

Circular No. 08-38  
Date 20 June 2008  
Doc ID. A118731

Contact Lyn Brown  
02 4428 4161  
lyn.brown@dlg.nsw.gov.au

## **REVISED MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW**

The Model Code of Conduct for Local Councils in NSW (Model Code) first came into effect on 1 January 2005 and applies to general purpose councils and county councils.

Under section 440 of the Local Government Act 1993 councils must adopt a code of conduct that incorporates the provisions of the Model Code (or is consistent with the Model Code). In addition, councils were required to establish conduct committees to consider relevant complaints about the conduct of councillors and/or the general manager.

The Department of Local Government has now completed a review of the Model Code that included the establishment of a reference group to assist with the review, a call for written submissions, a survey of councils for feedback on the implementation of the Model Code and consultation through focus groups and telephone interviews with local council representatives and specific industry groups.

The outcome of the review is a revised Model Code that will take effect from 20 June 2008. This is achieved by an amendment to the *Local Government (General) Regulation 2005* that prescribes the Model Code. The amendment to the Regulation will appear in the Government Gazette on 20 June 2008. \*

A separate email will be sent to all councils and county councils with a word version copy of the Model Code to assist councils with the changes to their codes.

The Model Code is available on the Department's website.

[http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/Model\\_Code\\_of\\_Conduct\\_June\\_2008.pdf](http://www.dlg.nsw.gov.au/dlg/dlghome/documents/Information/Model_Code_of_Conduct_June_2008.pdf)

### **Changes to the Model Code**

The following are the main changes to the Model Code:

Overall:

Department of Local Government  
5 O'Keefe Avenue NOWRA NSW 2541  
Locked Bag 3015 NOWRA NSW 2541  
T 02 4428 4100 F 02 4428 4199 TTY 02 4428 4209  
E [dlg@dlg.nsw.gov.au](mailto:dlg@dlg.nsw.gov.au) W [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au) ABN 99 567 863 195

\* Now see Government Gazette No. 76 of 27 June 2008

- The Code has been organised in three Parts: Context, Standards of Conduct and Procedures.
- Additional sections have been added on complaint handling, complaint assessment criteria, and operational guidelines for conduct review committees/reviewers. These sections are contained in Part 3, Procedures.
- Aspirational language is now only contained in the Part 1 section of the Model Code. The provisions in Part 2, Standards of Conduct, are now phrased in operational language.
- Administrators have been added to the provisions that apply to councillors and included in the definition of council officials.

#### Specific sections and Parts:

##### Part 1: Context

- The introduction has been amended to include a reference to the relationship of the Model Code to section 440 of the Act.
- Additional definitions have been added for the conduct review committee, conduct reviewer, conflict of interests, misbehaviour, person independent of council and personal information.
- The definition of delegates of council has been amended to clarify that it applies to individual members of bodies that exercise a function delegated by council.
- The key principle of 'objectivity' has been amended to 'impartiality'.
- Guide to ethical decision making has been moved from the general conduct obligations section into the context Part of the Model Code.
- The guide to ethical decision making now includes additional information to assist council officials with political donations and conflict of interests situations.

##### Part 2: Standards of Conduct

- Council officials are reminded of the sanctions for failure to comply with an applicable provision of the standards of conduct.

##### General Conduct Obligations

- Previous clause 5.1 (now clause 6.1) has been worded so that it applies to all council officials and not just councillors. It is consistent with Schedule 6A of the Act.
- An additional clause has been added (6.4) that requires councillors to comply with council resolutions requiring them to take action as a result of a breach.

##### Conflict of Interests

- This section of the Model Code has been substantially rewritten. The clauses have been re-ordered and duplicate clauses removed.
- New provisions relating to non-pecuniary conflicts of interests include the addition of a clause (7.12) to provide that the political views of a councillor do not constitute a private interest and a clause (7.11) that provides that the matter of a conduct review committee/reviewer report to council is not a private interest.

- The code provides a clearer definition of significant non-pecuniary conflicts of interests – clause 7.16.
- The code now clarifies the action that is required to be taken if a council official has a non-pecuniary conflict of interest. This provides actions for significant and less than significant non-pecuniary conflict situations, clauses 7.17 and 7.18.
- (New) clause 7.19 provides that council staff should manage any non-pecuniary conflicts of interests in consultation with their managers.
- The political donations provisions now require councillors to treat a political donation in excess of \$1000 in the same way as a significant non-pecuniary conflict of interest. Councillors are required to determine whether or not contributions below \$1000 create a significant conflict of interest.

#### Personal Benefit

- This section of the Model Code has also been substantially rewritten. The clauses have been re-ordered and duplicate clauses removed.
- Definitions of token gifts and benefits and gifts and benefits of value have been provided at the beginning of the section. These have been substantially rewritten to provide greater clarity around what is and what is not a gift/benefit of value or of token value.
- (Old) clauses 7.1, 7.2, 7.3 and 7.5 have been rewritten into (New) clause 8.3.
- (Old) clause 7.10 has been removed as the declaration of gifts totalling over \$500 by councillors and designated persons is a requirement in the Act and does not need to be replicated in the Model Code.

#### Relationship Between Council Officials

- The first four inappropriate interactions (clause 9.7) have been collapsed into two that advise about approaches between councillors, administrators and staff in relation to individual staffing matters and allow for discussion on broad industrial policy issues.
- An additional interaction has been provided that advises that it is inappropriate for councillors and administrators to make personal attacks on council staff in a public forum.
- Language has been changed to make it clear that inappropriate interactions are a breach of the code – this was previously implicit only.
- The clause on the role of the Mayor has been removed as it is no longer seen as necessary.

#### Access to Information and Council Resources

- (Old) clauses 9.1 to 9.13 have been tidied up to ensure they are clear.

## Reporting Breaches

- The content of this section has changed. This section only contains provisions that relate to the reporting of allegations of breaches of the code of conduct. The previous section included complaint handling and sanction information. That information is now contained in Part 3 of the Model Code.
- A provision has been added to make it clear that anyone can make a complaint alleging a breach of the code of conduct.
- The protected disclosures clauses have been modified to ensure that they are consistent with the Protected Disclosures Act.

## Part 3: Procedures

This is a new part of the Model Code. This Part contains the complaint handling procedures, complaint assessment criteria and the operating guidelines for the conduct review committee/reviewer.

The complaint handling requirements and the complaint assessment criteria now provide for the use of a range of methods for the resolution of complaints, give clearer guidance about the referral of complaints to the conduct review committee/reviewer, clarify the role of the Mayor and the general manager in relation to complaint management and provide for annual reporting to council by the general manager on a summary of complaints under the code of conduct.

Councils can now have conduct review committees or individual reviewers undertake enquiries into breach allegations. Members of these committees or the sole reviewers will now be independent of council and can act in the role for more than one council.

Conduct review committees/reviewers are required to act in accordance with the operating guidelines that are provided in the Model Code.

The general manager is now required to report annually to council on code of conduct complaints.

## **Model Code Guidelines and Education Package Facilitator's Guide**

The Department is currently updating the guidelines that assist in interpreting the Model Code. These will be re-issued shortly.

The Model Code Education Package Facilitator's Guide will also be updated to incorporate the new provisions. Only the changed sections and CD will be re-issued to councils to update the current resource that was distributed to all councils in 2005.

## **Transitional arrangements**

Councils will now need to review their codes of conduct to ensure that they adopt the provisions of the Model Code that is effective from 20 June 2008. Councils are reminded that their codes may include provisions that supplement the Model Code and provisions more onerous than those contained in the

Model Code. However, any supplementary or more onerous provisions will have no effect to the extent that they are inconsistent with the Model Code.

Councils will need to deal with any complaints that are currently on foot in accordance with the procedures established in their current code of conduct. Once councils have adopted the provisions of the revised Model Code, any complaints received about conduct that occurred under their previous code of conduct will need to be dealt with in accordance with the standards that applied in the code at that time. However, councils may choose to use the new procedural arrangements for managing the complaints that are contained in the revised Model Code for those complaints.

A question and answer document is provided with this circular to assist councils in implementing the changes to the code of conduct complaint handling processes.

A handwritten signature in black ink, appearing to be 'Garry Payne', with a long horizontal stroke extending to the right.

**Garry Payne AM**  
**Director General**

## QUESTIONS AND ANSWERS

**What standards of conduct have changed?**

The following standards have been added or changed in the revised Model Code:

*General conduct obligations:*

- An additional clause has been added that requires councillors to comply with council resolutions directing them to take action as a result of a breach.

*Conflict of interests obligations:*

The clauses have been re-ordered and duplicate clauses removed. Key changes include:

- New provisions relating to non-pecuniary conflicts of interests that provide that the political views of a councillor do not constitute a private interest; and the matter of a conduct review committee/reviewer report to council is not a private interest.
- Clarification of the action that is required to be taken if a council official has a non-pecuniary conflict of interest. This provides actions for significant and less than significant non-pecuniary conflict situations.
- A definition of “significant non-pecuniary conflict of interest”.
- Provision that council staff should manage any non-pecuniary interests in consultation with their managers.
- Political donations provisions that require councillors to treat a political donation in excess of \$1000 in the same way as a significant non-pecuniary conflict of interest. Councillors must also determine whether or not contributions below \$1000 create a significant conflict of interest.

*Personal benefit obligations:*

The clauses have been re-ordered and duplicate clauses removed. The key change is:

- Definitions of token gifts and benefits and gifts and benefits of value have been included at the beginning of the section. These have been substantially rewritten to provide greater clarity around what is and is not, a gift/benefit of value or of token value.

*Relationship between council officials obligations:*

- Refinement of the provisions relating to inappropriate interactions that advise about interactions between councillors, administrators and staff in relation to individual staffing matters.
- The provisions allow for discussion on broad industrial policy issues.
- An additional provision that advises that it is inappropriate for councillors and administrators to make personal attacks on council staff in a public forum.
- Engaging in inappropriate interactions is now an express breach of the code.

*Reporting breaches:*

- A provision has been added to make it clear that anyone can make a complaint alleging a breach of the code of conduct.
- The protected disclosures clauses have been modified to ensure that they are consistent with the *Protected Disclosures Act 1994*.

### **Who receives complaints?**

The general manager is the person responsible for receiving complaints alleging a breach of the code of conduct by councillors, council staff, council delegates or council committee members (clause 12.1).

The Mayor is the person responsible for receiving complaints alleging a breach of the code of conduct by the general manager (clause 12.2).

### **How have the complaint handling procedures changed?**

Section 12 of the Model Code prescribes the complaint handling procedures to be used by the general manager, the Mayor and the conduct review committee/sole conduct reviewer.

The complaint handling procedures now provide a range of options for managing a complaint alleging a breach of the code of conduct (section 12). Alternate dispute resolution strategies are provided for. It is expected that the conduct review committee/sole conduct reviewer will deal with the more serious complaints and/or complaints about repeated conduct standards breaches.

In section 13, the Model Code prescribes a set of criteria that must be taken into account in determining how to deal with a complaint. The complaint assessment criteria are to be used by the general manager, the Mayor and the conduct review committee/sole conduct reviewer.

### **When is the complaint assessment criteria used?**

The complaint assessment criteria are to be used by the general manager or Mayor when they first receive a complaint to determine the most appropriate course of action for handling the complaint (section 13).

Where it is assessed that the complaint shall be referred to the conduct review committee/sole conduct reviewer, then the conduct review committee/sole conduct reviewer must conduct its own assessment of the complaint using the criteria provided to determine the appropriate course of action.

### **What are the changes to the conduct review committee process?**

The general manager or Mayor will no longer be members of the conduct review committee. They may only act in an advisory capacity to the conduct review committee or sole conduct reviewer.

Conduct reviewers must be independent, qualified persons of high standing in the community who are appointed by council.

The council must appoint 3 or more persons to act in the role as conduct reviewers.

A sole conduct reviewer can now be chosen from the appointed persons to review complaints alleging breaches of the code of conduct.

If a conduct review committee is formed, it must consist of at least 3 members.

The conduct review committee/sole conduct reviewer must undertake its activities in accordance with the operating guidelines provided in the Model Code.

### **When are conduct reviewers appointed by council?**

Council should ensure that it undertakes a process to appoint conduct reviewers even though it does not have any complaints on foot. This will ensure that appropriately appointed conduct reviewers are available should a complaint arise which requires referral to a conduct committee/reviewer.

On appointing conduct reviewers, council should determine the term of appointment. This could be on an annual basis and determined in September each year when council confirms its committee memberships.

### **Can conduct reviewers act for more than one council?**

Conduct reviewers may act in that role for more than one council.

Conduct reviewers do not need to be residents of the local government area of the council that has appointed them.

Councils may decide to work with their regional organisation of councils or strategic alliance partners to appoint conduct reviewers to act for the member councils. Each member council will need to appoint the conduct reviewers for their council.

### **Should council appoint more than 3 conduct reviewers?**

Conduct review committees must consist of 3 or more members. Council should consider appointing more than 3 persons to act as conduct reviewers as circumstances may arise when one or more conduct reviewers are not available to participate in a matter, or may be precluded from considering a matter because of a conflict of interests or a reasonable apprehension of bias.

In such instances, if the council has only appointed 3 conduct reviewers, it will have insufficient persons available to form a conduct review committee. By appointing more than 3 conduct reviewers, the risk of these circumstances arising is minimised.

### **Who decides who will comprise the conduct review committee or whether one reviewer will act as a sole conduct reviewer?**

The general manager or Mayor will decide if the review will be undertaken by a sole conduct reviewer or a conduct review

committee and will select the reviewers from the persons appointed by council.

The number of persons who will undertake the review will depend on the nature, complexity and seriousness of the allegations.

For example, a council may have appointed 5 persons to act as conduct reviewers. The general manager or Mayor may receive a complaint that is assessed as requiring referral for review by a conduct review committee or reviewer.

If the matter is serious, the general manager or Mayor may determine to appoint all 5 persons to the conduct committee to determine that particular matter.

If the general manager or Mayor assesses the alleged breach as a reasonably straightforward matter, the general manager may determine to refer the complaint to a sole conduct reviewer.

The general manager or Mayor may then choose, from the persons appointed by council, a reviewer with expertise in relation to the nature of the conduct complained about.

### **Are conduct review committee members/sole conduct reviewers paid?**

This is a matter for council. Council may undertake an expression of interest process to call for interested and suitably qualified persons of high standing in the community to nominate to be appointed as conduct reviewers. Council should determine whether it is going to meet out of pocket expenses and/or pay a fee for the service.

### **What happens if a conduct reviewer has a conflict of interests?**

When a conduct reviewer cannot participate in a matter because of a conflict of interests, then the general manager or Mayor will select another person to be a member of the conduct review committee or to act as a sole conduct reviewer from those appointed by council.



### **How does the conduct review committee/sole conduct reviewer operate?**

The conduct review committee/sole conduct reviewer is required to undertake its enquiries in accordance with the operating guidelines provided in section 14 of the Model Code.

The general manager or Mayor may only attend conduct review committee meetings when invited and then in an advisory capacity only. Adequate resources must be provided to ensure that the committee/conduct reviewer can operate effectively.

### **What should a report of the conduct review committee/sole conduct reviewer contain?**

Where the conduct review committee/sole conduct reviewer makes enquiries or causes enquiries to be made into a matter, then it must report its findings in writing to the council on completion of these deliberations.

The conduct review committee/sole conduct reviewer should be mindful that there may be a need to protect the identity of the person making the complaint when preparing the report to council.

The report should be a summary of the enquiries undertaken while providing sufficient information for the council to make a determination as to whether the councillor or the general manager has breached the code of conduct.

It is suggested that, as a minimum, the report should contain:

- The nature of the complaint and the standard of conduct that is alleged to have been breached.
- The process undertaken by the conduct review committee/conduct reviewer in assessing and enquiring into the complaint.
- The facts of the matter.
- The findings and the reasons for those findings.
- Any recommendations to council (this now includes any recommendations for a revision of council's policies, procedures and/or the code of conduct).

The report will generally be dealt with in open session of council. Council can only close a meeting to the public if the matter is one that meets the requirements of section 10A(2) of the Act. In most cases, a report from the conduct review committee/sole conduct reviewer will not meet those requirements.

### **How are complainants kept informed?**

The complaint handling procedures in section 12 of the Model Code now require complainants to be kept informed in writing of the outcome of their complaint. Complainants must be advised when:

- enquiries are not to be made into the complaint and why
- the complaint is to be resolved by use of alternative strategies
- the complaint is to be referred to another body or person
- the conduct review committee/sole conduct reviewer has made its findings, the nature and reasons of those findings.