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UPDATED GUIDELINES FOR THE PAYMENT OF EXPENSES AND THE PROVISION OF FACILITIES TO MAYORS AND COUNCILLORS – ADDITIONAL ANNUAL REPORTING REQUIREMENTS AND OTHER MATTERS

The purpose of this circular is to advise councils of the release of updated Guidelines to assist in the review and preparation of policies on the payment of expenses and the provision of facilities for mayors and councillors.

Following amendments in December 2006 to clause 217 of the Local Government (General) Regulation 2005, the Guidelines now contain information about additional annual reporting requirements.

From the 2006/2007 financial year, councils are required to report separately on:

Provision of facilities

- the cost of the provision of dedicated office equipment allocated to councillors on a personal basis, such as laptop computers, mobile phones, telephones and facsimile machines and Internet installed in the councillors' homes (including line rental and Internet access). This item does not include the costs of using this equipment, such as calls.

Expenses

- the cost of phone calls including mobiles, home located landlines, facsimile and Internet services
- spouse/partner/accompanying person expenses (limited to circumstances outlined on page 14 of the Guidelines)
- conference and seminar expenses
- training and skill development expenses
- interstate travel expenses (including subsistence and out-of-pocket expenses)
- overseas travel expenses (including subsistence and out-of-pocket expenses)
- carer and other related expenses (of dependants to enable a councillor to undertake his/her civic functions).

Councils are reminded that:

- under section 252(5) of the *Local Government Act 1993* councils' expenses and facilities policies must comply with these guidelines
- provisions made by their policies in regard to the payment of expenses and the provision of facilities to councillors must be acceptable to and meet the expectations of the local community
- policies must not include a general expense or allowance clause. All expenses payments must be either reimbursed after the event or reconciled if an advance payment is made to the mayor or a councillor. The Guidelines clarify that procedures for reconciliation of expenses for councillors is discretionary and up to individual councils to determine. The level of supporting documentation should be commensurate with the nature of the expenditure
- limits to expenses and the level of provision of equipment and facilities must be set by individual councils to suit their needs and capacity to afford them
- there are no circumstances in which legal expenses should be met by a council for proceedings initiated by a councillor. Nor should legal expenses be met for a councillor defending any action in a matter not rising directly as a result of his or her civic duty.

Councils are required to submit their expenses and facilities policy to the department by 30 November each year. However, an extension has been granted for submission of policies for the current financial year. Councils have until **30 June 2007** to submit 2006/2007 policies that comply with these Guidelines.

Councils that have already advertised draft expenses and facilities policies for 2006/2007 based on the first version of the Guidelines issued in September 2006 are not required to readvertise those policies.

These Guidelines replace the Director General's Circular to Councils 06/57 – *Guidelines for the Payment of Expenses and the Provision of Facilities to Mayors and Councillors*.



Garry Payne AM
Director General



Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors for Local Councils in NSW

Department of Local Government

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Suggested format for a councillor expenses and facilities policy.

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Acknowledgements

The Department of Local Government would like to thank the Local Government and Shires Associations Working Party on Councillor Expenses for their contribution to the review of these guidelines.

Purpose of these guidelines

These guidelines have been developed to assist councils review and prepare their policies on the payment of expenses and the provision of facilities for mayors and councillors in local councils in NSW.

These guidelines have been prepared under the provisions of section 23A of the *Local Government Act 1993* as Director General's Guidelines. Under section 252 of the Act relevant policies must comply with the provisions of the Act, the regulations and any relevant guidelines issued under section 23A.

The aims of these guidelines are to:

- clarify issues in regard to the scope and extent of the expenses that may be claimed by, and equipment and facilities provided to, mayors and councillors so that these are reasonable and appropriate,
- ensure a level of consistency in the content of council policies,
- provide direction for reporting requirements required by the Department of Local Government.

These guidelines set out certain principles and discuss relevant issues to assist councils with the making of their expenses and facilities policies. They do not provide model clauses for inclusion in policies. **However, a suggested outline structure or format for a policy is at ATTACHMENT 1.** Councils are encouraged to use this format and adapt it where necessary to suit their needs.

These guidelines replace the departmental Circular to Councils 04/60 *Policy on payment of expenses and provision of facilities to the mayor, deputy mayor and other councillors*.

These guidelines do not deal with matters associated with the setting and payment of councillors' annual fees, which are a matter for the Local Government Remuneration Tribunal.

Background

A departmental review of a number of council expenses policies revealed a high level of variability in their format and content, the scope of expenses and facilities provided, and the level of payment of expenses to councillors. Many councils did not set a limit to the payment of a number of types of expenses.

In order to address concerns, sections 252 and 253 of the *Local Government Act 1993* were amended (refer the *Local Government Amendment Act 2005*). These amendments are discussed under the statutory requirements section of these guidelines.

Note that a council may disburse money only if the disbursement is authorised by the *Local Government Act 1993*, either expressly or because it is supplemental, incidental to or consequential upon the exercise of its functions.

Principles

Conduct

As required by section 439 of the *Local Government Act 1993* and reinforced in the Model Code of Conduct provisions, councillors must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out their functions under the Act or any other Act. Councillors should in particular, be mindful of the provisions of the *Anti-Discrimination Act 1977*.

Participation, equity and access

The expenses policy provisions must be **non-discriminatory and used in an equitable manner to enable the full participation by councillors from different walks of life**. The policy should allow councillors to represent the community in different ways and take account of, as much as possible, individual differences.

The provisions made in the policy should be at an appropriate level to **encourage members of the community, particularly under-represented groups such as those in primary caregiver roles, to seek election to council by ensuring that they would not be financially or otherwise disadvantaged in undertaking the civic duties of a councillor**. Such encouragement promotes a diversity of representation that can bring the benefit of new and different approaches and solutions to issues.

The council expenses policy should take account of and make reasonable provision for the **special needs of councillors** to allow access to the appropriate parts of council premises, and facilities, and maximise participation in the civic duties and business of council. This should include for example, provision for sight or hearing impaired councillors and those with other

disabilities. It should also make reasonable transportation provisions for those unable or unwilling to drive a vehicle.

Accountability and transparency

Council expenses policies must ensure that there is accountability and transparency in the reimbursement of expenses incurred or to be incurred by councillors. They must cover the specific expenses for which councillors are entitled to receive reimbursement. Councillors can only receive reimbursement for expenses when the expense is identified in the policy.

The overriding principle to be addressed in the development of a council expenses policy is that **the details and range of expenses paid and facilities provided to councillors by the council must be clearly and specifically stated and be fully transparent and acceptable to the local community.**

More comprehensive reporting requirements defined under the Local Government Regulation and under these guidelines further reinforce accountability and transparency.

Reasonable expenses

The expenses and facilities policy must ensure that councillors are reimbursed for **expenses reasonably incurred** in their performance of their role as a councillor.

Recognising local differences

Individual policies should be sufficiently **flexible** and tailored to allow individual councils to determine **what they can afford to pay and what is acceptable to their communities.** They need to **recognise the differences between councils** in terms of levels of complexity of their governance, population size, the local economic and development environment and so on. These differences are broadly reflected in the various categorisations of councils, which have been determined by the Local Government Remuneration Tribunal to derive the level of annual fees paid to mayors and councillors.

Further, it is up to individual councils to determine the most appropriate procedure for reconciling expenses taking into consideration issues of accountability and transparency as well as resource availability.

Limits

The payment of expenses and the provision of equipment and facilities to councillors **must not be open-ended.** Councils must agree and set monetary limits to all expense provisions in their policy where practicable and where appropriate, as well as standards for the provision of equipment and facilities provided to councillors.

Annual fees and expenses

The relationship between the annual fees paid to mayors and councillors and the level and scope of expenses paid to councillors is a basic issue when considering the development of a policy for councillor expenses.

The Local Government Remuneration Tribunal has adopted the principle that **expenses reasonably incurred by councillors are outside provisions made under the annual fee determinations.** However, the Tribunal also acknowledges the ability and practice of some councils to ask councillors to pay for some of their expenses from their annual fee. This practice, which has been adopted by some small country councils, can have the effect of financially disadvantaging their councillors and therefore is not encouraged.

Councils may only **pay a deputy mayor part of the mayor's annual fee** where a deputy mayor demonstrably acts in the role of the mayor. Such payment must only be done at the direction of the council and any amount paid to the deputy mayor must be deducted from the mayor's annual fee (section 249 of the *Local Government Act 1993*).

Policies should set levels of expenses and facilities to realistically account for costs incurred by councillors independent of the level of their annual fees.

Expenses and allowances

Councils may determine their own **local rates** of expenses, the level of equipment provision and procedures for reimbursement so long as they follow these guidelines, conform to legislative and statutory requirements, and other policies nominated in these guidelines.

Expenses and facilities policies must not include a general expense clause. Clause 403 (previously 42A) of the Local Government (General) Regulation 2005 provides that councils must not include in their section 252 policies any provision that enables council to pay a councillor an allowance in the nature of a general expense allowance.

Section 252 of the *Local Government Act 1993* only **authorises payment or reimbursement of actual expenses incurred by councillors in carrying out their civic duties.** It is not appropriate or lawful for councils to pay general allowances unrelated to actual expenses incurred or designed to supplement councillors' annual fees.

When requested by a councillor, consideration should be given to the provision of an **advance payment** for the cost of a service associated with a civic duty. This must then be reconciled at a future date within a timeframe stated in the policy. It is up to individual councils to determine the most appropriate means of reconciling such advance payments taking into account issues of accountability and transparency as well as resource availability. The level of supporting documentation should be commensurate with the nature of expenditure.

Monetary limits to expenses

These guidelines do not specify particular monetary limits for the payment of various expenses to councillors. Rather it is the responsibility of individual councils to establish what they would consider **a reasonable level of provision** by determining their own monetary limits and/or rates for the payment of expenses and other benefits to their councillors. **These limits are to be clearly stated in the policy.**

Identifying and publishing monetary limits allows members of the public to know the expected cost of providing services to councillors and to make comment during the public consultation phase of making or amending the policy. It also avoids situations where councillors incur costs that are unforeseen or considered unreasonable by other councillors and the public.

Standard of provision of equipment and facilities

These guidelines do not specify a specific standard for the provision of equipment and facilities to councillors. As with expenses, it is the responsibility of councils to establish and define an appropriate and reasonable level of provision that would enable councillors to effectively carry out their civic duties.

It is expected that **the needs of different councils would be reflected in the scale, scope and nature of equipment and facilities provided.** Like expenses, it is expected that councils of an equivalent Local Government Remuneration Tribunal category would generally make similar provisions.

Approval arrangements

The policy should clarify approval arrangements. In particular, it should **avoid any one person from being the sole decision maker.** This is to prevent potential conflicts. Approval for discretionary trips and attendance at conferences and the like should be where possible, approved by a full meeting of the council. If this is not possible then the approval should be given jointly by the mayor and the general manager. If the mayor requires approval to travel outside of council meetings it should be given jointly by the deputy mayor (if there is one) or another councillor (if there is not a deputy mayor) and the general manager.

Private benefit

Councillors **should not obtain private benefit from the provision of equipment and facilities**, nor from travel bonuses such as 'frequent flyer' schemes or any other such loyalty programs. However it is acknowledged that incidental use of council equipment and facilities may occur from time to time. Such incidental private use is not subject to a compensatory payment.

Where more substantial private use has occurred the Act provides that a payment may be made to cover the level of that private use. Councils should establish a suitable rate for private use and include it within the policy (refer s252 (2)).

Notes to assist councils in the development of a councillor expenses policy are at APPENDIX 1. These notes do not form part of these guidelines.

Statutory requirements

A policy for the payment of expenses and the provision of facilities for councillors is made under section 252 of the *Local Government Act 1993* and in accordance with clause 403 of the *Local Government (General) Regulation 2005*.

Other policy provisions, which should be considered, include these guidelines, Department of Local Government circulars to councils, the Model Code of conduct for Local Councils in NSW and the Independent Commission against Corruption publication *No Excuse for Misuse*.

Details of relevant statutory requirements and other policy provisions are at APPENDIX 2 of these guidelines.

Development, promotion and review of an expenses and facilities policy

Development and adoption of the policy

Councils must implement section 253 of the *Local Government Act 1993* before adopting or amending a policy. Councils must give public notice of its intention and allow at least 28 days for public submissions. Councils must consider any submissions received and make any appropriate changes to the policy. Councils do not need to give public notice of a proposed amendment to the policy, **if the amendment is not substantial**. Within 28 days of adopting or amending the policy, the policy and details of submissions are to be forwarded to the Director-General of the Department of Local Government.

The term “not substantial” should be taken to mean minor changes to wording of the policy or changes to monetary provisions or rates that are less than 5%. It also means minor changes to the standard of the provision of equipment and facilities. Substantial amendments to the policy that could include larger changes to monetary limits than the limit noted above, and/or major changes to the standard of provision of equipment and facilities, will require public notice of

the amendment. Any **new** category of expenses, facilities and equipment included in the policy will also require public notice.

Note that a council must adopt a policy each year even if the policy is the same as its existing policy. As noted above, public notice must be given prior to the annual adoption process.

Promotion and availability of the policy

Councils should promote their policies on the payment of expenses and the provision of facilities to councillors to the community by placing them on their websites and making them readily accessible. Councils should ensure that the policy is easy to locate and view by the public.

Review

Councils are required on an annual basis to review and submit their policy to the Director-General of the Department of Local Government within 28 days of adoption by council, even if they propose to adopt an unchanged policy.

Current policies must be submitted by 30 November each year.

Reporting obligations

Section 428 of the *Local Government Act 1993* requires councils to include in their annual report:

- the council's policy on the provision of facilities for, and the payment of expenses to, mayors and councillors
- the total amount of money expended during the year on providing those facilities and paying those expenses
- additional information as required by the Local Government (General) Regulation 2005.

Additional annual reporting requirements

Amendments to clause 217 of the Local Government (General) Regulation 2005 made in December 2006 now require councils to include additional reporting information in their annual reports.

The additional reporting information required is for the purposes of transparency and accountability and should not be seen as a disincentive for the payment of appropriate expenses to councillors.

Councils are now required to report separately on:

- the total cost of expenses and the provision of facilities for the mayor and all councillors, as well as:

Provision of facilities

- the cost of the provision of dedicated office equipment allocated to councillors on a personal basis such as laptop computers, mobile phones, telephones and facsimile machines and Internet installed in the councillors' homes (including line rental and internet access). This item does not include the costs of using this equipment, such as calls.

Expenses

- the cost of phone calls including mobiles, home located landlines, facsimile and internet services
- spouse/ partner/ accompanying person expenses (limited to circumstances outlined on page 14 of these Guidelines)
- conference and seminar expenses
- training and skill development expenses
- interstate travel expenses (including subsistence and out-of-pocket expenses)
- overseas travel expenses (including subsistence and out-of-pocket expenses)
- care and other related expenses (of dependants to enable a councillor to undertake his or her civic functions).

Reporting of exceptional equipment and facilities costs

In addition to the statutory reporting requirements, councils should report other costs where these are significant. For example, councils should report the cost of the provision of facilities and equipment where such provision is above what would **normally** be required for the day-to-day running of the council.

Appendix 1

Notes to assist councils in the development of a councillor expenses policy

Introduction

The following notes do not form part of the guidelines. However they have been provided to assist councils in clarifying various issues and include examples to assist councils to prepare their policies. Councils should give consideration to using these notes where they are appropriate to their needs and circumstances.

Status of the policy

The current status of the policy, including details of the date of commencement and previous amendments and revisions, should be provided. The date of the adoption of the amended policy and an outline of the current amendments should be provided in a separate section of the policy to facilitate perusal by the Department of Local Government.

Payment of expenses

General

Council should establish a time limit for councillors to seek reimbursement for their expenses.

Councillors may request payment in advance in anticipation of expenses to be incurred in attending conferences, seminars and training away from home. Councillors may also request an advance payment for the cost of any other service or facility covered by the policy.

Reimbursement and reconciliation of expenses

The means of reimbursement of costs and expenses to councillors is up to individual councils to determine. Expenses and costs incurred must be in accordance with the requirements of the council expenses policy. Incidental expenses may not require specific receipts provided it can be demonstrated that expenditure was incurred and is not general in nature. Where receipts are not required it would be appropriate for councillors to certify that the expenditure was for the purpose intended.

Payment of expenses for spouses, partners and accompanying persons

There may be limited instances where certain costs incurred by the councillor on behalf of their spouse, partner or accompanying person are properly those of the councillor in the performance of his or her functions. An accompanying person is a person who has a close personal relationship with the councillor and/or provides carer support to the councillor.

Meeting the reasonable costs of spouses and partners or an accompanying person for attendance at official council functions that are of a formal and ceremonial nature, is considered appropriate when accompanying councillors within the local government area. Such functions would be those that a councillor's spouse, partner or accompanying person could be reasonably expected to attend. Examples could include but not be limited to, Australia Day award ceremonies, Citizenship ceremonies, civic receptions and charitable functions for charities formally supported by the council.

Limited expenses of spouses, partners or accompanying persons associated with attendance at the Local Government and Shires Associations' annual conferences could be met by councils. These expenses should be limited to the cost of registration and official conference dinners. Travel expenses, any additional accommodation expenses, and the cost of partner/accompanying person tours etc would be the personal responsibility of individual councillors.

Consideration should also be given to the payment of expenses for the spouse, partner or accompanying person of a mayor, or a councillor when they are representing the mayor, when they are called on to attend an official function of council or carry out an official ceremonial duty while accompanying the mayor outside the council's area, but within the State. Examples could include charitable functions to which the mayor has been invited and award ceremonies and other functions to which the mayor is invited to represent the council.

The above circumstances should be distinguished from spouses, partners or accompanying persons who accompany a councillor at any event or function outside the council area, including interstate and overseas, where the costs and expenses of the spouse or partner or accompanying person should not be paid by council (with the exception of attendance at the Local Government and Shires Associations annual conferences, as noted above).

The above examples should also be distinguished from circumstances where spouses, partners or accompanying persons accompany councillors at seminars and conferences and the like. In these situations all costs, including any additional accommodation costs, must be met by the councillor or the spouse/partner/accompanying person.

The payment of expenses for spouses, partners or accompanying persons for attending appropriate functions as permitted above should be confined specifically to the ticket, meal and/or the direct cost of attending the function. Peripheral expenses incurred by spouses, partners or accompanying persons

such as grooming, special clothing and transport are not considered reimbursable expenses.

Incidental expenses

Reasonable out of pocket or incidental expenses associated with councillors attending conferences, seminars or training courses may be reimbursed provided that it can be demonstrated that the expenses were actually incurred and that established reconciliation procedures are followed, for example, the completion of a claim form. A claim form must include an itemised account of expenditure and should not be general in nature.

Incidental expenses could reasonably include telephone or facsimile calls, refreshments, internet charges, laundry and dry cleaning, newspapers, taxi fares and parking fees. In addition, the cost of meals not included in the registration fees for conferences or similar functions may be reimbursed after reconciliation. It is expected that councils would specify daily limits to these out of pocket or incidental expenses in their policy. All advanced payments are required to be reconciled.

Consideration of specific expenses for mayors and councillors

General travel arrangements

All travel by councillors should be undertaken by utilising the most direct route and the most practicable and economical mode of transport subject to any personal medical considerations.

Local travel arrangements and expenses

The policy should provide for the payment of reasonable travel expenses for local travel relating to defined council business.

For example, the policy could include arrangements for the use of a private vehicle and provisions for the use of public transport, taxis, hire cars, travel using a council vehicle and associated other costs such as parking and road tolls. The policy should clarify that the driver is personally responsible for all traffic or parking fines incurred while travelling in private or council vehicles on council business.

Interstate travel

Prior approval of travel should generally be required for interstate travel. The application for approval should include full details of the travel, including itinerary, costs and reasons for the travel.

Overseas travel

It is strongly recommended that councils scrutinise the value and need for councillors to undertake overseas travel. Councils should avoid international visits unless direct and tangible benefits can be established for the council and the local community.

Detailed proposals for overseas travel should be developed, including nomination of the councillors undertaking the trip, purpose of the trip and expected benefits. The duration, itinerary and approximate total costs of each proposed visit, should also be provided.

Overseas travel must be approved by a meeting of the full council prior to a councillor undertaking the trip. Travel must be approved on an individual trip basis. Councils should not allow the retrospective re-imburement of overseas travel expenses unless prior authorisation of the travel has been obtained.

Travel proposals should be included in the council business papers. The use of a mayoral minute to obtain council approval for travel is not appropriate as it is not consistent with principles of openness and transparency.

After returning from overseas, councillors, or an accompanying member of council staff, should provide a detailed written report to council on the aspects of the trip relevant to council business and/or the local community. Councillors are also strongly encouraged to report back on their overseas travel to a full meeting of the council.

Details of overseas travel must also be included in councils' annual reports. Councils are also required to report on the benefits of any proposed overseas sister city relationships.

Attendance at seminars and conferences

Councils may provide specific guidance in their policies in regard to the type of seminars and conferences that may be attended, the number of councillors who may attend and approval arrangements.

Requests for attending conferences should generally be in writing outlining the benefits for council. After returning from the conference, councillors or a member of council staff accompanying the councillor/s, should provide a written report to council on the aspects of the conference relevant to council business

and/or the local community. No written report is required for the Annual Conferences of the Local Government and Shires Associations.

Councils may pay conference registration fees charged by the conference organisers including the costs of related official lunches and dinners, and associated tours where they are relevant to the business and interests of the council.

Councils should meet the reasonable cost of transportation and accommodation associated with attendance at the conference, and meals when they are not included in the conference fees.

Accommodation costs

Councils may make specific provision in the policy in regard to an appropriate standard of accommodation for councillors attending conferences, seminars and other functions.

Attendance at dinners and other non-council functions

The policy should address the issue of councillors' attendance at formal dinners and other non-council functions.

Consideration may be given to meeting the cost of councillors' attendance at dinners and other non-council functions which provide briefings to councillors from key members of the community, politicians and business. Approval to meet expenses should only be given when the function is relevant to the council's interest. Only the cost of the service provided should be met. No payment should be reimbursed for any component of a ticket that is additional to the service cost of the function, such as a donation to a political party or candidate's electoral fund, or some other private benefit. An additional payment to a registered charity may be acceptable as part of the cost of the function.

Training and educational expenses

Councils should consider making separate provision for the payment of relevant training and educational expenses incurred by councillors in the budget. These expenses would support and encourage an active learning process and skills development in addition to attending seminars and conferences related to council functions. It is essential where council is paying these expenses that the training or educational course is directly related to the councillor's civic functions and responsibilities.

This initiative also supports NSW Government policy. The Minister for Local Government is keen to encourage councillors to undertake relevant training and skills development to ensure they carry out their functions as effectively as possible.

Telephone call costs and related expenses

Councils should establish a monthly monetary limit for the cost of official mobile, landline and facsimile calls made by councillors. A system should be also be established to reconcile all telephone call costs claimed with account statements. Councils should also consider limiting expenses for Internet use.

Care and other related expenses

Councils are strongly encouraged to make provision for the reimbursement of the reasonable cost of carer arrangements, including childcare expenses and the care of elderly, disabled and/or sick immediate family members of councillors, to allow councillors to undertake their council business obligations. This is in accordance with the principles of participation, access and equity outlined on page six of these guidelines and is considered by the Department of Local Government to be a legitimate expense. Councillors claiming the carer expense should not be subject to criticism for doing so.

Consideration should be given to the payment of other related expenses associated with the special requirements of councillors such as disability and access needs, to allow performance of normal civic duties and responsibilities.

Legal assistance provisions and expenses

The expenses policy may address the provision of the payment of legal expenses incurred in relation to proceedings arising out of the performance by a councillor of his or her functions under the *Local Government Act 1993*.

The policy should be in accordance with provisions in the departmental Circular to Councils 05/08 *Legal assistance for councillors and council employees*.

The policy should also be consistent with the provisions of the model policy set out in the *Local Government Law Guide*, Sly and Weigall in association with Deacons, Graham & James (June 1994) p 322, point 252.3(6).

Consistent with this circular and this model policy, the expenses policy should not provide for legal assistance to be provided in respect of legal proceedings initiated by the Mayor and/or councillors in any circumstances.

Insurance provisions and expenses

Section 382 of the *Local Government Act 1993* requires a council to make arrangements for its adequate insurance against public liability and professional liability.

The policy should include a section outlining insurance provisions for councillors and as a minimum these insurances should cover:

- Public liability (for matters arising out of councillors' performance of their civic duties and/or exercise of their council functions)
- Professional indemnity (for matters arising out of councillors' performance of their civic duties and/or exercise of their functions)

Councils could also give consideration to providing additional insurance for councillors to cover:

- Personal injury while on council business. Note that councillors are not covered by workers' compensation payments or arrangements.
- Travel insurance for approved interstate and overseas travel on council business

All insurances are to be subject to any limitations or conditions set out in the council's policy of insurance.

Provision of facilities, equipment and services

General principles

Facilities, equipment and services should be provided that are appropriate to support mayors and councillors in undertaking their role as elected members of the council. Facilities should be provided to ensure the safety of councillors, for example the allocation of a safe and secure designated parking space at or near the council premises.

Council facilities, equipment and services are not to be used to produce election material or for any other political purposes.

Provision of facilities, equipment and services for councillors

The following are examples of equipment, facilities and services that could be included in the policy and provided to mayors and councillors. The provision of facilities, equipment and services should not be limited to this list:

- Office equipment (phones, fax, photocopier)
- Mobile phone
- Internet
- Dedicated computer equipment including a desktop and/or laptop, printer, scanner and software
- Furnished councillors' room
- Secretarial and administrative support
- Stationery, office supplies, postage, business cards and other consumables
- Non-dedicated council vehicle
- Car parking set aside for the sole use of councillors
- Meals and refreshments
- Meals on evenings of council meetings and official dinners, light refreshments at committee and working party meetings
- Corporate clothing and protective clothing and equipment

Provision of additional facilities, equipment and services for mayors

In addition to the facilities, equipment and services provided to councillors, certain additional facilities may be provided to a mayor to recognise the special role, responsibilities and duties of the position both in the council and in the community.

Provision of a dedicated motor vehicle

Generally, a fully serviced and maintained vehicle, including a fuel card, should be provided for the sole use of the mayor. The type of motor vehicle and all conditions of use, should be specified in the policy.

Other equipment, facilities and services

Other equipment to be provided for the use of the mayor may include, but not be limited to:

- Ceremonial clothing including mayoral robes, chains of office
- Dedicated staff support, including secretarial services
- Furnished mayoral office
- Allotted parking space at the council premises

Acquisition and return of equipment and facilities by councillors

Councils should provide details of arrangements for councillors to return equipment and other facilities to the council after the completion of their term of office, extended leave of absence or at the cessation of their civic duties.

The policy should provide the option for councillors to purchase council equipment previously allocated to them at the cessation of their duties. If the item is for sale it should be purchased at an agreed fair market price or written down value.

Appendix 2

Details of relevant statutory requirements and other policy provisions.

Provisions under the *Local Government Act 1993*

Changes to sections 252(5) and 253 of the *Local Government Act 1993*, made by the *Local Government Amendment Act 2005*, require councils to make and submit their expenses and provision of facilities policies annually to the Department of Local Government.

Section 252 of the *Local Government Act 1993* requires councils to adopt or amend a policy annually for the payment of expenses and the provision of facilities to mayors, deputy mayors and other councillors. Mayors and councillors can only be reimbursed for expenses and provided with facilities in accordance with this policy.

Section 252 also makes provision for a council to reduce the amount payable to mayors and councillors (under sections 248-251 of the *Local Government Act 1993*) by the amount representing any private benefit of a facility provided by the council to them. It also requires that the policy be made under the provisions of this Act, the Local Government (General) Regulation and any relevant guidelines issued under section 23A of the Act.

Section 252 states:

(1) Within 5 months after the end of each year, a council must adopt a policy concerning the payment of expenses incurred or to be incurred by, and the provision of facilities to, the mayor, the deputy mayor (if there is one) and the other councillors in relation to discharging the functions of civic office.

(2) The policy may provide for fees payable under this Division to be reduced by an amount representing the private benefit to the mayor or a councillor of a facility provided by the council to the mayor or councillor.

(3) A council must not pay any expenses incurred or to be incurred by, or provide any facilities to, the mayor, the deputy mayor (if there is one) or a councillor otherwise than in accordance with a policy under this section.

(4) A council may from time to time amend a policy under this section.

(5) A policy under this section must comply with the provisions of this Act, the regulations and any relevant guidelines issued under section 23A.

Section 253 specifies actions that council must undertake before a policy concerning expenses and facilities can be adopted or amended.

Section 253 states:

(1) A council must give public notice of its intention to adopt or amend a policy for the payment of expenses or provision of facilities allowing at least 28 days for the making of public submissions.

(2) Before adopting or amending the policy, the council must consider any submissions made within the time allowed for submissions and make any appropriate changes to the draft policy or amendment.

(3) Despite subsections (1) and (2), a council need not give public notice of a proposed amendment to its policy for the payment of expenses or provision of facilities if the council is of the opinion that the proposed amendment is not substantial.

(4) Within 28 days after adopting a policy or making an amendment to a policy for which public notice is required to be given under this section, a council is to forward to the Director-General:

(a) a copy of the policy or amendment together with details of all submissions received in accordance with subsection (1), and

(b) a statement setting out, for each submission, the council's response to the submission and the reasons for the council's response, and

(c) a copy of the notice given under subsection (1).

(5) A council must comply with this section when proposing to adopt a policy each year in accordance with section 252 (1) even if the council proposes to adopt a policy that is the same as its existing policy.

Section 254 requires that a part of a council or committee meeting which considers the adopting or amending of such a policy must not be closed to the public.

Section 12 provides that the public is able to inspect during office hours at the council, and at no charge, the current version and the immediately preceding version of the council's expenses and facilities policy. The public are also entitled to a copy of the policy either free of charge or on payment of a reasonable copying charge.

Section 23A makes provision for the Director-General of the Department of Local Government to prepare, adopt or vary guidelines that relate to the exercise by a council of any of its functions. It also requires that a council must take the relevant guidelines into consideration before exercising any of its functions.

Section 428(2)(f) requires a council to include in its annual report:

The total amount of money expended during the year on mayoral fees and councillor fees, the council's policy on the provision of facilities for use by councillors and the payment of councillors' expenses, together with a statement of the total amount of money expended during the year on the provision of such facilities and the payment of such expenses.

In addition Section 428(r) requires that councils must report on any other information required by the regulations.

Provisions under the Local Government (General) Regulation 2005

In December 2006 additional reporting requirement provisions were incorporated into the Local Government (General) Regulation 2005.

Clause 217 (Additional information for inclusion in annual reports) states in part:

(1) For the purposes of section 428 (2) (r) of the Act, an annual report of a council is to include the following information:

(a) details (including the purpose) of overseas visits undertaken during the year by councillors, council staff or other persons while representing the council (including visits sponsored by other organisations),

(a1) details of the total cost during the year of the payment of the expenses of, and the provision of facilities to, councillors in relation to their civic functions (as paid by the council, reimbursed to the councillor or reconciled with the councillor), including separate details on the total cost of each of the following:

(i) the provision during the year of dedicated office equipment allocated to councillors on a personal basis, such as laptop computers, mobile telephones and landline telephones and facsimile machines installed in councillors' homes (including equipment and line rental costs and internet access costs but not including call costs),

(ii) telephone calls made by councillors, including calls made from mobile telephones provided by the council and from landline telephones and facsimile services installed in councillors' homes,

(iii) the attendance of councillors at conferences and seminars,

(iv) the training of councillors and the provision of skill development for councillors,

(v) interstate visits undertaken during the year by councillors while representing the council, including the cost of transport, the cost of accommodation and other out-of-pocket travelling expenses,

(vi) overseas visits undertaken during the year by councillors while representing the council, including the cost of transport, the cost of accommodation and other out-of-pocket travelling expenses,

(vii) the expenses of any spouse, partner or other person who accompanied a councillor in the performance of his or her civic functions, being expenses payable in accordance with the Guidelines for the payment of expenses and the provision of facilities for Mayors and Councillors for Local Councils in NSW prepared by the Director-General from time to time,

(viii) expenses involved in the provision of care for a child of, or an immediate family member of, a councillor, to allow the councillor to undertake his or her civic functions.

Clause 403 (Payment of expenses and provision of facilities) states:

A policy under section 252 of the Local Government Act 1993 must not include any provision enabling a council:

(a) to pay any councillor an allowance in the nature of a general expense allowance, or

(b) to make a motor vehicle owned or leased by the council available for the exclusive or primary use or disposition of a particular councillor other than a mayor.

Other NSW Government policy provisions

Department of Local Government Guidelines

As noted above under section 252(5) of the *Local Government Act 1993* the council expenses policy must comply with these guidelines issued under section 23A of the Act.

Department of Local Government Circulars to Councils

The policy must take into account the following Circulars.

- Circular 05/08 *Legal assistance for councillors and council employees.*
- Circular 02/34 *Unauthorised use of council resources.*

As previously stated, these guidelines replace Circular 04/60 *Policy on payment of facilities to the mayor, deputy mayor and other councillors.*

The Model Code of Conduct for Local Councils in NSW

The policy should be consistent with the *Model Code of Conduct for Local Councils in NSW, Department of Local Government – December 2004*. The following parts of the code are particularly relevant to s252 policies:

Use of council resources (pp 23-24)

9.14 You must use council resources ethically, effectively, efficiently and carefully in the course of your public or professional 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.

9.16 You must be scrupulous in your use of council property including intellectual property, official services and facilities and should not permit their misuse by any other person or body.

9.17 You must avoid any action or situation which could create the impression that council property, official services or public facilities are being improperly used for your own or any other person or body's private benefit or gain.

9.18 The interests of a councillor in their re-election is considered to be a personal interest and as such the reimbursement of travel expenses incurred on election matters is not appropriate. Council letterhead, council crests and other information that could give the impression it is official council material must not be used for these purposes.

9.19 You must not convert any property of the council to your own use unless properly authorised.

ICAC Publication - *No Excuse for Misuse, preventing the misuse of council resources*

Councils should also be aware of and take account of the Independent Commission Against Corruption (ICAC) publication *No Excuse for Misuse, preventing the misuse of council resources (Guidelines 2)* November 2002. This publication is available on the ICAC website in at www.icac.nsw.gov.au.

Attachment 1

A suggested format for a policy for the payment of expenses and the provision of facilities for mayors and councillors

Part 1 INTRODUCTION

- **Title, commencement etc of the Policy**
- **Purpose of the Policy**
The purpose of the policy is to ensure that there is accountability and transparency in the reimbursement of expenses incurred or to be incurred by councillors. The policy also ensures that the facilities provided to assist councillors to carry out their civic duties are reasonable.
- **Objectives and coverage of the Policy**
- **Making and adoption of the Policy**
- **Reporting requirements**
- **Legislative provisions**
- **Other Government policy provisions**
 DLG Guidelines for payment of expenses and provision of facilities
 Model Code of Conduct
 DLG Circulars to councils
 ICAC publications
- **Approval arrangements for claiming expenses and use of facilities**

Part 2 PAYMENT OF EXPENSES

GENERAL PROVISIONS

- **Payment of expenses generally**
 Allowances and expenses
 Reimbursement and reconciliation of expenses

Payment in advance

- **Establishment of monetary limits and standards**
- **Spouse and partner expenses**

SPECIFIC EXPENSES FOR MAYORS AND COUNCILLORS

- **Attendance at seminars and conferences**
- **Training and educational expenses**
- **Local travel arrangements and expenses**
- **Travel outside the LGA including interstate travel**
- **Telephone costs and expenses**
- **Internet**
- **Care and other related expenses**
- **Insurance expenses and obligations**
- **Legal expenses and obligations**

ADDITIONAL MAYORAL EXPENSES

Part 3 PROVISION OF FACILITIES

GENERAL PROVISIONS

- **Provision of facilities generally**
- **Private use of equipment and facilities**

PROVISION OF EQUIPMENT AND FACILITIES FOR COUNCILLORS

PROVISION OF ADDITIONAL EQUIPMENT AND FACILITIES FOR MAYORS

Part 4 OTHER MATTERS

- **Acquisition and returning of facilities and equipment by Councillors**
- **Status of the Policy**