

MODEL CODE OF CONDUCT FOR LOCAL COUNCILS IN NSW

‘AT A GLANCE’ GUIDE FOR COUNCIL STAFF



Introduction

This guide summarises the key elements of the *Model Code of Conduct for Local Councils in NSW* that apply to employees of councils and joint organisations.

The Model Code of Conduct is available at www.olg.nsw.gov.au.

Each council's and joint organisation's code of conduct must reflect the requirements of the Model Code of Conduct and may contain additional requirements.

While this guide refers to "councils" for simplicity, all references in it to "councils" are to be taken as including local and county councils and joint organisations.

Staff should familiarise themselves with their council's code of conduct and understand their obligations and the obligations of others.

Who is a council staff member?

Any person employed by a council is a council staff member. This includes the general manager, senior staff and permanent, temporary and casual staff.

General Conduct

It is important that the local community has confidence in the council and those that serve it, whether as elected representatives, members of staff or as delegates or committee members.

As a member of council staff you must ensure that your conduct and behaviour towards others (including other members of staff) meets the high standards that the community is entitled to expect of all council officials.

What conduct is expected of a staff member?

(Clauses 3.1 - 3.21)

You **must**:

- act lawfully and honestly and exercise care and diligence in undertaking your duties
- give your attention to council business when on duty
- undertake your work ethically, efficiently, economically and effectively
- carry out reasonable and lawful directions even if you do not agree with them
- consider matters consistently, promptly and fairly and in accordance with established procedures
- ensure land use planning, development assessment and other regulatory decisions are properly made and that all parties are dealt with fairly
- comply with your duties under the *Work Health and Safety Act 2011* and take care of your own and others' health and safety, and
- ensure that any political activities you take part in do not conflict with your responsibilities as a council staff member.

You **must not** conduct yourself in a way that:

- will bring the council into disrepute
- is contrary to law and council policies
- is improper, unethical or an abuse of power
- involves misuse of your position for personal benefit
- constitutes harassment or bullying or is unlawfully discriminatory, or
- is intimidating or verbally abusive.

Submitting returns of interests

Councillors and staff who exercise functions that may give rise to conflicts of interest are required to disclose their personal interests in publicly available returns of interests. These operate as a key transparency mechanism for promoting community confidence in council decision making, whether by councillors or by staff or others under delegation.

Do I need to submit a written return of interests?

(Clauses 4.8 and 4.9)

Staff who are “designated persons” must complete and submit returns of their interests to the general manager.

The following staff are “designated persons”:

- the general manager
- senior council staff, and
- staff who have been identified by the council as a “designated person” because their role involves the exercise of functions that could give rise to a conflict of interest.

When do I need to submit a written return of interests?

(Clause 4.21)

If you are a designated person, you must submit a return of interests within three months of your appointment and submit a new return annually (within three months of the start of each financial year).

If you become aware of any new interest that needs to be disclosed in the return, you must submit a new return within three months of becoming aware of the interest.

What interests do I need to disclose?

(Schedule 1)

If you are a designated person you will be required to disclose, among other things, the following types of interests in your return:

- interests in real property
- gifts
- contributions to travel
- interests and positions in corporations
- positions in trade unions and professional or business associations
- dispositions of real property
- sources of income, and
- debts

Conflicts of interest

As a member of the local community, it is inevitable that at some point you will have a conflict of interest in a matter that you are dealing with. What is important is that you are able to identify that you have a conflict of interest and that you disclose and manage it appropriately.

There are two types of conflicts of interest – pecuniary and non-pecuniary. Your obligations to disclose and manage conflicts of interest will depend on what type of conflict of interest you have.

What is a pecuniary conflict of interest?

(Clauses 4.1 – 4.5)

You will have a pecuniary interest in a matter you are dealing with where there is a reasonable likelihood or expectation that you or a related person (eg a relative or a company you hold shares in) will gain or lose financially appreciably as a result of any decision made in relation to the matter.

How do I manage pecuniary conflicts of interest that I have in matters I am dealing with?

(Clauses 4.10, 4.14, 4.15 and 4.18)

If you are a designated person, you must disclose in writing to the general manager any pecuniary interest you may have in a matter you are dealing with as soon as you become aware of it. In the

general manager's case, this disclosure needs to be made to the council.

The general manager (or the council in the case of a disclosure by the general manager) will decide how the matter will be dealt with.

If you are not a designated person, this disclosure must be made in writing to your manager or the general manager, who will decide how the matter will be dealt with.

If you are a member of a committee, you must disclose any pecuniary interest you have in any matter being dealt with by the committee at each committee meeting that the matter arises and leave the meeting while the matter is being considered and voted on.

What is a non-pecuniary conflict of interest?

(Clauses 5.1 – 5.2 and 5.8)

Non-pecuniary interests are private or personal interests that are not pecuniary interests.

You will have a non-pecuniary conflict of interest in a matter you are dealing with if a reasonable and informed person would perceive that you could be influenced by a private interest that you have in that matter. This is also known as the "pub test".

How you deal with a non-pecuniary conflict of interest will depend on whether it is significant.

How do I know if I have a significant non-pecuniary conflict of interest in a matter I am dealing with?

(Clause 5.9)

You will have a significant non-pecuniary conflict of interest in a matter you are dealing with where you have:

- a close relationship (including a business relationship) with a person who will be affected by any decision made in relation to the matter
- a strong affiliation with an organisation that will be affected by any decision made in relation to the matter
- a financial interest in the matter that is not a pecuniary interest, or you otherwise stand to

gain or lose a personal benefit as a result of a decision made in relation to that matter.

You will also have a significant non-pecuniary conflict of interest in a matter where you are member of the board or management committee of an organisation as the council's representative and the interests of the council and the organisation are potentially in conflict in relation to the matter under consideration. This is what is known as a "conflict of duties".

How do I manage significant non-pecuniary conflicts of interest that I have in matters I am dealing with?

(Clauses 5.6 and 5.10)

If you have a significant non-pecuniary conflict of interest in a matter you are dealing with, you must:

- disclose it in writing to your manager as soon as possible (disclose it to the mayor if you are the general manager)
- disclose it on each occasion the matter arises, and
- do not participate in any consideration of the matter.

If you are a member of a council committee you must also disclose your interest at each committee meeting that the matter arises and leave the meeting while the matter is being considered and voted on.

How do I manage non-pecuniary conflicts of interest that are not significant?

(Clauses 5.6, 5.7 and 5.11)

If you believe that you have a non-pecuniary conflict of interest in a matter you are dealing with that is not significant and that does not require further action, you must still disclose your interest in writing to your manager as soon as possible and explain why you believe it is not significant. The general manager is to disclose their interest to the mayor.

Your manager (or the mayor if you are the general manager) will help you decide how to manage your interest.

If you are a member of a committee, you must also disclose your interest at each committee meeting the matter arises and explain why you

believe it is not significant and no further action is necessary to manage it.

What if I am not sure?

(Clause 5.4)

Remember, no one knows your personal circumstances better than you and for that reason, the onus is on you to identify and disclose any potential conflict of interest you may have in a matter you are dealing with and to manage it appropriately.

If you are not sure whether you have a conflict of interest in a matter you are dealing with or what type of conflict of interest it is, always err on the side of caution. Disclose the interest in writing to your manager and discuss with them whether you should continue to deal with the matter.

Can I undertake paid work outside of my employment with council?

(Clauses 5.23 – 5.27)

You must not undertake any paid work outside of your employment with the council that relates to council business or that may conflict with your council duties without notifying and obtaining the approval of the general manager.

The general manager must not undertake any paid work outside of their employment with the council without the council's approval.

How do I deal with council in my private capacity as a resident or ratepayer?

(Clauses 5.28 and 5.29)

As a member of the community, it is inevitable that you will need to deal with your council in your private capacity. Where this occurs, you should deal with the council in the same way as other members of the public. You should not expect or seek any preferential treatment because you are an employee of the council.

You must not use your position to obtain a private benefit for yourself or for someone else or to influence others in the performance of their functions to obtain a private benefit for yourself or for someone else.

Gifts and benefits

In the course of performing your duties you may be offered a gift or a personal benefit. There are strict rules that govern what gifts or benefits you may accept and those that you must refuse.

These rules are informed by the following principles:

- you must not benefit personally from the performance of your duties on behalf of the council other than through the remuneration and any other benefits you receive as an employee of the council, and
- you must not be influenced or be seen to be influenced in the performance of your duties as a result of the receipt of a gift or personal benefit.

What is a gift or benefit?

(Clauses 6.1 and 6.2)

A gift or benefit is something offered to or received by you or someone closely associated with you for personal use or enjoyment.

Gifts and benefits do not include:

- items with a value of \$10 or less
- a gift or benefit provided to the council as part of a cultural exchange or sister city relationship (provided it is not used for your personal use and enjoyment)
- a benefit provided to you by the council
- attendance at a work-related event or function for the purpose of undertaking your council duties, or
- meals, beverages or refreshments that are provided to you while you are carrying out your council duties.

What gifts or benefits must I refuse?

(Clause 6.5)

You **must not**:

- seek or accept bribes
- seek gifts or benefits of any kind
- accept any gift or benefit that may create a sense of obligation, or that may be perceived as intended or likely to influence you in undertaking your duties

- accept any gift or benefit that is worth more than \$100
- accept tickets to major sporting or cultural events with a ticket value of over \$100 or corporate hospitality at such events
- accept cash or cash-like gifts (such as gift vouchers, credit cards, debit cards with credit on them, phone or internet credit, lottery tickets etc) of any amount
- participate in competitions for prizes where eligibility is based on the council being a customer of the competition organiser, or
- personally benefit from reward points programs when purchasing on behalf of council.

What if I can't refuse a gift or benefit?

(Clause 6.7)

If you are offered a gift or benefit that is worth more than \$100 that cannot be reasonably refused, you must surrender it to the council.

What gifts can I accept and who must I report this to?

(Clauses 6.6, 6.8 and 6.11)

You may accept gifts with a value of under \$100. However, if you receive further gifts from the same person or another person associated with them in the next 12 months with a value which, when combined with the value of the first gift exceeds \$100, you must refuse to accept the additional gifts.

If you accept a gift of any value above \$10, you must disclose this promptly to your manager or the general manager in writing. The following details must be recorded in the council's gift register:

- the nature of the gift or benefit
- the estimated monetary value of the gift or benefit
- the name of the person who provided the gift or benefit, and
- the date on which the gift or benefit was received.

Interactions with the mayor and councillors

Under the *Local Government Act 1993*, the general manager is responsible for the management of council staff. For this reason, the mayor and councillors cannot direct staff in the performance of their duties.

There should be little need for you to have direct contact with the mayor or another councillor. Most contact with the governing body is likely to occur through the general manager.

If the mayor or a councillor needs to contact you about council-related business, or you need to contact them, any interaction must be with the general manager's approval or comply with your council's councillor/staff interaction policy.

What are the obligations of the mayor and councillors in dealing with council staff?

(Clauses 7.6 and 8.26)

The mayor and councillors are not entitled to access staff only areas of the council and can only speak directly to council staff about council related matters where permitted to do so under the council's councillor/staff interaction policy or with the consent of the general manager.

The mayor and councillors **must not**:

- behave in an overbearing or threatening way towards staff
- direct, pressure or influence staff in the performance of their duties, including in relation to the making of recommendations, or
- make personal attacks on staff at council meetings or other public forums including social media.

What are my obligations when dealing with the mayor or councillors?

(Clause 7.6)

As a member of staff, you also have obligations that apply to how you deal with the mayor and councillors. In particular, you should:

- not discuss personal workplace matters such as operational issues, grievances, workplace investigations or disciplinary matters with the mayor or councillors
- treat the mayor and councillors with respect and not behave in an overbearing or threatening way towards them, and
- not provide ad hoc advice to councillors without recording or documenting the interaction in the same way you would a member of the public.

If a councillor has lodged a development application with the council, you must avoid discussing the application with the councillor in staff-only areas.

What information must I provide to the mayor and councillors?

(Clauses 8.1 – 8.6)

It is important that councillors have all the information they need to make informed decisions on behalf of the community. For this reason, the mayor and councillors are entitled to any information necessary to perform their functions effectively as members of the governing body and as elected representatives.

Councillor requests must be made by way of the councillor action/information request system or in accordance with council's councillor/staff interaction policy. The general manager will decide whether the mayor or a councillor can be provided with information they have requested. When the general manager has approved a councillor request, you must provide the requested information in a timely way.

If information is provided to one councillor, then it must also be provided to all other councillors who request it.

Councillors are not entitled to access information relating to matters they have a conflict of interest in. Access by councillors to this information can be denied unless the information is otherwise publicly available.

Councillors who have a private interest only in council information (ie they don't require it for the purpose of performing their role), have the same rights of access to that information as any other member of the public.

Use of council information and resources

Council resources (including council information) are public resources. You must use council resources ethically, effectively, efficiently and carefully when performing your duties.

You must not use council resources for private purposes, or convert council property for your own use unless you are authorised to do so.

What records should I keep?

(Clauses 8.21 – 8.24)

All information created, sent or received in your official capacity (whether or not stored on a council device or a council email account) and any information stored in either soft or hard copy on council resources is considered to be a council record and must be kept in accordance with the *State Records Act 1998* and your council's records management policy.

Do not destroy, alter or dispose of records unless authorised to do so.

What are my obligations in relation to the use of council information?

(Clauses 8.9 – 8.11)

You can only access and use council information for council business. You must not use council information for private purposes and you must not seek to privately benefit from any council information you have obtained in your role as a staff member.

You must only release council information in accordance with established council policies and procedures and in compliance with relevant legislation (including privacy legislation).

You must maintain the integrity and security of any confidential or personal information you have access to. In particular, you must:

- only access confidential or personal information that you have been authorised to access and only for the purposes of performing your duties
- protect confidential and personal information
- only release confidential or personal information if authorised to do so
- only use confidential or personal information for the purpose for which it is intended to be used
- not use confidential or personal information to obtain a private benefit for you or for someone else
- not use confidential or personal information to cause harm to the council or anyone else, and
- not disclose confidential information discussed during a closed session of a council or committee meeting or any other confidential forum (such as councillor workshops or briefing sessions).

What are my obligations when using my council computer or mobile device?

(Clause 8.20)

You must not use council's computer or mobile devices to access, download or communicate any material that is offensive, obscene, pornographic, threatening, abusive or defamatory or could lead to civil or criminal liability and/or damage council's reputation.

Making complaints under the code of conduct

Your council's code of conduct is the key mechanism for promoting and enforcing the ethical and behavioural standards the community rightly expects of those who serve the council.

For this reason, it is important that your council's code of conduct is correctly used and that code of conduct processes are respected and complied with.

How do I make a code of conduct complaint?

(Part 4 of the Procedures)

Complaints alleging breaches of the code of conduct must be made in writing to the general manager. Complaints about the general manager must be made in writing to the mayor. Complaints must be made within 3 months of the conduct occurring or you becoming aware of the conduct.

To be dealt with under the council's code of conduct, a complaint must show or tend to show conduct by another member of staff, a councillor or another person exercising council functions under delegation or who is otherwise subject to the council's code of conduct in connection with their official role or the exercise of their official functions that would constitute a breach of the council's code of conduct if proven.

The following types of complaints must not be dealt with under a council's code of conduct and should instead be dealt with under the council's routine complaints management processes:

- complaints about the standard or level of service provided by the council or a council official
- complaints that relate solely to the merits of a decision made by the council or a council official or the exercise of a discretion by the council or a council official
- complaints about the policies or procedures of the council, and
- complaints about the conduct of a council official arising from the exercise of their functions in good faith, whether or not involving error, that would not otherwise constitute a breach of the council's code of conduct.

What happens if a code of conduct complaint is made about me?

(Clauses 5.4 – 5.9 of the Procedures)

Under the Local Government Act, the general manager is responsible for the management of council staff. For this reason, the general manager (or another member of staff authorised by the general manager) is responsible for dealing with code of conduct complaints about council staff.

Code of conduct complaints about council staff must be managed in accordance with the relevant industrial instrument or employment contract and make provision for procedural fairness including the right of staff to be represented by their union.

Where proven, code of conduct complaints may result in counselling, training or disciplinary action including dismissal. Any disciplinary action will depend on the nature and severity of the breach and must be determined in accordance with the relevant industrial instrument or employment contract.

What are my responsibilities in relation to code of conduct complaints?

(Clauses 9.1 – 9.7 and 9.13)

You have certain obligations in relation to any code of conduct complaints that you make or that are made about you. These obligations are designed to safeguard the integrity of your council's code of conduct and the processes for investigating and dealing with alleged breaches by ensuring code of conduct matters are dealt with in a manner that is robust, fair and confidential. Breaches of these obligations may themselves constitute a breach of your council's code of conduct.

In particular you must not:

- make code of conduct complaints for an improper purpose
- take or cause reprisal action to be taken against someone for making or dealing with a code of conduct complaint
- disclose any information about a code of conduct complaint you have made or that has been made about you except for the purpose of seeking legal advice, or
- impede or disrupt the consideration of a code of conduct complaint and you must comply with any reasonable and lawful requests.