be dealt with?**

- 5.14 The general manager must refer all code of conduct complaints about administrators to the Division for its consideration.
- 5.15 The general manager must notify the complainant of the referral of their complaint in writing.

#### **How are code of conduct complaints about councillors to be dealt with?**

- 5.16 The general manager must refer the following code of conduct complaints about councillors to the OLG:
  - a) complaints alleging a breach of the pecuniary interest provisions of the Act,
  - b) complaints alleging a failure to comply with a requirement under the code of conduct to disclose and appropriately manage conflicts of interests arising from reportable political donations (see section 328B),
  - c) complaints alleging a breach of Part 8 of the code of conduct relating to the maintenance of the integrity of the code, and
  - d) complaints the subject of a special complaints management arrangement with the OLG under clause 5.40.
- 5.17 Where the general manager refers a complaint to the OLG under clause 5.16, the general manager must notify the complainant of the referral in writing.

- 5.18 Where the general manager considers it to be practicable and appropriate to do so, the general manager may seek to resolve code of conduct complaints about councillors, other than those requiring referral to the OLG under clause 5.16, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology instead of referring them to the complaints coordinator under clause 5.20.
- 5.19 Where the general manager resolves a code of conduct complaint under clause 5.18 to the general manager's satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.20 The general manager must refer all code of conduct complaints about councillors other than those referred to the OLG under clause 5.16 or resolved under clause 5.18 to the complaints coordinator.

#### **How are code of conduct complaints about the general manager to be dealt with?**

- 5.21 The Mayor must refer the following code of conduct complaints about the general manager to the OLG:
- a) complaints alleging a breach of the pecuniary interest provisions of the Act,
  - b) complaints alleging a breach of Part 8 of the code of conduct relating to the maintenance of the integrity of the code, and
  - c) complaints the subject of a special complaints management arrangement with the OLG under clause 5.40.
- 5.22 Where the Mayor refers a complaint to the OLG under clause 5.21, the Mayor must notify the complainant of the referral in writing.
- 5.23 Where the Mayor considers it to be practicable and appropriate to do so, he or she may seek to resolve code of conduct complaints about the general manager, other than those requiring referral to the OLG under clause 5.21, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology instead of referring them to the complaints coordinator under clause 5.25.
- 5.24 Where the Mayor resolves a code of conduct complaint under clause 5.23 to the Mayor's satisfaction, the Mayor must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.
- 5.25 The Mayor must refer all code of conduct complaints about the general manager other than those referred to the OLG under clause 5.21 or resolved under clause 5.23 to the complaints coordinator.

#### **Referral of code of conduct complaints to external agencies**

- 5.26 The general manager, Mayor or a conduct reviewer or conduct review committee may, at any time, refer a code of conduct complaint to an external agency or body such as, but not limited to, the OLG, the Independent Commission Against Corruption, the NSW Ombudsman or the Police for its consideration, where they consider such a referral is warranted.
- 5.27 Where the general manager, Mayor, conduct reviewer or conduct review committee refers a complaint to an external agency or body under clause 5.26, they must notify the complainant of the referral in writing where it is appropriate for them to do so.



5.28 Referral of a matter to an external agency of body shall finalise consideration of the matter under the code of conduct unless the council is subsequently advised otherwise by the referral agency or body.

#### **Disclosure of the identify of complainants**

5.29 In dealing with matters under these procedures, information that identifies or tends to identify complainants is not to be discussed unless:

- a) the complainant consents in writing to the disclosure, or
- b) it is generally known that the complainant has made the complaint as a result of the complainant having voluntarily identified themselves as the person who made the complaint, or
- c) it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed, or
- d) a conduct reviewer or conduct review committee is of the opinion that disclosure of the information is necessary to investigate the matter effectively, or
- e) it is otherwise in the public interest to do so.

5.30 Clause 5,29 does not apply to code of conduct complaints made by councillors about other councillors or the general manager.

5.31 Where a councillor makes a code of conduct complaint about another councillor or the general manager and the complainant councillor considers that compelling grounds exist that would warrant information that identifies or tends to identify them as the complainant not to be disclosed, they may request in writing that such information not be disclosed.

5.32 A request made by a complainant councillor under clause 5.31 must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.

5.33 The general manager or Mayor or, where the matter is referred, a conduct reviewer or conduct review committee must consider a request made under clause 5.31 before disclosing information that identifies or tends to identify the complainant councillor but are not obliged to comply with the request.

5.34 Where a complainant councillor makes a request under clause 5.31, the general manager or Mayor or, where the matter is referred, a conduct reviewer or conduct review committee shall notify the councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

### **Code of conduct complaints made as public interest disclosures**

- 5.35 Code of conduct complaints that are made as public interest disclosures under the *Public Interest Disclosures Act 1994* are to be managed in accordance with the requirements of that Act, the council's internal reporting policy and any guidelines issued by the NSW Ombudsman that related to the management of public interest disclosures.
- 5.36 For a code of conduct complaint to be dealt with as a public interest disclosure, the complainant must state at the outset and in writing at the time of making the complaint that it is made as a public interest disclosure.
- 5.37 Where a councillor makes a code of conduct complaint about another councillor or the general manager as a public interest disclosure, before the matter may be dealt with under these procedures, the complainant councillor must consent in writing to the disclosure of their identity as the complainant.
- 5.38 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under clause 5.37, the general manager or the Mayor must refer the complaint to the OLG for consideration. Such a referral must be made under section 26 of the Public Interest Disclosures Act 1994.

### **Special complaints management arrangements**

- 5.39 The general manager may request in writing that the Division enter into a special complaints management arrangement with the council in relation to code of conduct complaints made by or about a person or persons.
- 5.40 Where the OLG receives a request under clause 5.39, it may agree to enter into a special complaints management arrangement where it is satisfied that the number or nature of code of conduct complaints made by or about a person or persons has:
- a) imposed an undue and disproportionate cost burden on the council's administration of its code of conduct, or
  - b) impeded or disrupted the effective administration by the council of its code of conduct, or
  - c) impeded or disrupted the effective functioning of the council.
- 5.41 A special complaints management arrangement must be in writing and must specify the following:
- a) the code of conduct complaints the arrangement relates to, and
  - b) the period that the arrangement will be in force.
- 5.42 The Division may by notice in writing, amend or terminate a special complaints management arrangement at any time.
- 5.43 While a special complaints management arrangement is in force, an officer of the Division (the assessing OLG officer) must undertake the preliminary assessment of the code of conduct complaints specified in the arrangement in accordance with the requirements of these procedures except as provided by clause 5.44 below.

- 5.44 Where, following a preliminary assessment, the assessing Divisional officer determines that a code of conduct complaint warrants investigation by a conduct reviewer or a conduct review committee, the assessing OLG officer shall notify the complaints coordinator in writing of their determination and the reasons for their determination. The complaints coordinator must comply with the recommendation of the assessing Divisional officer.
- 5.45 Prior to the expiry of a special complaints management arrangement, the Division shall, in consultation with the general manager, review the arrangement to determine whether it should be renewed or amended.
- 5.46 A special complaints management arrangement shall expire on the date specified in the arrangement unless renewed under clause 5.45.

## **Part 6: Preliminary Assessment**

### **Referral of code of conduct complaints to conduct reviewers**

- 6.1 The complaints coordinator must refer all code of conduct complaints about councillors or the general manager submitted to the complaints coordinator within 21 days of receipt of a complaint by the general manager or the Mayor.
- 6.2 For the purposes of clause 6.1, the complaints coordinator will refer a complaint to a conduct reviewer selected from:
- a) a panel of conduct reviewers established by the council, or
  - b) a panel of conduct reviewers established by an organisation approved by the Chief Executive of the OLG.
- 6.3 In selecting a suitable conduct reviewer, the complaints coordinator may have regard to the qualifications and experience of members of the panel of conduct reviewers.
- 6.4 A conduct reviewer must not accept the referral of a code of conduct complaint where:
- a) they have a conflict of interests in relation to the matter referred to them, or
  - b) a reasonable apprehension of bias arises in relation to their consideration of the matter, or
  - c) they or their employer has entered into one or more contracts with the council in the 2 years preceding the referral and they or their employer have received or expect to receive payments under the contract or contracts of a cumulative value that exceeds \$100K, or
  - d) at the time of the referral, they or their employer are the council's legal service providers or are a member of a panel of legal service providers appointed by the council.
- 6.5 For the purposes of clause 6.4(a), a conduct reviewer will have a conflict of interests in a matter where a reasonable and informed person would perceive that they could be influenced by a private interest when carrying out their public duty (see clause 4.1 of the Model Code of Conduct).
- 6.6 For the purposes of clause 6.4(b), a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the conduct reviewer might not bring an impartial and unprejudiced mind to the matter referred to the conduct reviewer.

- 6.7 Where the complaints coordinator refers a matter to a conduct reviewer, they will provide the conduct reviewer with a copy of the code of conduct complaint and any other information relevant to the matter held by the council.
- 6.8 The complaints coordinator must notify the complainant in writing that the matter has been referred to a conduct reviewer and advise which conduct reviewer the matter has been referred to.
- 6.9 The conduct reviewer is to undertake a preliminary assessment of a complaint referred to them by the complaints coordinator for the purposes of determining how the complaint is to be managed.
- 6.10 The conduct reviewer may determine to do one or more of the following in relation to a complaint referred to them by the complaints coordinator:
- a) to take no action, or
  - b) to resolve the complaint by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
  - c) to refer the matter back to the general manager or, in the case of a complaint about the general manager, the Mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, or apology, or
  - d) to refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, the Division or the Police, or
  - e) to investigate the matter, or
  - f) to recommend that the complaints coordinator convene a conduct review committee to investigate the matter.
- 6.11 In determining how to deal with a matter under clause 6.10, the conduct reviewer must have regard to the complaint assessment criteria prescribed under clause 6.27.
- 6.12 The conduct reviewer may make such enquiries the conduct reviewer considers to be reasonably necessary to determine what option to exercise under clause 6.10.
- 6.13 The conduct reviewer may request the complaints coordinator to provide such additional information the conduct reviewer considers to be reasonably necessary to determine what option to exercise in relation to the matter under clause 6.10. The complaints coordinator will, as far as is reasonably practicable, supply any information requested by the conduct reviewer.
- 6.14 The conduct reviewer must refer to the OLG any complaints referred to him or her that should have been referred to the OLG under clauses 5.16 and 5.21.
- 6.15 The conduct reviewer must determine to take no action on a complaint that is not a code of conduct complaint for the purposes of these procedures.
- 6.16 Where the conduct reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.10, paragraphs (a), (b) or (c), they must provide the complainant with written notice of their determination and provide reasons for it and this will finalise consideration of the matter under these procedures.
- 6.17 Where the conduct reviewer refers a complaint to another agency or body, they must notify the complainant of the referral in writing where it is appropriate for them to do so.

- 6.18 The conduct reviewer may only determine to investigate a matter or to recommend that a conduct review committee be convened to investigate a matter where they are satisfied as to the following:
- a) that the complaint is a “code of conduct complaint” for the purposes of these procedures, and
  - b) that the alleged conduct, on its face, is sufficiently serious to warrant investigation, and
  - c) that the matter is one that could not or should not be resolved by alternative means.
- 6.19 The conduct reviewer may only determine to recommend that a conduct review committee be convened to investigate a matter after consulting with the complaints coordinator and where they are satisfied that it would not be practicable or appropriate for the matter to be investigated by a sole conduct reviewer.
- 6.20 The conduct reviewer must complete their preliminary assessment of the complaint within 28 days of referral of the matter to them by the complaints coordinator.
- 6.21 The conduct reviewer is not obliged to give prior notice to or to consult with any person before making a determination in relation to their preliminary assessment of a complaint except as may be specifically required under these procedures.

#### **Referral back to the general manager or Mayor for resolution**

- 6.22 Where the conduct reviewer determines to refer a matter back to the general manager or to the Mayor to be resolved by alternative and appropriate means, they must write to the general manager or, in the case of a complaint about the general manager, to the Mayor, recommending the means by which the complaint may be resolved.
- 6.23 The conduct reviewer must consult with the general manager or Mayor prior to referring a matter back to them under clause 6.22.
- 6.24 The general manager or Mayor may decline to accept the conduct reviewer’s recommendation. Where the general manager or Mayor declines to do so, the conduct reviewer may determine to deal with the complaint by other means under clause 6.10.
- 6.25 Where the conduct reviewer refers a matter back to the general manager or Mayor under clause 6.22, the general manager or, in the case of a complaint about the general manager, the Mayor, is responsible for implementing or overseeing the implementation of the conduct reviewer’s recommendation.
- 6.26 Where the conduct reviewer refers a matter back to the general manager or Mayor under clause 6.22, the general manager, or, in the case of a complaint about the general manager, the Mayor, must advise the complainant in writing of the steps taken to implement the conduct reviewer’s recommendation once these steps have been completed.

#### **Complaints assessment criteria**

- 6.27 In undertaking the preliminary assessment of a complaint, the conduct reviewer may have regard to the following considerations:
- a) whether the complaint is a “code of conduct complaint”,

- b) whether the complaint is trivial, frivolous, vexatious or not made in good faith,
- c) whether the complaint discloses prima facie evidence of a breach of the code,
- d) whether the complaint raises issues that would be more appropriately dealt with by another agency or body,
- e) whether there is or was an alternative and satisfactory means of redress available to the complainant in relation to the conduct complained of,
- f) whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation or apology,
- g) whether the issue/s giving rise to the complaint have previously been addressed or resolved,
- h) whether the conduct complained of forms part of a pattern of conduct,
- i) whether there were mitigating circumstances giving rise to the conduct complained of,
- j) the seriousness of the alleged conduct,
- k) the significance of the conduct or the impact of the conduct for the council,
- l) how much time has passed since the alleged conduct occurred, or
- m) such other considerations that the conduct reviewer considers may be relevant to the assessment of the complaint.

## **Part 7: Operations of Conduct Review Committees**

- 7.1 Where a conduct reviewer recommends that the complaints coordinator convene a conduct review committee to investigate a matter, the conduct reviewer must notify the complaints coordinator of their recommendation and the reasons for their recommendation in writing.
- 7.2 The complaints coordinator must convene a conduct review committee comprising three conduct reviewers selected from:
- a) a panel of conduct reviewers established by the council, or
  - b) a panel of conduct reviewers established by an organisation approved by the Chief Executive of the Division.
- 7.3 In selecting suitable conduct reviewers for membership of a conduct review committee convened under clause 7.2, the complaints coordinator may have regard to the following:
- a) the qualifications and experience of members of the panel of conduct reviewers, and
  - b) any recommendation made by the conduct reviewer about the membership of the committee.
- 7.4 The conduct reviewer who made the preliminary assessment of the complaint must not be a member of a conduct review committee convened under clause 7.2.

- 7.5 A member of a panel of conduct reviewers may not be appointed to a conduct review committee where they would otherwise be precluded from accepting a referral of the matter to be considered by the committee under clause 6.4.
- 7.6 Where the complaints coordinator convenes a conduct review committee, they will advise the complainant in writing that the committee has been convened and the membership of the committee.
- 7.7 Where, after a conduct review committee has been convened, a member of the committee becomes unavailable to participate in further consideration of the matter, the complaints coordinator may appoint another person from a panel of conduct reviewers to replace them.
- 7.8 Meetings of a conduct review committee may be conducted in person or by teleconference.
- 7.9 The members of the conduct review committee must elect a chairperson of the committee.
- 7.10 A quorum for a meeting of the conduct review committee is two members.
- 7.11 Business is not to be conducted at any meeting of the conduct review committee unless a quorum is present.
- 7.12 If a quorum is not present at a meeting of the conduct review committee, it must be adjourned to a time and date that is specified.
- 7.13 Each member of the conduct review committee is entitled to one vote in relation to a matter. In the event of an equality of votes being cast, the chairperson will have a casting vote.
- 7.14 If the vote on a matter is not unanimous, then this should be noted in the report of the conduct review committee in which it makes its determination in relation to the matter.
- 7.15 The chairperson may make a ruling on questions of procedure and the chairperson's ruling is to be final.
- 7.16 The conduct review committee may only conduct business in the absence of the public.
- 7.17 The conduct review committee must maintain proper records of its proceedings.
- 7.18 The complaints coordinator shall undertake the following functions in support of a conduct review committee:
- a) provide procedural advice where required,
  - b) ensure adequate resources are provided including secretarial support,
  - c) attend meetings of the conduct review committee in an advisory capacity, and
  - d) provide advice about council's processes where requested.
- 7.19 The complaints coordinator must not be present at, or in sight of a meeting of, the conduct review committee where it makes its final determination in relation to the matter.

- 7.20 The conduct review committee may adopt procedures governing the conduct of its meetings that supplement these procedures. However, any procedures adopted by the committee must not be inconsistent with these procedures.

## **Part 8: Investigations**

### **What matters may a conduct reviewer or conduct review committee investigate?**

- 8.1 A conduct reviewer or conduct review committee (hereafter referred to as an “investigator”) may investigate a code of conduct complaint that has been referred to them by the complaints coordinator and any matters related to or arising from that complaint.
- 8.2 Where an investigator identifies further separate possible breaches of the code of conduct that are not related to or arise from the code of conduct complaint that has been referred to them, they are to report the matters separately in writing to the general manager, or, in the case of alleged conduct on the part of the general manager, to the Mayor.
- 8.3 The general manager or the Mayor is to deal with a matter reported to them by an investigator under clause 8.2 as if it were a new code of conduct complaint in accordance with these procedures.

### **How are investigations to be commenced?**

- 8.4 The investigator must at the outset of their investigation provide a written notice of investigation to the subject person. The notice of investigation must:
- a) disclose the substance of the allegations against the subject person, and
  - b) advise of the relevant provisions of the code of conduct that apply to the alleged conduct, and
  - c) advise of the process to be followed in investigating the matter, and
  - d) invite the subject person to make a written submission in relation to the matter within 28 days or such other reasonable period specified by the investigator in the notice, and
  - e) provide the subject person the opportunity to address the investigator on the matter within such reasonable time specified in the notice.
- 8.5 The subject person may within 14 days of receipt of the notice of investigation, request in writing that the investigator provide them with such further information they consider necessary to assist them to identify the substance of the allegation against them. An investigator will only be obliged to provide such information that the investigator considers reasonably necessary for the subject person to identify the substance of the allegation against them.
- 8.6 An investigator may at any time prior to issuing a draft report, issue an amended notice of investigation to the subject person in relation to the matter referred to them.
- 8.7 Where an investigator issues an amended notice of investigation, they will provide the subject person with a further opportunity to make a written submission in response to the amended notice of investigation within 28 days or such other reasonable period specified by the investigator in the amended notice.



- 8.8 The investigator must also, at the outset of their investigation, provide written notice of the investigation to the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, to the Mayor. The notice must:
- a) advise them of the matter the investigator is investigating, and
  - b) in the case of the notice to the complainant, invite them to make a written submission in relation to the matter within 28 days or such other reasonable period specified by the investigator in the notice.

### **Written and oral submissions**

- 8.9 Where the subject person or the complainant fails to make a written submission in relation to the matter within the period specified by the investigator in their notice of investigation or amended notice of investigation, the investigator may proceed to prepare their draft report without receiving such submissions.
- 8.10 The investigator may accept written submissions received outside the period specified in the notice of investigation or amended notice of investigation.
- 8.11 Prior to preparing a draft report, the investigator must give the subject person an opportunity to address the investigator on the matter being investigated. The subject person may do so in person or by telephone.
- 8.12 Where the subject person fails to accept the opportunity to address the investigator within the period specified by the investigator in the notice of investigation, the investigator may proceed to prepare a draft report without hearing from the subject person.
- 8.13 Where the subject person accepts the opportunity to address the investigator in person, they may have a support person or legal advisor in attendance. The support person or legal advisor will act in an advisory or support role to the subject person only. They must not speak on behalf of the subject person or otherwise interfere with or disrupt proceedings.
- 8.14 The investigator must consider all written and oral submissions made to them in relation to the matter.

### **How are investigations to be conducted?**

- 8.15 Investigations are to be undertaken without undue delay.
- 8.16 Investigations are to be undertaken in the absence of the public and in confidence.
- 8.17 Investigators must make any such enquiries that may be reasonably necessary to establish the facts of the matter.
- 8.18 Investigators may seek such advice or expert guidance that may be reasonably necessary to assist them with their investigation or the conduct of their investigation.
- 8.19 An investigator may request that the complaints coordinator provide such further information that the investigator considers may be reasonably necessary for them to establish the facts of the matter. The complaints coordinator will, as far as is reasonably practicable, provide the information requested by the investigator.

## **Referral or resolution of a matter after the commencement of an investigation**

- 8.20 At any time after an investigator has issued a notice of investigation and before they have issued a draft report, an investigator may determine to:
- a) resolve the matter by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
  - b) refer the matter to the general manager, or, in the case of a complaint about the general manager, to the Mayor, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
  - c) refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, the Division or the Police.
- 8.21 Where an investigator determines to exercise any of the options under clause 8.20 after the commencement of an investigation, they must do so in accordance with the requirements of Part 6 of these procedures relating to the exercise of these options at the preliminary assessment stage.
- 8.22 Where an investigator determines to exercise any of the options under clause 8.20 after the commencement of an investigation, they may by written notice to the subject person, the complainant, the complaints coordinator and the general manager, or in the case of a complaint about the general manager, the Mayor, discontinue their investigation of the matter.
- 8.23 Where the investigator discontinues their investigation of a matter under clause 8.22, this shall finalise the consideration of the matter under these procedures.
- 8.24 An investigator is not obliged to give prior notice to or to consult with any person before making a determination to exercise any of the options under clause 8.20 or to discontinue their investigation except as may be specifically required under these procedures.

## **Draft investigation reports**

- 8.25 When an investigator has completed their enquiries and considered any written or oral submissions made to them in relation to a matter, they must prepare a draft of their proposed report.
- 8.26 The investigator must provide their draft report to the subject person and invite them to make a written submission in relation to it within 28 days or such other reasonable period specified by the investigator.
- 8.27 Where the investigator proposes to make adverse comment about any other person (an affected person) in their report, they must also provide the affected person with relevant extracts of their draft report containing such comment and invite the affected person to make a written submission in relation to it within 28 days or such other reasonable period specified by the investigator.
- 8.28 The investigator must consider written submissions received in relation to the draft report prior to finalising their report in relation to the matter.

- 8.29 The investigator may, after consideration of all written submissions received in relation to their draft report, make further enquiries into the matter. Where as a result of making further enquiries, the investigator makes any material change to their proposed report that makes new adverse comment about the subject person or an affected person, they must provide the subject person or affected person as the case may be with a further opportunity to make a written submission in relation to the new adverse comment.
- 8.30 Where the subject person or an affected person fails to make a written submission in relation to the draft report within the period specified by the investigator, the investigator may proceed to prepare and issue their final report without receiving such submissions.
- 8.31 The investigator may accept written submissions in relation to the draft report received outside the period specified by the investigator at any time prior to issuing their final report.

### **Final investigation reports**

- 8.32 Where an investigator issues a notice of investigation they must prepare a final report in relation to the matter unless the investigation is discontinued under clause 8.22.
- 8.33 An investigator must not prepare a final report in relation to the matter at any time before they have finalised their consideration of the matter in accordance with the requirements of these procedures.
- 8.34 The investigator's final report must:
- a) make findings of fact in relation to the matter investigated, and,
  - b) make a determination that the conduct investigated either,
    - i. constitutes a breach of the code of conduct, or
    - ii. does not constitute a breach of the code of conduct, and
  - c) provide reasons for the determination.
- 8.35 Where the investigator determines that the conduct investigated constitutes a breach of the code of conduct, the investigator may make one or more of the following recommendations:
- a) that the council revise any of its policies or procedures,
  - b) that the subject person undertakes any training or other education relevant to the conduct giving rise to the breach,
  - c) that the subject person be counselled for their conduct,
  - d) that the subject person apologises to any person or organisation affected by the breach in such a time and form specified by the recommendation,
  - e) that findings of inappropriate conduct be made public,
  - f) in the case of a breach by the general manager, that action be taken under the general manager's contract for the breach,
  - g) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Act,
  - h) in the case of a breach by a councillor, that the council resolves as follows:
    - i. that the councillor be formally censured for the breach under section 440G of the Act, and

ii. that the matter be referred to the OLG for further action under the misconduct provisions of the Act.

8.36 Where the investigator determines that the conduct investigated does not constitute a breach of the code of conduct, the investigator may make one or more of the following recommendations:

- a) that the council revise any of its policies or procedures,
- b) that a person or persons undertake any training or other education.

8.37 In making a recommendation under clause 8.35, the investigator may have regard to the following:

- a) the seriousness of the breach,
- b) whether the breach can be easily remedied or rectified,
- c) whether the subject person has remedied or rectified their conduct,
- d) whether the subject person has expressed contrition,
- e) whether there were any mitigating circumstances,
- f) the age, physical or mental health or special infirmity of the subject person,
- g) whether the breach is technical or trivial only,
- h) any previous breaches,
- i) whether the breach forms part of a pattern of conduct,
- j) the degree of reckless intention or negligence of the subject person,
- k) the extent to which the breach has affected other parties or the council as a whole,
- l) the harm or potential harm to the reputation of the council or local government arising from the conduct,
- m) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny,
- n) whether an educative approach would be more appropriate than a punitive one,
- o) the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action,
- p) what action or remedy would be in the public interest.

8.38 At a minimum, the investigator's final report must contain the following information:

- a) a description of the allegations against the subject person,
- b) the relevant provisions of the code of conduct that apply to the alleged conduct investigated,
- c) a statement of reasons as to why the conduct reviewer considered that the matter warranted investigation,
- d) a statement of reasons as to why the conduct reviewer considered that the matter was one that could not or should not be resolved by alternative means,

- e) where the matter is investigated by a conduct review committee, a statement as to why the matter was one that warranted investigation by a conduct review committee instead of a sole conduct reviewer,
- f) a description of any attempts made to resolve the matter by use of alternative means,
- g) the steps taken to investigate the matter,
- h) the facts of the matter,
- i) the investigator's findings in relation to the facts of the matter and the reasons for those findings,
- j) the investigator's determination and the reasons for that determination,
- k) any recommendations.

8.39 The investigator must provide a copy of their report to the complaints coordinator, the subject person and the complainant.

8.40 Where the investigator has determined that there has not been a breach of the code of conduct, the complaints coordinator must provide a copy of the investigator's report to the general manager or, where the report relates to the general manager's conduct, to the Mayor and this will finalise consideration of the matter under these procedures.

8.41 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35, paragraph (a), the complaints coordinator must provide a copy of the investigator's report to the general manager. Where the general manager agrees with the recommendation/s, the general manager is responsible for implementing the recommendation/s.

8.42 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35, paragraphs (b) or (c), the complaints coordinator must provide a copy of the investigator's report to the general manager or, where the report relates to the general manager's conduct, to the Mayor. The general manager is responsible for arranging the implementation of the recommendation/s where the report relates to a councillor's conduct. The Mayor is responsible for arranging the implementation of the recommendation/s where the report relates to the general manager's conduct.

8.43 Where the investigator has determined that there has been a breach of the code of conduct and makes a recommendation or recommendations under clause 8.35, paragraphs (d) to (h), the complaints coordinator must, where practicable, arrange for the investigator's report to be reported to the next ordinary council meeting for the council's consideration unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case the report must be reported to the first ordinary council meeting following the election.

#### **Consideration of the final investigation report by council**

8.44 The role of the council in relation to a final investigation report is to impose a sanction where an investigator determines that there has been a breach of the code of conduct and makes a recommendation in their final report under clause 8.35, paragraphs (d) to (h).

8.45 The council is to close its meeting to the public to consider the final investigation report where it is permitted to do so under section 10A of the Act.

- 8.46 Where the complainant is a councillor, they must absent themselves from the meeting and take no part in any discussion or voting on the matter. The complainant councillor may absent themselves without making any disclosure of interests in relation to the matter unless otherwise required to do so under the Act or the Model Code.
- 8.47 Prior to imposing a sanction, the council must provide the subject person with an opportunity to make an oral submission to the council. The subject person is to confine their submission to addressing the investigator's recommendation/s.
- 8.48 Once the subject person has completed their oral submission they must absent themselves from the meeting and, where they are a councillor, take no part in any discussion or voting on the matter.
- 8.49 The council must not invite oral submissions from other persons for the purpose of seeking to rehear evidence previously considered by the investigator.
- 8.50 Prior to imposing a sanction, the council may by resolution:
- a) request that the investigator make additional enquiries and/or provide additional information to it in a supplementary report, or
  - b) seek an opinion by the OLG in relation to the report.
- 8.51 The council may, by resolution, defer further consideration of the matter pending the receipt of a supplementary report from the investigator or an opinion from the OLG.
- 8.52 The investigator may make additional enquiries for the purpose of preparing a supplementary report.
- 8.53 Where the investigator prepares a supplementary report, they must provide copies to the complaints coordinator who shall provide a copy each to the council, the subject person and the complainant.
- 8.54 The investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the complaints coordinator.
- 8.55 The council is only required to provide the subject person a further opportunity to address it on a supplementary report where the supplementary report contains new information that is adverse to them.
- 8.56 A council may by resolution impose one or more of the following sanctions on a subject person:
- a) that the subject person apologises to any person or organisation affected by the breach in such a time and form specified by the resolution,
  - b) that findings of inappropriate conduct be made public,
  - c) in the case of a breach by the general manager, that action be taken under the general manager's contract for the breach,
  - d) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Act,

- e) in the case of a breach by a councillor:
  - i. that the councillor be formally censured for the breach under section 440G of the Act, and
  - ii. that the matter be referred to the OLG for further action under the misconduct provisions of the Act.

8.57 The council is not obliged to adopt the investigator's recommendation/s. Where the council does not adopt the investigator's recommendation/s, the council must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.

8.58 The council may, by resolution, impose a sanction on the subject person under clause 8.56 different to the sanction recommended by the investigator in their final report.

8.59 Where the council resolves not to adopt the investigator's recommendation/s, the complaints coordinator must notify the OLG of the council's decision and the reasons for it.

## **Part 9: Rights of Review**

### **Failure to comply with a requirement under these procedures**

9.1 Where any person believes that a person has failed to comply with a requirement prescribed under these procedures, they may, at any time prior to the council's consideration of an investigator's final report, raise their concerns in writing with the OLG.

### **Practice rulings**

9.2 Where a subject person and an investigator are in dispute over a requirement under these procedures, either person may make a request in writing to the OLG to make a ruling on a question of procedure (a practice ruling).

9.3 Where the OLG receives a request in writing for a practice ruling, the Division may provide notice in writing of its ruling and the reasons for it to the person who requested it and to the investigator, where that person is different.

9.4 Where the OLG makes a practice ruling, all parties are to comply with it.

9.5 The OLG may decline to make a practice ruling. Where the Division declines to make a practice ruling, it will provide notice in writing of its decision and the reasons for it to the person who requested it and to the investigator, where that person is different.

### **Requests for review**

9.6 A person the subject of a sanction imposed under Part 8 of these procedures other than one imposed under clause 8.56, paragraph (e), may, within 28 days of the sanction being imposed, seek a review of the investigator's determination and recommendation by the Division.

9.7 A review under clause 9.6 may be sought on the following grounds:

- a) that the investigator has failed to comply with a requirement under these procedures, or

- b) that the investigator has misinterpreted or misapplied the standards of conduct prescribed under the code of conduct, or
  - c) that the council has failed to comply with a requirement under these procedures in imposing a sanction.
- 9.8 A request for a review made under clause 9.6 must be made in writing and must specify the grounds upon which the person believes the investigator or the council has erred.
- 9.9 The OLG may decline to conduct a review, where the grounds upon which the review is sought are not sufficiently specified.
- 9.10 The OLG may undertake a review of a matter without receiving a request under clause 9.6.
- 9.11 The OLG will undertake a review of the matter on the papers. However, the OLG may request that the complaints coordinator provide such further information that the OLG considers reasonably necessary for it to review the matter. The complaints coordinator must, as far as is reasonably practicable, provide the information requested by the OLG.
- 9.12 Where a person requests a review under clause 9.6, the OLG may direct the council to defer any action to implement a sanction. The council must comply with a direction to defer action by the OLG
- 9.13 The OLG must notify the person who requested the review and the complaints coordinator of the outcome of the OLG review in writing and the reasons for its decision. In doing so, the OLG may comment on any other matters the OLG considers to be relevant.
- 9.14 Where the OLG considers that the investigator or the council has erred, the Division may recommend that a decision to impose a sanction under these procedures be reviewed.
- 9.15 In the case of a sanction implemented by the general manager or Mayor under clause 8.42, where the OLG recommends that the decision to impose a sanction be reviewed:
- a) the complaints coordinator must provide a copy of the Division's determination in relation to the matter to the general manager or the Mayor, and
  - b) the general manager or Mayor must review any action taken by them to implement the sanction, and
  - c) the general manager or Mayor must consider the Division's recommendation in doing so.
- 9.16 In the case of a sanction imposed by the council by resolution under clause 8.56, where the Division recommends that the decision to impose a sanction be reviewed:
- a) the complaints coordinator must, where practicable, arrange for the OLG determination to be tabled at the next ordinary council meeting unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case it must be tabled at the first ordinary council meeting following the election, and
  - b) the council must:
    - i. review its decision to impose the sanction, and
    - ii. consider the OLG recommendation in doing so, and
    - iii. resolve to either rescind or reaffirm its previous resolution in relation to the matter.



- 9.17 Where having reviewed its previous decision in relation to a matter under clause 9.16 the council resolves to reaffirm its previous decision, the council must state in its resolution its reasons for doing so.

#### **Part 10: Procedural Irregularities**

- 10.1 A failure to comply with these procedures does not, on its own, constitute a breach of the code of conduct except as may be otherwise specifically provided under the code of conduct.
- 10.2 A failure to comply with these procedures will not render a decision made in relation to a matter invalid where:
- a) the non-compliance is isolated and/or minor in nature, or
  - b) reasonable steps are taken to correct the non-compliance, or
  - c) reasonable steps are taken to address the consequences of the non-compliance.

#### **Part 11: Practice Directions**

- 11.1 The OLG may at any time issue a practice direction in relation to the application of these procedures.
- 11.2 The OLG will issue practice directions in writing, by circular to all councils.
- 11.3 All persons performing a function prescribed under these procedures must consider the Division's practice directions when performing the function.

#### **Part 12: Reporting on Complaints Statistics**

- 12.1 The complaints coordinator must arrange for the following statistics to be reported to the council within 3 months of the end of September of each year:
- a) the total number of code of conduct complaints made about councillors and the general manager under the code of conduct in the year to September,
  - b) the number of code of conduct complaints referred to a conduct reviewer,
  - c) the number of code of conduct complaints finalised by a conduct reviewer at the preliminary assessment stage and the outcome of those complaints,
  - d) the number of code of conduct complaints investigated by a conduct reviewer,
  - e) the number of code of conduct complaints investigated by a conduct review committee,
  - f) without identifying particular matters, the outcome of code of conduct complaints investigated by a conduct reviewer or conduct review committee under these procedures,
  - g) the number of matter reviewed by the Division and, without identifying particular matters, the outcome of the reviews, and
  - h) the total cost of dealing with code of conduct complaints made about councillors and the general manager in the year to September, including staff costs.

12.2 The council is to provide the OLG with a report containing the statistics referred to in clause 12.1 within 3 months of the end of September of each year.

### **Part 13: Confidentiality**

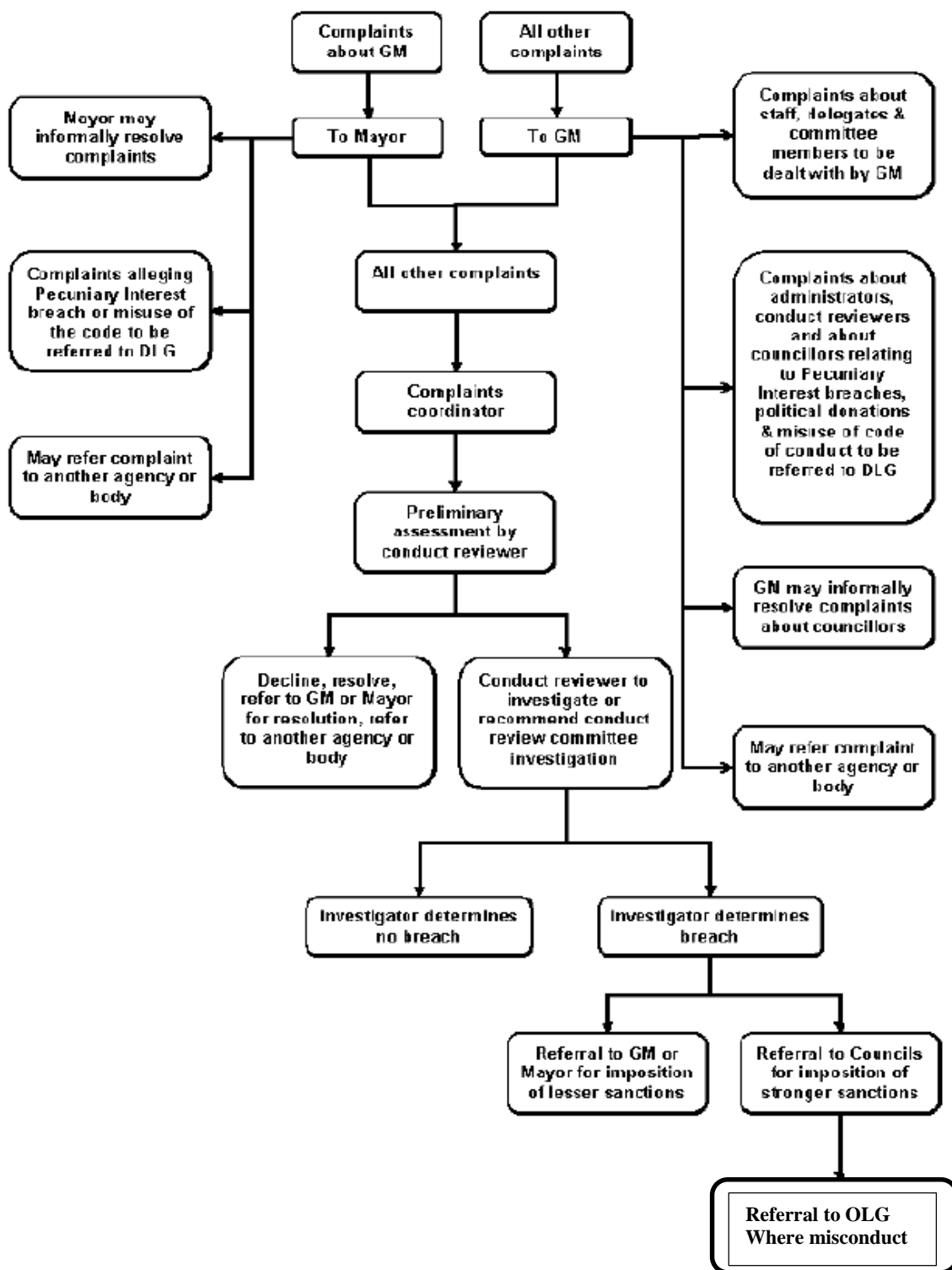
13.1 Information about code of conduct complaints and the management and investigation of code of conduct complaints is to be treated as confidential and is not to be publicly disclosed except as may be otherwise specifically required or permitted under these procedures.

**Note:**

*If the General Manager reasonably suspects that a councillor has not complied with the provisions of this Code of Conduct relating to the disclosure of political donations or the manner of dealing with any perceived conflict of interest in relation to political donations, the General Manager is required by section 328B of the Local Government Act 1993 to refer the matter to the Director-General of the Department of Local Government.*

*The General Manager is also under a duty to report to the Independent Commission Against Corruption (ICAC) any matter that he or she suspects on reasonable grounds concerns or may concern "corrupt conduct" (see section 11(2) of the ICAC Act 1988).*

# Model Code Procedure Flowchart



## **Appendix 1 – Conflict of Interest Guidelines**

### **Conflict of Interest Guidelines**

#### **Introduction**

The possibility of conflict between public duty and private interest is an ever-present risk for council officials. Sometimes, by virtue of their official status, position, functions or duties, council officials have the power to make decisions or act in ways that can further their own private interests. This may cause a real or perceived conflict between council official's private interests and their public duty.

As a general principle, no person should obtain a private benefit or advantage virtue of their position as a council official. Additionally, no public official should misuse the power or authority of their position to unfairly influence or decide a matter where they have a real or perceived private interest.

Most council officials are at some stage likely to experience a situation where they may have a non-pecuniary conflict of interests. This is most likely to arise out of family or personal relationships or perhaps through an association they, or someone close to them, may have through an involvement in a sporting, social or other kind of group or association. The greater their involvement with the club or organisation, the greater likelihood of a real or perceived conflict of interests, it may also involve an interest of a financial nature that does not amount to a pecuniary interest as defined by the Act.

#### **What is a conflict of interest & what is required of you in assessing possible interests?**

A conflict of interests exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty.

You must avoid or appropriately resolve any conflict of interests. Perceptions of conflict of interest are as important as actual conflict of interest. The onus is on you to identify a conflict of interests and take the appropriate action to manage the conflict in favour of your public duty.

Any conflict between your interests and those of Council must be managed to uphold the probity of council decision-making. When considering whether or not you have a conflict of interest, it is always important to think about how others would view your situation.

It is essential that you properly address conflict of interest issues that may arise. You must:

- Try to understand the concept and practical implications of conflict of interest issues;
- Accept that failure to resolve an actual or reasonably perceived conflict of interest is unacceptable in local government;
- Take timely and appropriate action to avoid, or if not, to disclose any actual, potential or reasonably perceived conflict of interest.

Where necessary, you must disclose an interest promptly, fully and in writing. If a disclosure is made at a Council or Committee Meeting, both the disclosure and nature of an interest must be recorded in the minutes.

Private interests can be of two types: pecuniary or non-pecuniary.

## What is a “pecuniary interest”?

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated (Section 442 of Local Government Act).

A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter.

However, a person will be taken to have a pecuniary interest in a matter if that person’s spouse or de facto partner or a relative of the person or a partner or employer of the person, or a company or other body of which the person, or a nominee, partner or employer of the person is a member, has a pecuniary interest in the matter (Section 443 Local Government Act).

The Local Government Act requires that:

- councillors and designated persons lodge an initial and an annual written disclosure of interests that could potentially be in conflict with their public or professional duties (section 449)
- councillors and members of council committees disclose an interest and the nature of that interest at a meeting, leave the meeting and be out of sight of the meeting and not participate in discussions or voting on the matter (section 451)
- designated members of staff (other than designated persons) reporting of the conflict of interest or to the Public Officer in compliance with the Conflict of Interest Policy is required.

## Non-pecuniary

A non-pecuniary interest is a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Local Government Act (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

Council’s Code of Conduct recognises two forms of non-pecuniary conflict of interests:

- significant
- less than significant

### **4.9 As a general rule, a non-pecuniary conflict of interests will be significant where a matter does not raise a pecuniary interest but it involves:**

- a. a relationship between a council official and another person that is particularly close, for example, parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the person’s spouse, current or former spouse or partner, de facto or other person living in the same household.
- b. other relationships that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship.
- c. an affiliation between the council official and an organisation, sporting body, club, corporation or association that is particularly strong.

Council officials should make an assessment of the circumstances to help them determine if a conflict is **significant**. The nature of a friendship or business relationship.

The frequency of contact and the duration of the friendship or relationship, the strength of an affiliation with an organisation are all matter that should be considered when assessing whether or not a conflict of interests is significant or less than significant.

Councillors should note that matters before Council involving campaign donors may give rise to a non-pecuniary conflict of interest.

### **Remoteness**

A person does not have an interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision that person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the *Local Government Act*.

The matter of a report to council from the conduct review committee/reviewer relates to the public duty of a councillor or the General Manager. Therefore, there is no requirement for councillors or the General Manager to disclose a conflict of interests in such a matter.

### **Who has a pecuniary interest?**

- (1) A person has a pecuniary interest in a matter if the pecuniary interest is the interest of:
  - a. The person; or
  - b. Another person with whom the person is associated as provided below.
  
- (2) A person is taken to have a pecuniary interest in a matter if:
  - a. The person's spouse or de facto partner or a relative of the person has a pecuniary interest in the matter; or
  - b. the person, or a nominee, partner or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

***(Note: relative, in relation to a person, means any of the following:***

- (i) The parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the persons' spouse;***
- (ii) The spouse, de facto partners of the person or of a person referred to in (i) above).***

- (3) However, a person is not taken to have a pecuniary interest in a matter as referred to in (2) above:
  - a. if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body;
  - b. just because the person is a member of, or employed by, a Council or a statutory body or is employed by the Crown; or
  - c. just because the person is a member of, or a delegate of a Council, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

## No knowledge

A person does not breach the code of conduct if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

## What interests do not have to be disclosed (Section 448)?

The following interests do **not** have to be disclosed for the purposes of the *Local Government Act*:

- “(a) an interest as an elector,*
- (b) an interest as a ratepayer or person liable to pay a charge,*
- (c) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to the public generally, or to a section of the public that includes persons who are not subject to this Part,*
- (d) an interest in any matter relating to the terms on which the provision of a service or the supply of goods or commodities is offered to a relative of the person by the council in the same manner and subject to the same conditions as apply to persons who are not subject to this Part,*
- (e) an interest as a member of a club or other organisation or association, unless the interest is as the holder of an office in the club or organisation (whether remunerated or not),*
- (f) an interest of a member of a council committee as a person chosen to represent the community or as a member of a non-profit organisation or other community or special interest group if the committee member has been appointed to represent the organisation or group on the committee,*
- (g) an interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument other than an instrument that effects a change of the permissible uses of:
  - (i) land in which the person or a person, company or body referred to in section 443 (1) (b) or (c) has a proprietary interest (which, for the purposes of this paragraph, includes any entitlement to the land at law or in equity and any other interest or potential interest in the land arising out of any mortgage, lease, trust, option or contract, or otherwise), or*
  - (ii) land adjoining, adjacent to or in proximity to land referred to in subparagraph (i), if the person or the person, company or body referred to in section 443 (1) (b) or (c) would by reason of the proprietary interest have a pecuniary interest in the proposal,**
- (h) an interest relating to a contract, proposed contract or other matter if the interest arises only because of a beneficial interest in shares in a company that does not exceed 10 per cent of the voting rights in the company,*
- (i) an interest of a person arising from the proposed making by the council of an agreement between the council and a corporation, association or partnership, being a corporation, association or partnership that has more than 25 members, if the interest arises because a relative of the person is a shareholder (but not a director) of the corporation or is a member (but not a member of the committee) of the association or is a partner of the partnership,*
- (j) an interest of a person arising from the making by the council of a contract or agreement with a relative of the person for or in relation to any of the following, but only if the proposed contract or agreement is similar in terms and conditions to such contracts and agreements as have been made, or as are proposed to be made, by the council in respect of similar matters with other residents of the area:
  - (i) the performance by the council at the expense of the relative of any work or service in connection with roads or sanitation,**

- (ii) security for damage to footpaths or roads,
- (iii) any other service to be rendered, or act to be done, by the council by or under any Act conferring functions on the council or by or under any contract,
- (k) an interest relating to the payment of fees to councillors (including the mayor and deputy mayor),
- (l) an interest relating to the payment of expenses and the provision of facilities to councillors (including the mayor and deputy mayor) in accordance with a policy under section 252,
- (m) an interest relating to an election to the office of mayor arising from the fact that a fee for the following 12 months has been determined for the office of mayor,
- (n) an interest of a person arising from the passing for payment of a regular account for wages or salary of an employee who is a relative of the person,
- (o) an interest arising from being covered by, or a proposal to be covered by, indemnity insurance as a councillor or member of a council committee,
- (p) an interest arising from appointment of a councillor to a body as representative or delegate of the council, whether or not a fee or other recompense is payable to the representative or delegate. “

### **Management of non-pecuniary conflict of interests**

Non-pecuniary interests **must** be disclosed in meetings.

Where you have a non-pecuniary interest that conflicts with your public duty, you must disclose the interest fully and in writing, even if the conflict is not significant. You must do this as soon as practicable.

If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes. This disclosure constitutes disclosure in writing.

How you manage a non-pecuniary conflict of interests will depend on whether or not it is significant. If you are a Council official, other than a member of staff of Council, and you have disclosed that a significant non-pecuniary conflict of interests exists, you must manage it in one of two ways:

- remove the source of the conflict, by relinquishing or divesting the interest that creates the conflict, or reallocating the conflicting duties to another council official;
- have no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue\*.

**\*Note: Despite the above, a councillor who has disclosed that a significant non-pecuniary conflict of interests exists may participate in a decision to delegate council’s decision making role to council staff, or appoint another person or body to make the decision in accordance with the law. This applies whether or not council would be deprived of a quorum if one or more councillors were to manage their conflict of interests by not voting on a matter in accordance with the above.**

Members of staff (other than designated persons) reporting of the conflict of interest is to be made immediately to the Public Officer in compliance with the Conflict Of Interest Policy is required.



If you determine that a non-pecuniary conflict of interests is less than significant and does not require further action, you must provide an explanation of why you consider that the conflict does not require further action in the circumstances. If you are a member of staff of council, the decision on which option should be taken to manage a non-pecuniary conflict of interests must be made in consultation with your manager.

### **Political donations exceeding \$1,000**

Councillors should note that matters before council involving political or campaign donors may give rise to a non-pecuniary conflict of interests. Councillors should take all reasonable steps to ascertain the source of any political contributions that directly benefit their election campaigns. For example, councillors should have reasonable knowledge of contributions received by them or their “official agent” that directly benefit their election campaign.

Where a councillor or the councillor’s official agent has received political contributions or political donations exceeding \$1,000 which directly benefit their campaign

- from a political or campaign donor or related entity in the previous four years; and
- where the political or campaign donor or related entity has a matter before council,
- then the councillor must declare a non-pecuniary conflict of interests, disclose the nature of the interest, and manage the conflict of interest by having no involvement in the matter, by absenting yourself from and not taking part in any debate or voting on the issue.

Councillor should note that political contributions below \$1,000, or political contributions to a registered political party or group by which a councillor is endorsed, may still give rise to a non-pecuniary conflict of interests. Councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.

### **Other business or employment**

If you are a member of staff of council considering outside employment or contract work that relates to the business of the council or that might conflict with your council duties, you must notify and seek the approval of the general manager in writing through the Conflict of Interest Policy and forms.

As a member of staff, you must ensure that any outside employment or business you engage in will not:

- conflict with your official duties
- involve using confidential information or council resources obtained through your work with the council
- require you to work while on council duty
- discredit or disadvantage the council.

### **Personal dealings with council**

You may have reason to deal with your council in your personal capacity (e.g. As a ratepayer, recipient of a council service or applicant for a consent granted by council). You must not expect or request preferential treatment in relation to any matter in which you have a private interest because of your position. You must avoid any action that could lead member of the public to believe that you are seeking preferential treatment.

Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- it may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (e.g. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (e.g. Relinquish or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in Section 451 of the Local Government Act apply (particularly if you have a significant non-pecuniary interest).

There is nothing wrong with a councillor having community as well as civic interests, though there are times when these interests may be perceived as a significant conflict to interests.

If the mayor or a councillor is the patron of a local club/organisation they should declare a non-pecuniary interest in any relevant matter as there is likely to be a community perception that a personal interest exists. Even though the Mayor often automatically becomes the patron of a club/organisation (because of his position), possibly even without his/her knowledge, he/she should declare a non-pecuniary interest in the matter when/if a related matter comes before the Council and/or a Council Committee.

It is up to each individual Councillor to determine whether he or she has a significant or less than significant non-pecuniary interest in matter before the council and this will subsequently determine whether they should vote on the matter in question.

### **Disclosure to be recorded (Section 453)**

A disclosure (and the reason(s) for the disclosure) made at a meeting of the Council or Council Committee or sub-Committee must be recorded in the minutes of the meeting.

### **Some examples of conflict of interests**

The following information is taken from the ICAC *“Under Careful Consideration: Key Issues for Local Government”* publication<sup>4</sup> and provides some examples of where conflict of interests may occur within Councils.

#### ***“Tendering and purchasing***

*A Council has advertised for a firm to supply and fit office equipment. A Councillor who is representative on the Council’s panel assessing the tender bids, has a close friend who is a senior executive in a firm submitting a bid. This may affect, or may be suspected to affect, the Council’s ability to make an unbiased decision.”*

#### ***“Elected officials – business interests***

*Many Councillors have business and professional interests in the local government area that they represent. Conflicts can arise if their public positions allow them access to information and opportunities that could be used to advance their personal and business interests.*

*For example, a Councillor may be tempted to influence an application to set up a new business in the town (area) if his (her) own business could lose custom as a result.”*

## Conflict of interest checklist

If you are unsure as to whether or not you have a conflict of interests in relation to a matter, you should consider these 6 points:

- Do you have a personal interest in a matter you are officially involved with?
- Is it likely you could be influenced by a personal interest in carrying out your public duty?
- Would a reasonable person believe you could be so influenced?
- What would be the public perception of whether or not you have a conflict of interests?
- Do your personal interests conflict with your official role?
- What steps do you need to take and that a reasonable person would expect you to take to appropriately manage any conflict of interests?

The following checklist should be considered by any person who considers that they may have an interest in a matter with which Council is concerned. This checklist should be used as a **guide only**.

If after considering the checklist you are still unsure of your obligation, please immediately contact the General Manager who may, if appropriate, seek advice to clarify whether an interest exists.

**Note that this checklist does not affect your obligation to disclose all interests in accordance with sections 444 and 445 of the Local Government Act.**

1. Do I, a relative, friend or associate stand to gain or lose financially from Council's decision or action on this matter?

**Yes:** a pecuniary interest exists – you must declare the interest and leave the meeting when the matter is being discussed and voted on.

**No:** no statutory *pecuniary* interest exists, continue consideration of nonpecuniary (conflict of) interest.

2. Non-pecuniary (conflict of) interest considerations:

- Do I, a relative, friend or associate stand to gain or lose my/our reputation because of Council's decision or action?
- Have I made any promises or commitments in relation to the matter?
- Have I received a benefit or hospitality from someone who stands to gain or lose from Council's decision or action?
- Am I a member of an association, club or professional organisation, or do I have particular ties and affiliations with organisations or individuals, who stand to gain or lose from Council's consideration of the matter?
- Is the person an election campaign donor or someone who helped during my election campaign?
- If I do participate in assessment or decision making, would I be unhappy if my colleagues and the public became aware of my association or connection?
- Would a fair and reasonable person perceive that I was influenced by a personal interest in performing my public duty?

**Yes:** If the answer to any of the above questions is yes, then the Councillor should declare a non-pecuniary interest in the matter in question. The management of the interest will depend on whether the councillor determines that the non-pecuniary interest is significant or less than significant, based on the considerations listed under the heading “Disclosure and management of non-pecuniary interest “

3. Is the matter so remote or insignificant that it could not reasonably or objectively be regarded as likely to influence any decision which you might make in relation to the matter?

**Yes:** no conflict of interest exists.

4. Will the relevant matter affect you or an associate more than any other member of the community?

**Yes:** disclose the interest - the management of the interest will depend on whether the councillor determines that the non-pecuniary interest is significant or less than significant, based on the considerations listed under the heading “Disclosure and management of non-pecuniary interest.

5. Am I confident of my ability to act impartially and in the public interest?

**No:** disclose the interest – you need to exclude yourself from consideration and voting on the relevant matter.

## References

- *Local Government Act, 1993.*
- *ICAC. Under Careful Consideration: Key Issues for Local Government. Guidelines to Reduce Conflicts of Interest in Councils. March 1997.*
- *NSW Ombudsman, Investigating complaints, A manual for investigators, June 2004.*

## History

MINUTE NUMBER	MEETING DATE	DESCRIPTION OF CHANGE
551/94	21 <sup>st</sup> June, 1994	Adopted
18/2001	20 <sup>th</sup> February, 2001	Adopted
124/2005	15 <sup>th</sup> March, 2005	Adopted
4/2007	7 <sup>th</sup> February, 2007	Adopted
497/2008	19 <sup>th</sup> August, 2008	Adopted
26/2012	21 February 2012	Reviewed
50/2013	5 <sup>th</sup> February 2013	Reviewed
601/2014	16 <sup>th</sup> September 2014	Reviewed
164/2017	15 August 2017	Reviewed