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REVIEW OF THE MODEL CODE OF CONDUCT FOR LOCAL COUNCILS – REQUEST FOR SUBMISSIONS ON CONSULTATION DRAFT

The purpose of this circular is to:

1. advise councils of the progress of the review of the *Model Code of Conduct for Local Councils in NSW* (the Model Code),
2. invite submissions on consultation drafts of the new Model Code, Model Code procedures and proposed amendments to the *Local Government Act 1993*.

Progress of the review

Last year, at the request of the Minister for Local Government, the Division of Local Government commenced a review of the Model Code of Conduct for Local Councils in NSW. The review process has included extensive consultation with councils and other stakeholders, to design a system that supports the highest standards of behaviour in local government, in a simple, clear and cost-effective way. This included:

- 1) A discussion paper to seek the views of stakeholders and any other interested persons on the operation of the current version of the Model Code and areas for improvement.

The Division received a total of 122 submissions in response to its discussion paper from a range of sources including councils, individual council officials, conduct reviewers, unions and industry bodies, Members of Parliament, NSW Government agencies such as the ICAC and the Ombudsman and members of the community.

- 2) A position paper on a draft reform proposal for the Model Code and the misbehaviour provisions of the Act, reflecting feedback to date.

The Division received 93 submissions on the position paper from a similarly broad range of sources as those provided in response to the discussion paper. In addition the Division held a series of workshops around the State to discuss and refine the proposal. Workshops were held in Sydney (including at the LGMA Governance network meeting), Tamworth, Dubbo, Wagga Wagga and Ballina.

Based on the feedback the Division has received from submissions and the workshops a refined proposal has now been developed.

Draft proposals

Drafts of the following have now been issued for comment:

- Proposed amendments to the Model Code (the amendments are highlighted in bold)
- Proposed new procedures for the administration of the Model Code
- Proposed amendments to the *Local Government Act 1993* and Local Government (General) Regulation 2005 (the amendments are highlighted in bold)

The consultation drafts are available on the Division's website at www.dlg.nsw.gov.au.

As foreshadowed in the position paper, the Division now seeks comment on the technical detail of the proposed changes.

The Division requests that submissions be made by email to dlg@dlg.nsw.gov.au.

Alternatively, submissions may be made in writing to the following postal address:

Division of Local Government
Department of Premier and Cabinet
Locked Bag 3015
NOWRA NSW 2541

The Division asks that submissions be received by **Tuesday, 26 June 2012**.

Should anyone wish to contact the Division to discuss the consultation drafts or the Model Code of Conduct Review, they may contact Mr John Davies, the Leader of the Division's Council Governance Team, on telephone 02 4428 4139.



Ross Woodward
Chief Executive, Local Government
A Division of the Department of Premier and Cabinet

Division of Local Government
Department of Premier and Cabinet

Review of the Model Code of Conduct for Local Councils in NSW



May 2012

Consultation Drafts

1. BACKGROUND

The original version of the Model Code of Conduct for Local Councils in NSW (the Model Code) commenced operation on 1 January 2005. A revised version of the Model Code subsequently came into force on 27 June 2008 and operates to this day.

The Model Code is an evolving document. While the framework for managing complaints about council officials has vastly improved over the 6 years the Model Code has been in operation, we agree that there remains scope for further refinement and improvement.

Over the three years in which the revised Model Code has been in operation, we have identified or have had brought to our attention a number of areas where the Model Code has not operated in the manner in which it was intended or where its operation could be improved.

We commenced a comprehensive review last year at the request of the Minister for Local Government, the Hon. Don Page MP. We issued a discussion paper in which we outlined the issues that had been raised with us about the operation of the current version of the Model Code. We asked you about any other areas where you considered the Model Code required improvement and asked for your suggestions on how best to make those improvements. We also asked for your views on possible options for improving the Model Code to address the issues that have been raised with us.

We received a total of 122 submissions in response to our discussion paper from a diverse range of sources. Based on our consideration of your submissions we prepared a reform proposal with respect to the Model Code and the misbehaviour provisions of the *Local Government Act 1993* (the Act).

We issued a position paper in which we outlined our proposal and asked you for your comments. We also held workshops around the State to discuss the proposal and to identify possible improvements to it.

We received close to 100 submissions in response to our position paper from a diverse range of sources. Our workshops were also well attended. Based on the

feedback we received from submissions and the workshops we have refined our proposal. The changes to our proposal are outlined below.

2. WHAT IS THE PURPOSE OF THIS PAPER?

Based on our consideration of the feedback we received on our position paper, we have now finalised our reform proposal. We have drafted the following for the purposes of implementing our final proposal:

- Proposed amendments to the Model Code (the amendments are highlighted in bold)
- Proposed new procedures for the administration of the Model Code
- Proposed amendments to the Local Government Act 1993 and Local Government (General) Regulation 2005 (the amendments are highlighted in bold)

As foreshadowed in the position paper, we now seek your comment on the technical detail of the proposed changes.

We request that submissions be made in writing and sent to the following postal address:

Division of Local Government
Department of Premier and Cabinet
Locked Bag 3015
NOWRA NSW 2541

Alternatively, submissions may be emailed to dlg@dlg.nsw.gov.au.

We ask that submissions be received by **Tuesday, 26 June 2012**.

Should you wish to contact us to discuss the consultation drafts or the Model Code of Conduct Review, you may contact Mr John Davies, the Leader of the Division's Council Governance Team, on telephone 02 4428 4139.

3. WHAT ARE OUR REFORM OBJECTIVES?

In preparing a reform proposal, we have had regard to the following needs identified in the submissions we received in relation to the discussion paper:

- For councils to be ultimately responsible for the management of complaints about the conduct of their officials.
- To put in place a framework for managing such complaints that is rigorous, cost-effective and promotes public confidence.
- To ensure that only those matters that warrant investigation are investigated and that alternative resolution strategies are available for those matters that do not warrant investigation.
- For all councils, regardless of their size and location to be able to access a pool of independent and suitably qualified persons to undertake investigations where they are warranted.
- To provide greater clarity and certainty in relation to the procedural requirements of the code at the same time as allowing flexibility.
- To ensure the code has more “teeth”.
- To ensure that rights are adequately protected and that appropriate checks and balances are in place.
- To put in place adequate protections and disincentives to prevent the misuse of the code.
- To minimise the exposure of councils to costly appeal processes in the Courts.
- To remove the current obstacles to the more effective exercise of the Division’s powers under the misbehaviour provisions of the Act and to provide it with more options for managing misbehaviour.

- To make the penalties that may be applied by the Chief Executive and the Pecuniary Interest and Disciplinary Tribunal in relation to misbehaviour more effective in deterring and managing such conduct.

What we intend to do to deliver on these reform objectives is described below.

4. WHAT IS BEING PROPOSED?

As foreshadowed in the Position Paper, in the interests of simplicity, we intend to split the Model Code into two instruments:

- A Model Code of Conduct for Local Councils in NSW (comprising solely of the prescribed standards of conduct), and
- Procedures for the Administration of the Model Code (comprising of the procedural requirements of the Code) (referred to below as the “Model Code procedures”)

In relation to the standards of conduct prescribed under the Model Code, we are proposing to make the following changes:

- In the interests of simplicity and clarity, to remove the “context” section of the Model Code. This is largely educational material and does not constitute enforceable standards of conduct. This will now be incorporated into the better practice Guidelines to the Model Code that will be developed separately.
- Prohibit binding caucus votes that prevent councillors from exercising their discretion. However councillors will still be permitted to meet to discuss council business ahead of meetings;
- Refine the provisions relating to the disclosure of reportable political donations to align them with subsequent amendments to the relevant legislation and to eliminate loopholes;

- Include provisions to address the loss of quorum arising from compliance with requirements under the code;
- Expand the prohibition on the acceptance of cash to include cash-like gifts;
- Amend the provisions relating to relationships between council officials to allow councillors to provide information to the Chair of the audit committee, to prohibit staff from participating in political activities that interfere with their duty to serve a council in a politically neutral manner and to allow councillors to discuss the general manager's performance with him or her;
- Remove loopholes in the provisions that relate to the use of council resources for election purposes; and
- Create a new class of standards relating to the maintenance of the integrity of the code of conduct. Breaches of these standards will be dealt with by the Division under the misbehaviour provisions.

Proposals made in the Position Paper about the disclosure of gifts and benefits of nominal value, councillors meeting with developers or objectors, councillors and staff discussing industrial policy matters and guidance on the application of the code to contractors and volunteers will **not** be included in the revised Model Code. They may, however, be made as better practice suggestions in the Guidelines to the Model Code.

In relation to the Model Code procedures, we are proposing to make the following changes:

- Councils will be able to establish their own panels of conduct reviewers or to establish regional panels
- An option will be created to allow councils to use conduct reviewers from a panel established by a prescribed organisation
- The selection process and criteria for conduct reviewers will be prescribed

- To limit the misuse of the procedures to deal with non code of conduct matters “Code of conduct complaint” will be a defined term
- Complaints must be made within 3 months
- General Managers and Mayors will no longer have any role in the management of complaints about councillors or the General Manager beyond the initial receipt of complaints. General Managers and Mayors will however retain the option to resolve complaints informally at the outset should they choose to do so, but this will be at their discretion.
- Councils will be required to nominate a member of staff other than the General Manager to be a complaints coordinator for the purposes of providing administrative support for the code. This will ensure complaints are dealt with at arms length from the General Manager and Mayor.
- The process for dealing with complaints about councillors and General Managers will be simplified. Where the current code prescribes a 3-tier process, (ie preliminary assessment by the General Manager or Mayor, investigation by a conduct reviewer and determination by the council), under our proposed changes, complaints will be dealt with from start to finish by a conduct reviewer at arms length from the council.
- Preliminary assessment of complaints will be undertaken by independent conduct reviewers
- Limited provision will be made for the Division of Local Government to undertake a preliminary assessment role for a council in relation to complaints made by or about a person where the number or nature of complaints made by or about the person imposes an undue cost burden on the council or impedes the effective administration of the council’s code
- A time limit will be imposed on the preliminary assessment of complaints
- Conduct reviewers will only be permitted to investigate a matter where they are satisfied the alleged conduct is sufficiently serious to warrant investigation and cannot be resolved by alternate means

- Provision will be made for the use of conduct review committees of three persons to investigate matters in limited circumstances
- The investigation process including procedural fairness requirements will be more clearly prescribed
- Councils will no longer make a determination that there has been a breach of the code. Determinations will now be made by the investigator
- Investigation reports will no longer be dealt with in the public domain. The only investigation reports that will be reported to council will be those recommending the imposition of a more severe sanction (eg censure)
- An amendment to section 10A of the Act will be sought to permit councils to consider investigation reports in closed meetings
- Councils' role in relation to code of conduct matters will be limited to imposing more severe sanctions (eg censure) where such sanctions have been recommended by the investigator. Councils will have limited discretion in the imposition of a sanction
- Lesser sanctions (eg training or counselling) will be implemented by the general manager or, in the case of a complaint about the General Manager, by the Mayor
- Where a person has a sanction imposed on them, they will have a limited right to request a review of the determination by the Division

We do **not** propose to proceed with the proposal made in the position paper to prescribed regional groups of councils. As stated above, it will be left to individual councils to determine how to configure their local arrangements for the administration of the code in a way that best suits their needs.

We also do **not** propose to proceed with the proposal made in the position paper for councils to nominate a neighbouring General Manager to undertake the preliminary assessment of complaints. As stated above, this role will now be undertaken by independent contracted conduct reviewers.

As foreshadowed in the position paper, we propose to seek amendments to the Act to simplify and streamline the process for taking action under the misbehaviour provisions.

We propose to seek amendments to the Act to change the term “misbehaviour” to “misconduct”. We believe this will more accurately reflect the nature of the conduct dealt with under those provisions.

We also propose to seek amendments to give the Division more options for managing misbehaviour under the Act. Accordingly the misbehaviour provisions will no longer focus simply on “suspension” as the sole form of action available for misbehaviour but will also refer to a broader range of options known collectively as “disciplinary action”.

Our proposed amendments will also confer on the Division the option of “calling in” code of conduct matters so that they may be dealt with under the misbehaviour provisions instead of a council’s code of conduct.

The amendments will maintain the existing two avenues for seeking disciplinary action to be taken against councillors under the misbehaviour provisions. These are:

- Action by the Chief Executive, Local Government as delegate of the Director General, Department of Premier and Cabinet
- Action by the Local Government Pecuniary Interest and Disciplinary Tribunal

Under our proposed amendments, the sanctions available to the Chief Executive will be strengthened to include suspension for up to three months.

The sanctions available to the Tribunal will be strengthened to align with those available for breaches of the pecuniary interest provisions of the Act. Under our proposed amendments, the Tribunal will be able to disqualify a councillor from holding civic office for up to 5 years for misbehaviour.

Under our proposed amendments, the Chief Executive and the Tribunal may take into consideration previous incidents of misbehaviour in imposing these sanctions.

5. WHAT DO WE WANT FROM YOU?

Attached to this paper are the following:

- Proposed amendments to the Model Code of Conduct (the amendments are highlighted in bold)
- Proposed new procedures for the administration of the Model Code
- Proposed amendments to the Local Government Act 1993 and Local Government (General) Regulation 2005 (the amendments are highlighted in bold).

We want to ensure that our proposed changes are workable and will provide for the more effective and efficient administration of the code of conduct.

To this end, we would like to hear your views on our proposed changes. In particular, we would like to hear your views on the following:

- Do you agree with the proposals? If not why not?
- Is there anything unclear about our proposed drafting?
- If so, how could it be said more clearly?
- Is there anything we have missed?
- Are there any loopholes?
- Does any of our proposed drafting carry potential unforeseen consequences?

We request that you make your submissions in writing to the following postal address:

Model Code of Conduct Review
Division of Local Government
Locked Bag 3015
NOWRA NSW 2541

Alternatively your submission may be lodged electronically via email to: dlg@dlg.nsw.gov.au .

We ask that submissions be received by **Tuesday, 26 June 2012**.

Should you wish to discuss the consultation drafts or the Model Code of Conduct Review, please contact Mr John Davies, the Leader of the Division's Council Governance Team, on telephone 02 4428 4139.

6. WHERE TO FROM HERE?

We will consider your comments prior to recommending the final Model Code and Model Code procedures to the Minister for consideration.

As with previous versions of the Model Code we intend to supplement the new Model Code and procedures with amended Guidelines to assist in their interpretation. We also intend to reissue an updated education package to assist councils to raise awareness among councillors, staff, delegates and committee members of any new requirements under the new Model Code and procedures.

7. LIST OF ATTACHMENTS

1. Summary version of the proposed new Model Code
2. Draft revised Model Code
3. Proposed procedures for the administration of the Model Code
4. Proposed amendments to the *Local Government Act 1993*

SUMMARY

PROPOSED NEW MODEL CODE OF CONDUCT

Standards of conduct for council officials

Council officials play a vital role in serving local communities.

To do this effectively you will want to uphold the highest standards of behaviour to ensure the public has trust and confidence in local government.

What are the expected standards of behaviour?

The following standards of behaviour are expected of council officials. You must:

- not conduct yourself in a manner that is likely to bring the council into disrepute
- act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions
- treat others with respect at all times
- consider issues consistently, promptly and fairly
- not harass, discriminate against, or support others who do so
- ensure that development decisions are properly made and that parties involved in the development process are dealt with fairly
- not participate in binding caucus votes
- avoid or appropriately manage any conflict of interests
- take all reasonable steps to ascertain the source of and report any reportable political donations
- not accept money or gifts of value and avoid situations that give rise to the appearance of securing favourable treatment
- in the case of councillors, not direct council staff or influence staff in the exercise of their role
- in the case of staff, ensure efficient and effective operation of the council's organisation and ensure the implementation of the decisions of the council without delay
- examine and make available information in accordance with Government Information (Public Access) Act 2009 and the council's charter.
- use and secure information appropriately
- use council resources ethically, effectively, efficiently and carefully in the course of official duties
- not make complaints improperly or take detrimental action in response to complaints about standards of behaviour.

Council officials include councillors, members of staff of council, administrators appointed under section 256 of the Act, members of council committees, conduct reviewers and delegates of council.

These standards are described in detail in the Model Code of Conduct for Local Councils in NSW. The code is a legal document that all officials are obliged to

understand and follow. The Model Code forms the basis of each council's own code of conduct.

What happens if the standards are not met?

In the very small number of cases where council officials fail to follow this code, this will be dealt with in accordance with the procedure for administration of the Model Code.

Complaints about a breach of these standards by anyone other than the general manager are to be made at first instance to general manager. Complaints about the general manager are to be made to the Mayor. In most cases where the complaint cannot be resolved informally, the process involves investigation by an independent conduct reviewer. The process for dealing with complaints is summarised in the flowchart below.

Breaches of these standards by delegates or council committee members may result in the following action:

- censure
- requirement of apology
- prosecution
- removal or restriction of delegation

Breaches by council staff may result in disciplinary action, termination or such other penalty permitted under the relevant industrial award.

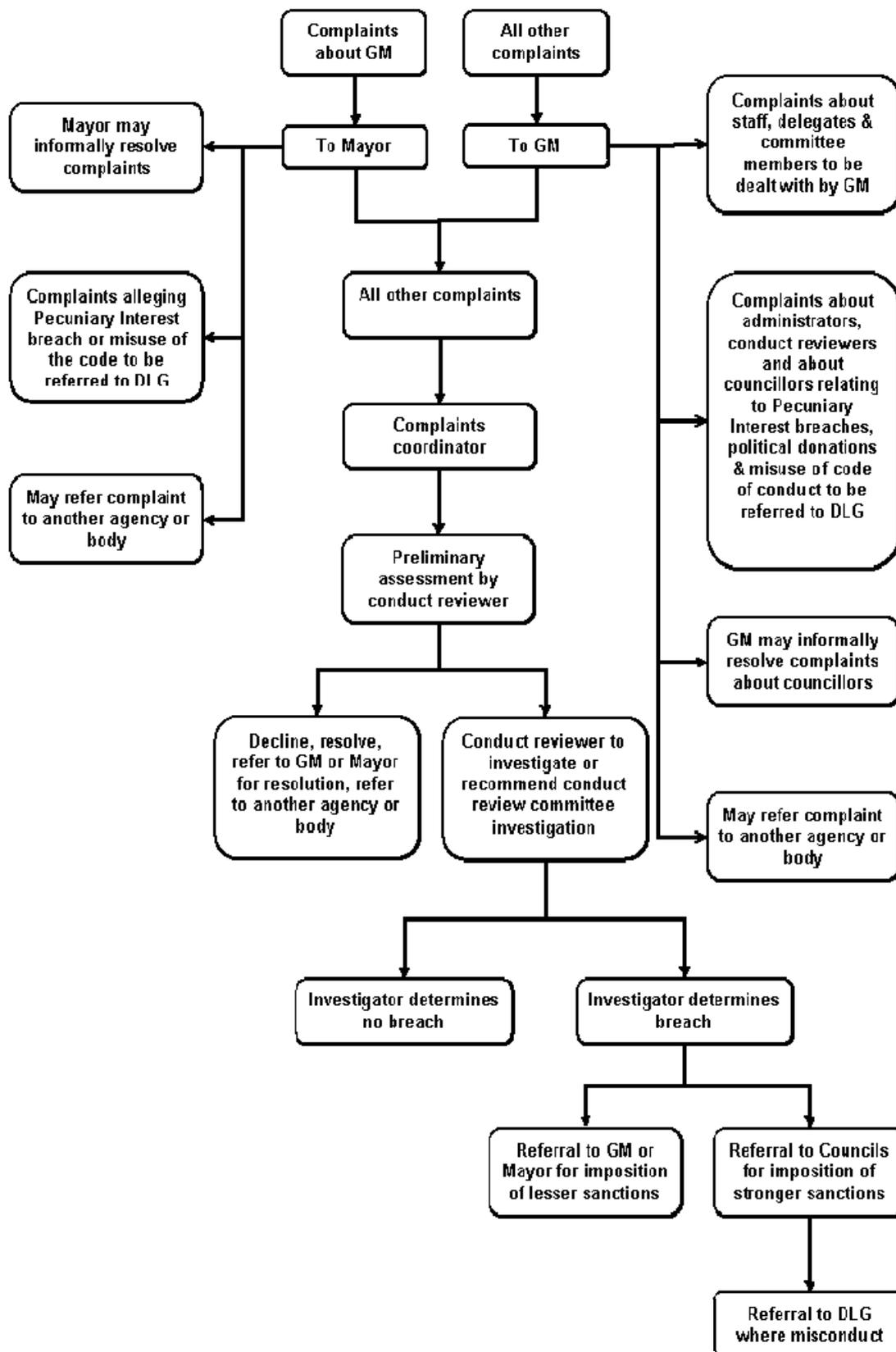
Breaches by the general manager may result in the following action

- requirement for training
- counselling
- requirement for apology
- findings of inappropriate conduct made public
- action under the general manager's contract

Breaches by councillors may result in the following action:

- requirement for training
- counselling
- requirement for apology
- findings of inappropriate conduct made public
- censure
- referral to the Division of Local Government for disciplinary action including but not limited to suspension for up to 3 months
- referral by the Division to the Pecuniary Interest and Disciplinary Tribunal for suspension of up to 6 months or disqualification from holding civic office.

Understanding the process for code of conduct breaches





Premier & Cabinet
Division of Local Government

The Model Code of Conduct for Local Councils in NSW

May 2012

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PART 1 INTRODUCTION

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 sections 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.

Failure by a councillor to comply with the standards of conduct prescribed under this code constitutes misconduct for the purposes of the *Local Government Act 1993* (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 set of guidelines has also been developed to assist councils to review and enhance their codes of conduct. The guidelines support this code and provide further information and examples on the provisions in this code.

PART 2 PURPOSE 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 the 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.

3.10 For the purposes of clause 3.9, a binding caucus vote is a process whereby a group of councillors establish a predetermined position on a matter before the council by way of a vote or other means that has the effect of compelling members of the group to vote on that matter in accordance with that position regardless of the merits of the matter or any personal views members of the group may have on the matter.

3.11 Clause 3.9 does not prohibit councillors from discussing a matter before the council prior to considering the matter in question at a council meeting.

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 interests 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), you must disclose in writing to your supervisor or the general manager, the nature of any pecuniary interest you have in a matter you are dealing with as soon as practicable.

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, the decision on which option should be taken to manage a non-pecuniary conflict of interests must be made in consultation with your manager.
- 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, 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 Councillors should take all reasonable steps to ascertain the source of any reportable political donations.**
- 4.22 Where a councillor has received a direct benefit to their election campaign from a reportable political donation:**
- a) **made by a major political donor or a related entity in the previous four years; and**
 - b) **where the major political 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 interests in accordance with clause 4.16(b).**
- 4.23 The obligation to disclose and manage a conflict of interests under clause 4.22 will only arise where there is a direct and demonstrable connection between the reportable political donation in question and any benefit to the election campaign of the councillor.**
- 4.24 For the purposes of this Part (Part 4):**
- 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*, and
 - c) a "related entity", is a "related body corporate" for the purposes of section 50 of the *Commonwealth Corporations Act 2001*.
- 4.25 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.

4.26 If a councillor has received a **direct benefit to their election campaign from a reportable political donation** of the kind referred to in clause 4.22, that councillor is not prevented from participating in a decision to delegate council's decision-making role to council staff 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

4.27 Where a majority of councillors are precluded from consideration of a matter under this Part (Part 4), the council must resolve to delegate consideration of the matter in question to another person.

4.28 Where a majority of councillors are precluded from consideration of a matter under this part (Part 4), 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.

4.29 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 before the council will result in the loss of a quorum, and
- b) the matter before the council relates to the exercise of a function of the council that may not be delegated under section 377 of the Act.

4.30 A councillor who would otherwise be precluded from participating in the consideration of a matter under this Part (Part 4) 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 part 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

4.31 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. (*section 353*)

- 4.32 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

- 4.33 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:
 - iii) the discussion of official business
 - iv) council work related events such as training, education sessions, workshops
 - v) conferences
 - vi) council functions or events
 - vii) 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 officials 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.

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 cash or a **cash-like gift**, regardless of the amount.

5.6 For the purposes of clause 5.5(e), 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 corporate. 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 industrial relations 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, in the course of their work, may be provided with information by individual councillors.**

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 does not conflict with their primary duty to serve the council in a politically neutral manner.**

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 staff matters and not broader industrial 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 **development applicants or objectors to development applications** 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.
- 6.8 It is appropriate that staff and staff organisations have discussions with councillors in relation to matters of industrial policy.
- 6.9 Notwithstanding clause 6.7, councillors and administrators may discuss issues with the general manager relating to the general manager's employment and performance provided they do so in a manner that is consistent with the requirements of the general manager's employment contract.**

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 property or facilities for the purpose of assisting your election campaign or the election campaign of others unless the property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the 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.

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 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 any function they have exercised 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 impede 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, you must comply with any council resolution requiring you to take action as a result of a breach.**

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 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 (Part 8) by other council officials are to be made to the general manager for consideration under the procedures prescribed under the Regulation for the administration of this code.**

PART 9 DEFINITIONS

In the Model Code of Conduct the following definitions apply:

the Act	the Local Government Act 1993
act of disorder	see the definition in clause 256 of the <i>Local Government (General) Regulation 2005</i>
administrator	a person appointed under section 256 of the Act
Chief Executive	Chief Executive of the Division of Local Government, Department of Premier and Cabinet
conflict of 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.
council official	includes councillors, members of staff of council, administrators appointed under section 256 of the Act, members of council committees, conduct reviewers and delegates of council
delegate of council	a person or body, and the individual members of that body, to whom a function of council is delegated
designated person	see the definition in section 441 of the Act
election campaign	includes council, State and Federal election campaigns
personal information	information or an opinion about a person whose identity is apparent, or can be determined from the information or opinion
the Regulation	the Local Government (General) Regulation 2005

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.



Premier & Cabinet
Division of Local Government

Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW

May 2012

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PART 1 INTRODUCTION

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 of Conduct”). Both the Model Code and Model Code Procedures are made under section 440 of the *Local Government Act 1993* (“the Act”) and the Local Government (General) Regulation 2005 (“the Regulation”).

Section 440 of the Act requires 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 prescribed 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.

A set of guidelines has also been developed to assist councils in the implementation of these procedures.

PART 2 DEFINITIONS

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

“the Act”	the Local Government Act 1993
“administrator”	a person appointed under section 256 of the Act.
“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 member”	a person other than a councillor or member of staff of a council who is a member of a committee of the council
“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 Division”	the Division of Local Government, Department of Premier and Cabinet
“investigator”	a conduct reviewer or conduct review committee
“the Regulation”	the Local Government (General) Regulation 2005
“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 arrangement 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 conduct review committee, a person must, at a minimum, meet the following requirements:
- a) knowledge of the local government context, 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 will not be 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 senior and suitably qualified member of staff of the council to act as a complaints coordinator.

- 3.13 The general manager may appoint other senior and suitably qualified 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 must also be a nominated disclosures officer 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 Division 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.

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.

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

- 4.4 All code of conduct complaints other than those relating to the general manager are to be made to the general manager in writing.
- 4.5 Where a code of conduct complaint about a council official other than the general manager can not be made in writing, the complaint must be

confirmed with the complainant in writing as soon as possible after the receipt of the complaint.

- 4.6 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.
- 4.7 The general manager or, where the complaint is referred to a conduct reviewer, the conduct reviewer, will consider the complainant's preferences in deciding how to deal with the complaint.
- 4.8 Notwithstanding clauses 4.4 and 4.5, 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?

- 4.9 Code of conduct complaints about the general manager are to be made to the Mayor in writing.
- 4.10 Where a code of conduct complaint about the general manager can not be made in writing, the complaint must be confirmed with the complainant in writing as soon as possible after the receipt of the complaint.
- 4.11 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.
- 4.12 The Mayor or, where the complaint is referred to a conduct reviewer, the conduct reviewer, will consider the complainant's preferences in deciding how to deal with the complaint.
- 4.13 Notwithstanding clauses 4.9 and 4.10, 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 will 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 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 will 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 adversely affected by the breach,
 - c) prosecution for any breach of the law,
 - d) removing or restricting the person's delegation,
 - e) removing the person from membership of the relevant council committee, or
 - f) revising any of council's policies or procedures
- 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 is to refer all code of conduct complaints about conduct reviewers to the Division 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 is to 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 is to refer the following code of conduct complaints about councillors to the Division:
- 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 11 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 Division under clause 5.39.
- 5.17 Where the general manager refers a complaint to the Division 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, he or she may seek to resolve code of conduct complaints about councillors, other than those requiring referral to the Division under clause 5.16, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology.
- 5.19 Where the general manager resolves a code of conduct complaint under clause 5.18 to their satisfaction, the general manager must notify the complainant in writing of the steps taken to resolve the complaint and this will serve to 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 Division 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 is to refer the following code of conduct complaints about the general manager to the Division:
- a) complaints alleging a breach of the pecuniary interest provisions of the Act,
 - b) complaints alleging a breach of Part 11 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 Division under clause 5.39.
- 5.22 Where the Mayor refers a complaint to the Division 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 Division under clause 5.16, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology.
- 5.24 Where the Mayor resolves a code of conduct complaint under clause 5.23 to their satisfaction, the Mayor must notify the complainant in writing of the steps taken to resolve the complaint and this will serve to 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 Division 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 Division, 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 or conduct reviewer refers a complaint to an external agency or body, under clause 5.26, they will 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 or body will serve to 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 identity of complainants

- 5.29 In dealing with matters under these procedures, information that identifies or tends to identify complainants is not to be disclosed 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 Conduct reviewers or conduct review committees 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, a conduct reviewer or conduct review committee will 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 relate to the management of Public Interest Disclosures.

- 5.36 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.

- 5.37 Where a complainant councillor declines to consent to the disclosure of their identity as the complainant under clause 5.36, the general manager or the Mayor must refer the complaint to the Division for consideration.

Special complaints management arrangements

- 5.38 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.

- 5.39 Where the Division receives a request under clause 5.38, 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.

- 5.40 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.

- 5.41 The Division may by notice in writing, amend or terminate a special complaints management arrangement at any time.

- 5.42 While a special complaints management arrangement is in force, an officer of the Division (the assessing Divisional officer) will 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 clauses 5.43 below.
- 5.43 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 Divisional officer will 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.
- 5.44 Prior to the expiry of a special complaints management arrangement, the Division, will, in consultation with the general manager review the arrangement to determine whether it should be renewed or amended.
- 5.45 A special complaints management arrangement will expire on the date specified in the arrangement unless renewed under clause 5.44.

PART 6 PRELIMINARY ASSESSMENT

Referral of code of conduct complaints to conduct reviewers

- 6.1 The complaints coordinator will 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 prescribed under the Regulation.
- 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 7.1 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 will 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.

Preliminary assessment by a conduct reviewer

- 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 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 a conduct review committee be convened to investigate the matter.
- 6.11 In determining how to deal with a matter under clause 6.10, the conduct reviewer is to 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 Division, any complaints referred to him or her that should have been referred to the Division 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 will 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 will 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 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 to the general manager or to the Mayor to be resolved by alternative and appropriate means, they will 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 is to consult with the general manager or Mayor prior to referring a matter 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 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, will be responsible for implementing, or overseeing the implementation of the conduct reviewer's recommendation.
- 6.26 Where the conduct reviewer refers a matter 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, will 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 a conduct review committee be convened to investigate a matter, the conduct reviewer will notify the complaints coordinator of their recommendation and the reasons for their recommendation in writing.
- 7.2 The complaints coordinator will 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 prescribed under the Regulation.
- 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 may 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 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 are to 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 the 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 will conduct business in the absence of the public.
- 7.17 The conduct review committee will maintain proper records of its proceedings.
- 7.18 The complaints coordinator will undertake the following functions in support of a conduct review committee:
 - a) provide procedural advice where required,
 - b) ensure adequate resources are provided including secretariat support

- c) attend meetings of the conduct review committee in an advisory capacity
- 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 meeting 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 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.
- 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 will serve to 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 that person with relevant extracts of their draft report containing such comment and invite the 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 submission 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 any other person, they must provide the affected person with a further opportunity to make a written submission in relation to the new adverse comment.
- 8.30 Where the subject person or any other 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 undertake any training or other education relevant to the conduct giving rise to the breach
- c) in the case of a breach by a councillor, that the councillor be counselled by the general manager for their conduct,
- d) in the case of a breach by the general manager, that the general manager be counselled by the Mayor for their conduct,
- e) that the subject person apologise to any person affected by the breach in such a time and form specified by the recommendation,
- f) that findings of inappropriate conduct be made public,
- g) in the case of a breach by the general manager, that action be taken under the general manager's contract for the breach,
- h) in the case of a breach by a councillor, that the councillor be formally censured for the breach under section 440G of the Act,
- i) 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 council states its belief that grounds may exist that warrant the councillor's suspension, and
 - iii. that the council request that the Director General suspend the councillor for the conduct.

- 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 will 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 will provide a copy of the investigator's report to the general manager. The general manager will be 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) to (d), the complaints coordinator will 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 will be responsible for implementing the recommendation/s where the report relates to a councillor's conduct. The Mayor will be responsible for implementing 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 (e) to (i), the complaints coordinator will, where practicable, arrange for the investigator's report to be reported to the next ordinary council meeting for the council's consideration.

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 it is recommended by an investigator in their final report under clause 8.35, paragraphs (e) to (i).

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

- 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.
- 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.
- 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 Division 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 Division.
- 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 are to provide copies to the complaints coordinator for submission to the council and to 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 will only be 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 the following sanctions on a subject person:
- a) that the subject person apologise to any person 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 council states its belief that grounds may exist that warrant the councillor's suspension, and
 - iii. that the council request that the Director General suspend the councillor for the conduct.

8.57 The council may only impose a sanction on the subject person under clause 8.56 that is recommended by the investigator in their final report.

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

8.59 Where the council resolves not to adopt the investigator's recommendation, the complaints coordinator must notify the Division 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 Division.

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 Division to make a ruling on a question of procedure (a practice ruling).

9.3 Where the Division 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 Division makes a practice ruling, all parties are to comply with it.

9.5 The Division 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.
- 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 Division may decline to conduct a review, where the grounds upon which the review is sought are not sufficiently specified.
- 9.10 The Division may undertake a review of a matter without receiving a request under clause 9.6.
- 9.11 The Division will undertake a review of the matter on the papers. However the Division may request that the complaints coordinator provide such further information that the Division considers reasonably necessary for them to review the matter. The complaints coordinator will, as far as is reasonably practicable, provide the information requested by the Division.
- 9.12 The Division will notify the person who requested the review and the complaints coordinator of the outcome of the Division's review in writing and the reasons for its decision. In doing so, the Division may comment on any other matters the Division considers to be relevant.
- 9.13 Where the Division 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.
- 9.14 In the case of a sanction implemented by the general manager or Mayor under clause 8.42, where the Division recommends that the decision to impose a sanction be reviewed:
- a) the complaints coordinator will 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 will review any action taken by them to implement the sanction, and
- c) the general manager or Mayor will consider the Division's recommendation in doing so.

9.15 In the case of a sanction imposed by the council by resolution under clause 8.55, where the Division recommends that the decision to impose a sanction be reviewed:

- a) the complaints coordinator will, where practicable, arrange for the Division's determination to be tabled at the next ordinary council meeting, and
- b) the council will:
 - i. review its decision to impose the sanction, and
 - ii. consider the Division's recommendation in doing so, and
 - iii. resolve to either rescind or reaffirm its previous resolution in relation to the matter.

9.16 Where having reviewed its previous decision in relation to a matter under clause 9.15, 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 Division may at any time issue a practice direction in relation to the application of these procedures.

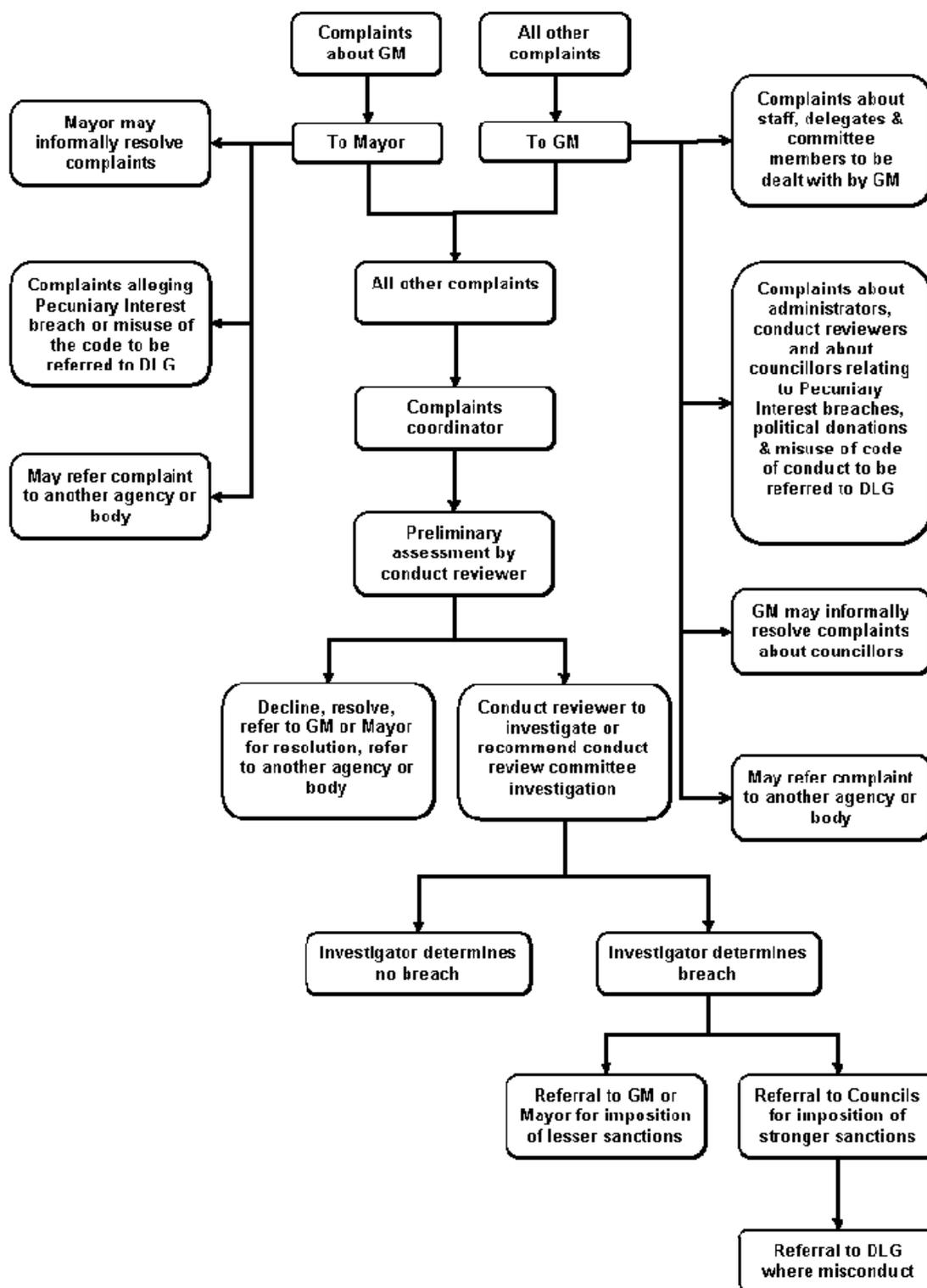
11.2 The Division will issue practice directions in writing, by circular to all councils.

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 will arrange for the following statistics to be reported to the council within 3 months of the end of each financial year:
- a) the total number of code of conduct complaints made about councillors and the general manager under the code of conduct,
 - 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.
- 12.2 The council is to provide the Division with a report containing the statistics referred to in clause 12.1 within 3 months of the end of each financial year.

Model Code Procedure Flowchart





Premier & Cabinet
Division of Local Government

Proposed Amendments to the Local Government Act 1993 to Support the Revised Model Code of Conduct

May 2012

INTRODUCTION

The purpose of this document is to provide an indication of how proposed amendments to the Local Government Act 1993 to support the revised Model Code of Conduct for Local Councils in NSW may look. This document has been prepared by the Division of Local Government for consultation purposes only to assist you to provide feedback on the drafting of the proposed amendments.

The proposed amendments are highlighted in bold. Existing headings in the legislation are also in bold. Proposed amendments to headings in the legislation are underlined.

The proposed amendments outlined in this document are indicative only and may not reflect any final amendments that may be made to the Act. Your comments will assist us to provide drafting instructions to the Parliamentary Counsel's Office.

Ultimately any final proposed amendments will need to be approved by Cabinet, drafted by the Parliamentary Counsel's Office and passed by both Houses of Parliament.

Proposed amendment to section 10A

- (1) A council, or a committee of the council of which all the members are councillors, may close to the public so much of its meeting as comprises:
 - (a) the discussion of any of the matters listed in subclause (2), or
 - (b) the receipt or discussion of any of the information so listed.

- (2) The matters and information are the following:
 - (a) personnel matters concerning particular individuals (other than councillors),
 - (b) the personal hardship of any resident or ratepayer,
 - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
 - (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret,
 - (e) information that would, if disclosed, prejudice the maintenance of law,
 - (f) matters affecting the security of the council, councillors, council staff or council property,

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege,
 - (h) information concerning the nature and location of a place or an item of Aboriginal significance on community land,
 - (i) **a matter dealt with under the council's code of conduct adopted under section 440(3).**
- (3) A council, or a committee of the council of which all the members are councillors, may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.
- (4) A council, or a committee of a council, may allow members of the public to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.

Proposed amendments to sections 439 and 440

439 Conduct of councillors, administrators, staff and delegates

- (1) Every councillor, **administrator**, member of staff of a council and delegate of a council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act.
- (2) Although this section places certain duties on councillors, **administrators**, members of staff of a council and delegates of a council, nothing in this section gives rise to, or can be taken into account in, any civil cause of action.

440 Codes of conduct

- (1) The regulations may prescribe the following:
- (a) a model code of conduct (the model code) applicable to councillors, **administrators**, members of staff of councils and delegates of councils,
 - (b) procedures for the administration of the model code (model code procedures), and**
 - (c) arrangements for the implementation of the model code and model code procedures.**
- (2) Without limiting what may be included in the model code, the model code may:
- (a) relate to any conduct (whether by way of act or omission) of a councillor, **administrator**, member of staff or delegate in carrying out his or her functions that is likely to bring the council or holders of civic office into disrepute, and

- (b) in particular, contain provisions for or with respect to conduct specified in Schedule 6A.
- (3) A council must adopt a code of conduct (the adopted code) **and procedures for the administration of the adopted code (the adopted code procedures)** that incorporate the provisions of the model code **and the model code procedures respectively**. The adopted code **and adopted code procedures** may include provisions that supplement the model code **and model code procedures**.
- (4) A council's adopted code **and adopted code procedures** have no effect to the extent that they are inconsistent with the model code and **the model code procedures** as in force for the time being.
- (5) Councillors, **administrators**, members of staff and delegates of a council must comply with the applicable provisions of:
- (a) the council's adopted code, except to the extent of any inconsistency with the model code as in force for the time being, and
- (b) the model code as in force for the time being, to the extent that:
- (i) the council has not adopted a code of conduct, or
- (ii) the adopted code is inconsistent with the model code, or
- (iii) the model code contains provisions or requirements not included in the adopted code.
- (6) A provision of a council's adopted code is not inconsistent with the model code merely because the provision makes a requirement of the model code more onerous for persons required to observe the requirement.
- (7) A council must, within 12 months after each ordinary election, review its adopted code **and adopted code procedures** and make such adjustments as it considers appropriate and as are consistent with this section.
- (8) **The Director General may issue:**
- (a) **practice directions to provide procedural guidance to councils on the administration of their adopted codes of conduct.**
- (b) **practice rulings on questions of procedure in relation to particular matters being dealt with under a council's adopted code.**
- (9) **A council and any person exercising a function under a council's adopted code procedures must comply with a practice direction or practice ruling issued by the Director General.**
- (10) **The Director General may authorise a member of staff of the Department to exercise a function of the Department that is prescribed under the model code procedures.**

- (11) Nothing in this section or such a code gives rise to, or can be taken into account in, any civil cause of action, but nothing in this section affects rights or liabilities arising apart from this section.

Proposed amendments to the current misbehaviour provisions

Division 3 Misconduct

440F Definitions

- (1) In this **Chapter**:

administrator means a person appointed under section 256

Disciplinary action means any of the following:

- (a) disciplinary action by the Director General under section 440K
- (b) suspension of a councillor from civic office by the Director General under section 440L
- (c) a decision by the Pecuniary Interest and Disciplinary Tribunal under section 482A

Misconduct of a councillor means any of the following:

- (a) a contravention by the councillor of this Act or the regulations,
- (b) a failure by the councillor to comply with an applicable requirement of a code of conduct as required under section 440 (5),
- (c) an act of disorder committed by the councillor at a meeting of the council or a committee of the council,
- (d) **a failure to comply with an order made by the Director General under this Division.**

but does not include a contravention of the disclosure requirements of Part 2.

Pattern of misconduct means a pattern of conduct that comprises of more than one incident of misconduct.

Note. A contravention of the disclosure requirements of Part 2 is dealt with under other provisions of this Chapter.

- (2) A reference in this **Chapter** to **misconduct** or an incident of **misconduct** includes a reference to **misconduct** that consists of an omission or failure to do something.

440G Formal censure of councillor for misconduct

- (1) A council may by resolution at a meeting formally censure a councillor for **misconduct**.
- (2) A formal censure resolution may not be passed except by a motion to that effect of which notice has been duly given in accordance with regulations made under section 360 and, if applicable, the council's code of meeting practice.
- (3) A council may pass a formal censure resolution only if it is satisfied that the councillor has **engaged in misconduct** on one or more occasions.
- (4) The council must specify in the formal censure resolution the grounds on which it is satisfied that the councillor should be censured.
- (5) A motion for a formal censure resolution may, without limitation, be moved on the report of a committee of the council and any such report must be recorded in the minutes of the meeting of the council.

440H How may the process for disciplinary action under this Division be initiated?

- (1) The process for **disciplinary action under this Division** may be initiated by:
 - (a) a request made by the council by resolution communicated to the Director-General, in which the council states its belief that grounds may exist that warrant the councillor's suspension, or
 - (b) a referral by the general manager where such a referral is required under section 328B or the model code procedures, or**
 - (c) at the Director-General's own motion, or**
 - (d) a request made by the Director-General to the council for a report from the council in relation to the councillor's alleged **misconduct**, or
 - (e) a report made by the Ombudsman in which the Ombudsman states that the Ombudsman is satisfied that grounds exist that warrant **disciplinary action under this Division**, or
 - (f) a report made by the Independent Commission Against Corruption in which the Commission recommends that consideration be given to **disciplinary action** under this Division.
- (2) **The process for disciplinary action under this Division cannot be initiated by a request made by the council unless the councillor has:**
 - (a) been formally censured for the misconduct in question, or**
 - (b) been expelled from a meeting of the council or a committee of the council for the incident of misconduct in question.**

- (3) The council must make a report to the Director-General requested under subsection (1)(c) before the date specified in the Director-General's request or any later date allowed by the Director-General.
- (4) This section authorises such requests and reports to be made, and a reference in this section to a report made by the Independent Commission Against Corruption or the Ombudsman is a reference to a report made to the Director-General under the authority of this subsection or under any other provisions of this or any other Act.
- (5) Nothing in this section affects any function under any other provisions of this or any other Act that authorises the making of a report or recommendation concerning suspension of a councillor from civic office.

440I What are the grounds on which disciplinary action may be taken against a councillor?

The grounds on which disciplinary action may be taken against a councillor under this Division are that the councillor's conduct has involved one or more incidents of misconduct or a pattern of misconduct.

440J Preparation of a departmental report a prerequisite to disciplinary action

- (1) The Director-General may arrange for a departmental report to be prepared into the matters initiated under section 440H.
- (2) The Director-General may authorise a member of the staff of the Department to conduct an investigation into any or all of those matters to assist in the preparation of the departmental report.
- (3) A member of staff authorised to conduct an investigation under subsection (2) may require a councillor or member of staff of a council to:
 - (a) give a statement of information,
 - (b) produce any document or other thing, or
 - (c) give a copy of any document.
- (4) The preparation of a departmental report is a prerequisite to a decision by the Director-General to take disciplinary action against a councillor, but is not necessary if the Independent Commission Against Corruption or the Ombudsman states in a report that the Commission or Ombudsman is satisfied that grounds exist that warrant disciplinary action against the councillor

- (5) In this Division, departmental report means a report prepared by a person authorised by the Director-General to do so.

440K Disciplinary action by the Director General

- (1) The Director General may by order in writing take one or more of the disciplinary actions against a councillor referred to in subsection (2):
- (a) if the Director-General has considered a departmental report into the matters concerned and is satisfied that grounds exist that warrant disciplinary action against the councillor, or
 - (b) if the Independent Commission Against Corruption or the Ombudsman states in a report that the Commission or Ombudsman is satisfied that grounds exist that warrant disciplinary action against the councillor.
- (2) For the purposes of subsection (1), the Director-General may take one or more of the following disciplinary actions against the councillor:
- (a) counsel the councillor.
 - (b) reprimand the councillor
 - (c) make public findings of misconduct
 - (d) require the councillor to apologise to any person adversely affected by the conduct that constitutes an incident of misconduct
 - (e) require the councillor to take such action specified in the order
 - (f) suspend the councillor's right to be paid any fee or other remuneration to which the councillor would otherwise be entitled as the holder of the civic office in respect of a period not exceeding 3 months.
- (3) A copy of the order must be served on the councillor.
- (4) A failure by a councillor to comply with a requirement under an order issued by the Director General under this section will constitute grounds for suspension from civic office by the Director General or referral to the Pecuniary Interest and Disciplinary Tribunal.

440L Suspension by Director-General for misconduct

- (1) The Director-General may by order in writing suspend a councillor from civic office for a period not exceeding **three months**:
- (a) if the Director-General has considered a departmental report into the matters concerned and is satisfied that grounds exist that warrant the councillor's suspension, or
 - (b) if the Independent Commission Against Corruption or the Ombudsman states in a report that the Commission or

Ombudsman is satisfied that grounds exist that warrant the councillor's suspension.

- (2) A copy of the order must be served on the councillor.
- (3) A councillor, while suspended from civic office under this section:
 - (a) is not entitled to exercise any of the functions of the civic office, and
 - (b) is not entitled to any fee or other remuneration to which he or she would otherwise be entitled as the holder of the civic office.
- (4) **The Director General may take into consideration previous incidents of misconduct by the councillor when determining whether to suspend the councillor from civic office.**

440M When does an order of suspension take effect?

The period of suspension under an order made by the Director-General commences on the date 7 days after the service of the order on the councillor or the date specified in the order for the commencement of the period of suspension, whichever is the later.

440N Appeals against disciplinary action by the Director General

- (1) A councillor against whom an order of **disciplinary action or suspension** is made by the Director-General may appeal against the order to the Pecuniary Interest and Disciplinary Tribunal.
- (2) Such an appeal may not be made more than 28 days after the date the order was served on the councillor.
- (3) The Tribunal may stay the order of suspension until such time as the Tribunal determines the appeal.
- (4) The Tribunal may:
 - (a) confirm the order, or
 - (b) quash the order, or
 - (c) amend the order consistently with the powers of the Director-General.
- (5) If the order is quashed, any fee or other remuneration withheld is payable to the councillor.
- (6) If the order is amended, the order as amended has effect as if it had been made in that form by the Director-General.
- (7) The regulations may make provision for or with respect to the making, hearing and determination of appeals under this section.

440O Referral of matters to Pecuniary Interest and Disciplinary Tribunal

- (1) The Director-General may refer a matter **initiated** under section 440H for consideration by the Pecuniary Interest and Disciplinary Tribunal instead of **taking disciplinary action** against the councillor concerned under this Division.
- (2) The preparation and consideration of a departmental report is not a prerequisite to a decision by the Director-General to refer a matter to the Tribunal, but the Director-General may take into consideration a departmental report into the matter if one is prepared.
- (3) A matter is referred to the Tribunal under this section by means of a report presented to the Tribunal by the Director-General. A report may contain or be accompanied by such material and observations as the Director-General thinks fit.
- (4) The regulations may make provision for or with respect to the reference of matters to the Tribunal under this section.

440P Are there alternatives to disciplinary action under this Division or referral to Pecuniary Interest and Disciplinary Tribunal?

- (1) The Director-General may, after considering a matter **initiated** under section 440H and any relevant departmental report prepared under section 440J, decide to take no further action on the **matter**, whether or not a departmental investigation or departmental report has been authorised, started or completed, if satisfied that no further action is warranted.
- (2) The Director-General may, instead of **taking disciplinary action against a councillor** under this Division or referring the matter to the Pecuniary Interest and Disciplinary Tribunal, refer the matter to the council with recommendations as to how the council might resolve the matter, by alternative dispute resolution or otherwise.

440Q Expenses to be borne by council

- (1) The Director-General may recover the reasonable expenses incurred by or in respect of the Department in considering and dealing with a request made by a council under section 440H from the council, including the expenses of any departmental investigation and departmental report into the matters raised by or connected with the request.
- (2) The Director-General may make a determination of the amount of the expenses referred to in subsection (1) and serve a notice on the council requiring the amount so determined be paid in recovery of the Department's expenses.

- (3) An amount equal to the expenses as so determined is payable to the Department as a debt by the council concerned, except as determined by the Director-General.
- (4) The council may apply to the Administrative Decisions Tribunal for a review of whether any part of the expenses so determined are not reasonable expenses.
- (5) The Director-General must give effect to any decision of the Tribunal on a review of the determination of the amount of the expenses.
- (6) A reference in this section to expenses incurred includes a reference to remuneration paid to departmental staff.

440Q Reasons to be given

- (1) The Director-General is required to prepare a written statement of reasons for:
 - (a) **disciplinary action taken under section 440K,**
 - (b) **imposing a period of suspension,**
 - (c) **a decision to take no action**
 - (d) referring a matter to the Pecuniary Interest and Disciplinary Tribunal.
- (2) The statement of reasons is to be provided to the council and councillor concerned.
- (3) **The Director General may make the written statement of reasons public.**

Proposed amendments to section 482A

482A Decision of Pecuniary Interest and Disciplinary Tribunal—misconduct matters

- (1) This section applies where a matter has been referred to the Pecuniary Interest and Disciplinary Tribunal under section 440O.
- (2) The Tribunal may, if it finds that the **conduct** concerned warrants action under this section:
 - (a) counsel the councillor, or
 - (b) reprimand the councillor, or
 - (c) suspend the councillor from civic office for a period not exceeding 6 months, or
 - (d) **disqualify the councillor from holding civic office for a period not exceeding 5 years, or**
 - (e) suspend the councillor's right to be paid any fee or other remuneration, to which the councillor would otherwise be entitled as the holder of the civic office, in respect of a period not

exceeding 6 months (without suspending the councillor from civic office for that period).

- (3) **The Tribunal may take into consideration previous incidents of misconduct by the councillor when determining what action to take under this section.**

Proposed amendment to section 661

275 Who is disqualified from holding civic office?

- (1) A person is disqualified from holding civic office:
- (a) while disqualified from being an elector, or
 - (b) while a judge of any court of the State or the Commonwealth, or
 - (c) while serving a sentence (including a sentence the subject of an intensive correction order) for a serious indictable offence or any other offence, except a sentence imposed for a failure to pay a fine, or
 - (d) if he or she is while holding that office, or has been within 2 years before nomination for election, election or appointment to the office, convicted of an offence under the regulations made for the purposes of section 748 (3), or
 - (e) if he or she is while holding that office, or has been within 5 years before nomination for election, election or appointment to the office, convicted of an offence referred to in Part 4 of the Crimes Act 1900 (Offences relating to property), or
 - (f) while a surcharge, payable by the person under Part 5 of Chapter 13 and not paid within 6 months after it became payable, remains unpaid, or
 - (g) while disqualified from holding a civic office under a provision of this Act or Part 4A of the Crimes Act 1900 (Corruptly receiving commissions and other corrupt practices), or
 - (h) while disqualified from managing a corporation under Part 2D.6 of the Corporations Act 2001 of the Commonwealth, **or**
 - (i) **while disqualified from holding civic office by an order by the Pecuniary Interest and Disciplinary Tribunal made under section 482 or section 482A.**
- (2) A person is disqualified from holding civic office on a council if he or she is an employee of the council or holds an office or place of profit under the council.
- (3) A person is not disqualified from holding a civic office only because, while holding the civic office, the person ceases to be a resident in the area, to own property in the area or to be an occupier or ratepaying lessee of rateable land in the area.
- (4) A person is taken not to be disqualified from holding civic office if the Administrative Decisions Tribunal, in proceedings under section 329,

has refused to order the dismissal of the person in circumstances to which subsection (4) of that section applies.

Note. If a person while holding civic office becomes subject to disqualification under this section, the office becomes vacant under section 234.

Proposed amendment to section 329

329 Can the holder of a civic office be dismissed?

- (1) Any person may apply to the Administrative Decisions Tribunal for an order that a person be dismissed from civic office.
- (2) On any such application, the Tribunal may order the dismissal of a person from civic office:
 - (a) if there has been any irregularity in the manner in which the person has been elected or appointed to that office, or
 - (b) if the person is disqualified from holding civic office.
- (3) Proceedings based on the ground that there has been an irregularity in the manner in which a person has been elected or appointed to civic office may not be commenced more than 3 months after the date of the person's election or appointment to that office.
- (4) If the proceedings are based on the ground that a person is disqualified from holding civic office, the Tribunal may refuse to order the dismissal of the person from that office if it is satisfied:
 - (a) that the facts and circumstances giving rise to the disqualification are of a trifling character, and
 - (b) that the acts which gave rise to that disqualification were done in good faith and without knowledge that the person would incur disqualification by doing those acts.
- (5) Subsection (4) does not apply to a person who is disqualified from holding civic office by a decision of the Pecuniary Interest and Disciplinary Tribunal under section 482 **or section 482A** or by a decision of the Governor under section 440B.
- (6) The Tribunal may award costs under section 88 of the Administrative Decisions Tribunal Act 1997 in respect of proceedings commenced by an application made under this Part.

Proposed amendment to section 661

661 Failure to comply with certain directions

A person who fails, without lawful excuse, to comply with a direction given to the person under Part 3 or 5 of Chapter 13 or **Part 1 of Chapter 14** by a person authorised to give the direction is guilty of an offence.

Maximum penalty: 20 penalty units.

Proposed amendment to Part 8A of Chapter 10

Part 8A Political donations

328A General manager to keep register of political donation disclosures

- (1) The general manager is required to keep a register of copies of current declarations of disclosures of political donations lodged with the Election Funding Authority by or on behalf of councillors of the council concerned (including in their capacity as candidates for election as councillors).
- (2) For the purposes of this section, current declarations of disclosures of political donations are declarations lodged under Part 6 of the **Election Funding, Expenditure and Disclosures Act 1981** in respect of the relevant disclosure period that includes the date of the last election (other than a by-election) and all subsequent relevant disclosure periods.

Note. Part 6 of the **Election Funding, Expenditure and Disclosures Act 1981** makes provision for disclosure by councillors and candidates for civic office (and parties registered in connection with local government elections) of political donations and electoral expenditure.

328B Reference by general manager to Director-General of political donation matters

- (1) If the general manager reasonably suspects that a councillor has not complied with the provisions of the code of conduct under section 440 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 to refer the matter to the Director-General.
- (2) Any such matter may be referred by the Director-General to the Pecuniary Interest and Disciplinary Tribunal.
- (3) **Any such matter is taken (for the purposes of this Act) to be referred to the Tribunal under section 440O.**

Other consequential amendments

All other references in Chapter 14 to “misbehaviour” are to be amended to refer instead to “**misconduct**”.

All references in Chapter 14 to section “440N” in relation to the referral of matters to the Tribunal are to be amended to refer instead to “**section 440O**”

Consequential amendments to the Local Government (General) Regulation 2005

Division 4 Conduct generally

193 Code of conduct

- (1) For the purposes of section 440 (Codes of conduct) of the Act:
 - (a) the Code called The Model Code of Conduct for Local Councils in NSW, as published in the Gazette on [XX] 2012, is prescribed as the model code of conduct, and
 - (b) **the procedures called Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW, as published in the Gazette on [XX] 2012, is prescribed as the model code procedures.**
- (2) **Councils may use conduct reviewers appointed to a panel established by an organisation prescribed under this Regulation for the purposes of implementing the model code and model code procedures.**

Division 5 Appeals against suspension

195 Making of appeal

An appeal under section **440N** of the Act is to be made:

- (a) in accordance with any relevant procedures set out in the Pecuniary Interest and Disciplinary Tribunal Procedure Manual published by the Pecuniary Interest and Disciplinary Tribunal, as in force from time to time, or
- (b) if there are no such relevant procedures (or no such manual)—by giving written notice of the appeal to that Tribunal.