

COUNCIL POLICY

BACKGROUND

In accordance with the Local Government Act 1993 Council has adopted three Codes of Conduct (a Code for Staff, a Code for Councillors and a Code for Delegates, Contractors and Volunteers) incorporating relevant provisions of the Model Code of Conduct published by the Division of Local Government. Codes of Conduct provide that any person may make a complaint alleging a breach of a Code of Conduct.

OBJECTIVE

The objective of this policy is to provide a process for the handling of complaints alleging a breach of a relevant Code of Conduct including a process for the operation of Conduct Review Committees and Sole Conduct Reviewers engaged to undertake investigations into Code of Conduct complaints.

POLICY STATEMENT

This policy provides information for complainants and persons the subject of a complaint alleging a breach of a relevant Code of Conduct and ensures that the process of investigation of complaints is based upon the principles of procedural fairness.

STATEMENT OF PROCEDURES

PART A – COMPLAINTS PROCEDURE

1 Who complaints must be made to

1.1 Complaints alleging breaches of a relevant Code of Conduct by a Councillor, a member of Council staff, a member of a Council Committee or a delegate of Council may be made by any person and must be made to the General Manager, in writing, identifying the complainant.

1.2 Complaints alleging a breach of the relevant Code of Conduct by the General Manager may be made by any person and must be made to the Lord Mayor, in writing, identifying the complainant.

2 Complaint handling procedure – Councillor conduct

2.1 The General Manager is responsible for assessing complaints alleging breaches of the Code of Conduct by Councillors, in accordance with the following criteria, in order to determine whether to refer the matter to a Conduct Review Committee or a Sole Conduct Reviewer:

- whether there is any prima facie evidence of a breach of the Code of Conduct
- whether the subject matter of the complaint relates to conduct that is associated with the carrying out of the functions of civic office
- whether the complaint is trivial, frivolous, vexatious or not made in good faith
- whether the conduct the subject of the complaint could reasonably constitute a breach of the Code of Conduct
- whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Division of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police
- whether there is an alternative and satisfactory means of redress
- how much time has elapsed since the events the subject of the complaint took place
- how serious the complaint is and the significance it has for Council
- whether the complaint is one of a series indicating a pattern of conduct.

2.2 The General Manager must determine either to:

- take no further action and give the complainant the reason/s in writing and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
- resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice of the resolution of the matter in writing, or
- discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person as well as advising the complainant in writing, or
- refer the matter to a Conduct Review Committee or Sole Conduct Reviewer.

2.3 Complaints that are assessed by the General Manager as not having sufficient grounds to warrant referral to a Conduct Review Committee or Sole Conduct Reviewer or that are to be referred to a more appropriate person or body can be finalised by the General Manager.

3 Complaint handling procedure – staff (excluding General Manager), Council committee member or delegate conduct

- 3.1 The General Manager is responsible for making enquiries, or causing enquiries to be made, into complaints alleging a breach of the relevant Code of Conduct regarding members of staff of Council, delegates of Council and/or members of Council committees (other than Councillors) and will determine such matters.
- 3.2 Complaints that are assessed by the General Manager as not having sufficient grounds to warrant referral to a Conduct Review Committee or Sole Conduct Reviewer, or that are to be referred to a more appropriate person or body can be finalised by the General Manager.
- 3.3 Where the General Manager has determined not to enquire into the matter, the General Manager will give the complainant the reason/s in writing and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 3.4 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.
- 3.5 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.
- 3.6 Sanctions for delegates and/or members of Council committees (other than Councillors) depend on the severity, scale and importance of the breach and may include:
- censure
 - requiring the person to apologise to any person adversely affected by the breach
 - counselling
 - prosecution for any breach of the law
 - removing or restricting the person's delegation
 - removing the person from membership of the relevant Council committee
 - revising any of Council's policies, procedures and/or the relevant Code of Conduct.

4 Complaint handling procedure – General Manager conduct

- 4.1 The Lord Mayor is responsible for assessing complaints alleging breaches of the Code of Conduct by the General Manager, in accordance with the following criteria, in order to determine whether to refer the matter to a Conduct Review Committee or a Sole Conduct Reviewer:
- whether there is any prima facie evidence of a breach of the Code of Conduct
 - whether the subject matter of the complaint relates to conduct that is associated with the carrying out of duties as General Manager
 - whether the complaint is trivial, frivolous, vexatious or not made in good faith
 - whether the conduct the subject of the complaint could reasonably constitute a breach of the Code of Conduct
 - whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Division of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police
 - whether there is an alternative and satisfactory means of redress
 - how much time has elapsed since the events the subject of the complaint took place
 - how serious the complaint is and the significance it has for Council
 - whether the complaint is one of a series indicating a pattern of conduct.

4.2 The Lord Mayor must determine either to:

- take no further action and give the complainant the reasons in writing and those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
- resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation and give the complainant advice of the resolution of the matter in writing, or
- discontinue the assessment in the circumstances where it becomes evident that the matter should be referred to another body or person as well as advising the complainant in writing, or
- refer the matter to a Conduct Review Committee or a Sole Conduct Reviewer.

4.3 Complaints that are assessed by the Lord Mayor as not having sufficient grounds to warrant referral to a Conduct Review Committee or Sole Conduct Reviewer, or that are to be referred to a more appropriate person or body can be finalised by the Lord Mayor.

PART B – OPERATION OF CONDUCT REVIEW COMMITTEES OR SOLE CONDUCT REVIEWERS

5 Jurisdiction of a Conduct Review Committee or Sole Conduct Reviewer

5.1 The complaint handling function of a Conduct Review Committee or a Sole Conduct Reviewer is limited to consideration of, making enquiries into and reporting on complaints made alleging a breach of the relevant Code of Conduct by Councillors and/or the General Manager.

5.2 Complaints regarding pecuniary interest matters must be reported to the Division of Local Government and will not be dealt with by the Conduct Review Committee or Sole Conduct Reviewer.

5.3 Members of a Conduct Review Committee and Sole Conduct Reviewers are subject to the provisions of the Code of Conduct for Delegates, Contractors and Volunteers.

6 Role of the General Manager and Lord Mayor

6.1 The General Manager, or in the case of complaints about the General Manager, the Lord Mayor, will undertake the following functions in relation to a Conduct Review Committee or Sole Conduct Reviewer:

- provide procedural advice when requested
- ensure adequate resources are provided, including providing secretariat support
- attend meetings of the Conduct Review Committee if so requested by the Committee, and then in an advisory capacity only
- provide advice about Council processes if requested to do so but not so as to take part in the decision-making process
- if attending a Conduct Review Committee meeting to provide advice, must not be present at, or in sight of, the meeting when a decision is taken.

6.2 Where the General Manager, or in the case of complaints about the General Manager, the Lord Mayor, is unable to act as adviser to a Conduct Review Committee or Sole Conduct Reviewer due to a conflict of interests in relation to the complaint, they are to nominate a senior Council officer or Councillor (in the case of complaints about the General Manager) to perform this role.

7 Composition of the Conduct Review Committee/Sole Conduct Reviewer

7.1 Council must resolve to appoint five or more appropriately qualified persons of high standing in the community, who are independent of Council, to comprise a Conduct Review Committee and/or to act as a Sole Conduct Reviewer. These persons do not need to be residents of the City of Wollongong, may act in that role for more than one Council and will be engaged on a fee-for-service basis.

7.2 Where a matter is to be considered by a Conduct Review Committee or a Sole Conduct Reviewer, then in each case the General Manager or, in the case of complaints about the General Manager, the Lord Mayor, acting in their capacity as advisor, will either convene a Conduct Review Committee and select its members from those appointed by Council or, alternatively, select a Sole Conduct Reviewer from those appointed by Council.

7.3 The number of persons selected to undertake the review will depend on the nature, complexity and seriousness of the allegations. The person/s selected should also have expertise in relation to the nature of the conduct that is the subject of the complaint.

8 Quorum for meetings of Conduct Review Committee

8.1 A quorum for a meeting of a Conduct Review Committee is the majority of the members of the Conduct Review Committee.

8.2 If a quorum is not present at a meeting of a Conduct Review Committee business is not to be conducted at the meeting and the meeting must be adjourned to a specified time and date.

8.3 Business may be conducted by video-conference or tele-conference.

9 Voting at meetings of Conduct Review Committee

9.1 The first item of business at the first meeting of a Conduct Review Committee must be the election, by majority of members, of a Chairperson.

9.2 Each member of a Conduct Review Committee shall be entitled to one vote in respect of any matter. In the event of equality of votes being cast, the Chairperson shall have the casting vote.

9.3 If the vote on any matter is not unanimous this should be noted in any report to Council on the Committee's findings.

9.4 In relation to any procedural matters relating to the operation of the Committee, the ruling of the Chairperson shall be final.

10 Procedures of Conduct Review Committee/Sole Conduct Reviewer

10.1 The General Manager, or in the case of a complaint about the General Manager, the Lord Mayor, will be responsible for convening the initial meeting of a Conduct Review Committee when there is a complaint referred to it.

10.2 A Conduct Review Committee or Sole Conduct Reviewer will conduct business in the absence of the public.

10.3 A Conduct Review Committee or Sole Conduct Reviewer will keep proper records of deliberations.

10.4 A Conduct Review Committee shall determine the procedures governing the conduct of its meetings provided such procedures are consistent with this policy and the Division of Local Government's Model Code of Conduct.

10.5 Members of a Conduct Review Committee or a Sole Conduct Reviewer must accept their appointment in writing, including a declaration that they have no conflict of interest in the matter referred to the Committee or the Sole Conduct Reviewer.

11 Initial determination

11.1 A Conduct Review Committee or a Sole Conduct Reviewer is responsible for making enquiries into complaints referred to it by the General Manager or Lord Mayor alleging breaches of the relevant Code of Conduct by Councillors or the General Manager and must determine either to:

- not make enquiries into the complaint and give the complainant the reason/s in writing. Those reasons may include, but are not limited to, the fact that the complaint is trivial, frivolous, vexatious or not made in good faith, or
- resolve the complaint by use of alternative and appropriate strategies such as, but not limited to, mediation, informal discussion or negotiation, and give the complainant advice on the resolution of the matter in writing, or
- make enquiries into the complaint, or
- engage another appropriately qualified person to make enquiries into the complaint, or
- not make enquiries or discontinue making enquiries where it becomes evident that the matter should be referred to another body or person, and refer the matter to that body or person as well as advising the complainant in writing. Despite any other provision of this Policy this will constitute finalisation of such matters and no further action is required.

11.2 In making its initial determination the Conduct Review Committee or Sole Conduct Reviewer will have regard to the following criteria:

- whether there is any prima facie evidence of a breach of the Code of Conduct
- whether the subject matter of the complaint relates to conduct that is associated with the carrying out of duties as General Manager
- whether the complaint is trivial, frivolous, vexatious or not made in good faith
- whether the conduct the subject of the complaint could reasonably constitute a breach of the Code of Conduct
- whether the complaint raises issues that require investigation by another person or body, such as referring the matter to the Division of Local Government, the NSW Ombudsman, the Independent Commission Against Corruption or the NSW Police
- whether there is an alternative and satisfactory means of redress
- how much time has elapsed since the events the subject of the complaint took place
- how serious the complaint is and the significance it has for Council
- whether the complaint is one of a series indicating a pattern of conduct.

12 Procedural fairness

12.1 In the event that a Conduct Review Committee or a Sole Conduct Reviewer makes a determination to conduct enquiries into a complaint the Conduct Review Committee or Sole Conduct Reviewer, or the person engaged to do so, must follow the rules of procedural fairness and must:

- provide the person the subject of the complaint with a reasonable opportunity to respond to the substance of the allegation
- provide the person the subject of the complaint with an opportunity to place before the Conduct Review Committee, Sole Conduct Reviewer or person undertaking the enquiry any information the person considers relevant to the enquiry
- provide the person the subject of the complaint with an opportunity to address the Conduct Review Committee or Sole Conduct Reviewer in person
- hear all parties to a matter and consider submissions before deciding the substance of any complaint
- make reasonable enquiries before making any recommendations
- act fairly and without prejudice or bias
- ensure that no person decides a matter in which they have a conflict of interests
- conduct the enquiries without undue delay.

12.2 Where the person the subject of the complaint declines or fails to take the opportunity to respond to the substance of the allegation against them, the Conduct Review Committee or Sole Conduct Reviewer should proceed to finalise the matter.

13 Complaint handling procedures

13.1 All persons who are the subject of complaints that are referred to a Conduct Review Committee or a Sole Conduct Reviewer are to be given written information about the process being undertaken to deal with the matter.

13.2 In circumstances where the person the subject of a complaint meets with the Conduct Review Committee or a Sole Conduct Reviewer, the person is entitled to be accompanied by a support person, union representative or legal adviser. That person may act in an advisory and support role to the person the subject of the complaint and will not be permitted to speak on behalf of the person. Requests for reimbursement of costs of legal representation for Councillors and staff will be determined in accordance with Council's Policy on Payment of Expenses to Councillors and Staff.

14 No protection from action for defamation

14.1 Neither the Council nor a Conduct Review Committee nor a Sole Conduct Reviewer offers any protection against potential liability for defamation arising from any statements made in a complaint or in any statements made to a Conduct Review Committee or a Sole Conduct Reviewer.

15 Confidentiality

15.1 Records of proceedings before a Conduct Review Committee or a Sole Conduct Reviewer are to be confidential unless disclosure is required by law.

15.2 Parties to proceedings before a Conduct Review Committee or a Sole Conduct Reviewer may be required to execute a confidentiality undertaking in a form as determined by the Committee or the Sole Conduct Reviewer.

16 Draft Report

16.1 A draft of the report of a Conduct Review Committee or a Sole Conduct Reviewer must be provided to both the complainant and the person the subject of the complaint for comment prior to the report being finalised and submitted to Council.

16.2 The Conduct Review Committee or Sole Conduct Reviewer should be mindful that there may be a need to protect the identity of the complainant when making a report to Council.

17 Findings and recommendations of the Conduct Review Committee/Sole Conduct Reviewer

17.1 Where the Conduct review Committee or Sole Conduct Reviewer enquires or causes enquiries to be conducted, the Committee or Reviewer must make findings on whether, in its view, the conduct referred to it comprises a breach of the relevant Code of Conduct.

17.2 Where the Conduct Review Committee or the Sole Conduct Reviewer determines that the conduct referred to it comprises a breach of the relevant Code of Conduct it may, in its report to Council, make recommendations that it considers reasonable in the circumstances, that the Council take any of the following actions:

- censure the Councillor for misbehaviour
- require the Councillor or General Manager to apologise to any person adversely affected by the breach
- counsel the Councillor or General Manager
- make public findings of inappropriate conduct
- prosecute for any breach of the law
- revise any of Council's policies, procedures and/or the relevant Code of Conduct.

17.3 Before making any such recommendations the Conduct Review Committee or the Sole Conduct Reviewer shall have regard to the following:

- the seriousness of the breach
- whether the breach can be easily remedied or rectified
- whether the subject has expressed contrition
- whether the breach is technical or trivial only
- whether the breach represents repeated conduct
- the age, physical or mental health or special infirmity of the subject
- the degree of reckless intention or negligence of the subject
- the extent to which the breach has affected other parties or the Council as a whole
- the harm or potential harm to the reputation of local government and of the Council arising from the conduct
- whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny
- whether an educative approach would be more appropriate than a punitive approach
- the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action
- what action or remedy would be in the public interest
- where to comply with a Councillor's obligations under the relevant Code of Conduct would have the effect of depriving the Council of a quorum or otherwise compromise the capacity of Council to exercise its functions.

17.4 Where the Conduct Review Committee or Sole Conduct Reviewer makes findings, the Committee or Reviewer will report its findings, and the reasons for those findings, in writing to the Council, the complainant and the person the subject of the complaint.

17.5 The Conduct Review Committee or Sole Conduct Reviewer will report its findings and any recommendations to Council only when it has completed its deliberations.

SUMMARY SHEET

RESPONSIBLE DIVISION	Governance and Information
DATE ADOPTED ON BEHALF OF COUNCIL	24 May 2011
DATE OF PREVIOUS ADOPTION(S)	Not applicable
DATE FOR REVIEW	30 July 2012
PREPARED BY	Senior Legal and Governance Officer
AUTHORISED BY	Manager Governance and Information