

Newcastle City Council

# Procedure

## Administration of the Code of Conduct

December 2017

# Administration of the Code of Conduct Procedure



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Related policies/documents	<ul style="list-style-type: none"> <li>▪ Code of Meeting Practice</li> <li>▪ Media Policy</li> <li>▪ Interaction between Councillors and Staff Policy</li> <li>▪ Internal Reporting - Public Interest Disclosures Policy</li> </ul>
Related forms	<ul style="list-style-type: none"> <li>▪ Pecuniary Interest Declaration</li> <li>▪ Non-Pecuniary Interest Declaration</li> </ul>
Authorisations	Functions authorised under this policy including Council Officers authorised to perform the function.

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# Part 1 Introduction

## Introduction

The Model Code of Conduct Procedures for Local Councils in NSW (**Model Code Procedures**) are prescribed for the purposes of the administration of the Model Code of Conduct for Local Councils in NSW (**Model Code**). The Model Code and Model Code Procedures are made under sections 440 and 440AA respectively of the *Local Government Act 1993* (**Act**) and the Local Government (General) Regulation 2005 (**Regulation**).

Sections 440 and 440AA of the Act require every council to adopt a Code of Conduct and Procedures for the administration of the Code of Conduct that incorporate the provisions of the Model Code and Model Code Procedures respectively.

In adopting procedures for the administration of their adopted codes of conduct, councils may supplement the Model Code Procedures. However provisions of a council's adopted procedures that are not consistent with those prescribed under the Model Code Procedures will have no effect.

## Part 2 Definitions

### Definitions

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

<b>Act</b>	means the <i>Local Government Act 1993</i> (NSW).
<b>Administrator</b>	means an Administrator of a Council appointed under the Act other than an Administrator appointed under section 66.
<b>General Manager</b>	means Chief Executive Officer of Newcastle City Council and includes their delegate or authorised representative. References to the CEO are references to the General Manager appointed under the Act.
<b>Code of Conduct</b>	means a Code of Conduct adopted under section 440 of the Act.
<b>Code of Conduct complaint</b>	means a complaint that alleges conduct on the part of a Council Official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the Council's Code of Conduct.
<b>Complainant</b>	means a person who makes a Code of Conduct complaint.
<b>Complainant Councillor</b>	means a Councillor who makes a Code of Conduct complaint.
<b>Complaints Coordinator</b>	means a person appointed by the CEO under these procedures as a Complaints Coordinator.
<b>Conduct Review Committee</b>	means the committee provided for in Part 6.
<b>Conduct Reviewer</b>	means a person appointed under these procedures to review allegations of breaches of the Code of Conduct by Councillors or the CEO.
<b>Council</b>	means Newcastle City Council.
<b>Council Committee</b>	means a committee established by resolution of Council.
<b>Council Committee Member</b>	means a person other than a Councillor or member of staff of Council who is a member of a Council Committee.
<b>Council Official</b>	means Councillors, members of staff of Council, Administrators, Council Committee Members, Conduct Reviewers and Delegates of Council.
<b>Councillor</b>	means a person elected or appointed to civic office and includes the Lord Mayor.

<b>Delegate of Council</b>	means a person (other than a Councillor or member of staff of Council) or body and the individual members of that body to whom a function of Council is delegated.
<b>Internal Reporting Policy</b>	means the Internal Reporting - Public Interest Disclosures Policy.
<b>Investigator</b>	means a Conduct Reviewer or Conduct Review Committee.
<b>The Office</b>	means the Office of Local Government.
<b>The Regulation</b>	means the <i>Local Government (General) Regulation 2005</i> (NSW).
<b>Subject Person</b>	means a person whose conduct is the subject of investigation by a Conduct Reviewer or Conduct Review Committee under these procedures.

## Part 3 Administration Framework

### The establishment of a panel of Conduct Reviewers

- 3.1 Council must by resolution establish a panel of Conduct Reviewers.
- 3.2 Council may by resolution enter into an arrangement with one or more other Councils to share a panel of Conduct Reviewers.
- 3.3 The panel of Conduct Reviewers is to be established following a public expression of interest process.
- 3.4 An expression of interest for members of Council's panel of Conduct Reviewers must, at a minimum, be advertised locally and in the Sydney metropolitan area.
- 3.5 To be eligible to be a member of a panel of Conduct Reviewers, a person must, at a minimum, meet the following requirements:
  - a) have an understanding of local government;
  - b) have knowledge of investigative processes including, but not limited to, procedural fairness requirements and the requirements of *the Public Interest Disclosures Act 1994* (NSW) (**PID Act**);
  - c) have knowledge and experience of one or more of the following:
    - i. investigations;
    - ii. law;
    - iii. public administration;
    - iv. public sector ethics; or
    - v. alternative dispute resolution, and
    - vi. meet the eligibility requirements for membership of a panel of Conduct Reviewers under clause 3.6.
- 3.6 A person is not eligible to be a member of the panel of Conduct Reviewers if they are:
  - a) a Councillor;
  - b) a nominee for election as a Councillor;
  - c) an Administrator;
  - d) an employee of Council;
  - e) a member of the Commonwealth Parliament or any State Parliament or Territory Assembly;



- f) a nominee for election as a member of the Commonwealth Parliament or any State Parliament or Territory Assembly; or
  - g) a person who has a conviction for an indictable offence that is not an expired conviction.
- 3.7 A person is not precluded from being a member of Council's panel of Conduct Reviewers if they are a member of another council's panel of Conduct Reviewers.
- 3.8 A panel of Conduct Reviewers established under this Part is to have a term of up to four years.
- 3.9 Council may terminate the panel of Conduct Reviewers at any time by resolution.
- 3.10 When the term of the Conduct Reviewers concludes or is terminated, Council must establish a new panel of Conduct Reviewers in accordance with the requirements of this Part.
- 3.11 A person who was a member of a previous panel of Conduct Reviewers established by Council may be a member of subsequent panels of Conduct Reviewers established by Council.

## **The appointment of Complaints Coordinators**

- 3.12 The CEO must appoint a member of staff of the Council to act as a Complaints Coordinator. Where practicable, the Complaints Coordinator should be a senior and suitably qualified member of staff.
- 3.13 The CEO may appoint other members of staff to act as Alternative Complaints Coordinator.
- 3.14 The CEO must not undertake the role of Complaints Coordinator.
- 3.15 The person appointed as Complaints Coordinator or alternate Complaints Coordinator must also be a nominated Disclosures Coordinator appointed for the purpose of receiving and managing reports of wrongdoing under the PID Act.
- 3.16 The role of the Complaints Coordinator is to:
- a) coordinate the management of complaints made under the Code of Conduct;
  - b) liaise with and provide administrative support to a Conduct Reviewer or Conduct Review Committee;
  - c) liaise with the Office; and
  - d) arrange the annual reporting of Code of Conduct complaints statistics.

## **Part 4 How May Code of Conduct complaints be made?**

### **What is a Code of Conduct complaint?**

- 4.1 For the purpose of these procedures, a Code of Conduct complaint is a complaint that alleges conduct on the part of a Council Official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the Code of Conduct.
- 4.2 Only Code of Conduct complaints are to be dealt with under these procedures. Complaints that do not satisfy the definition of a Code of Conduct complaint are to be dealt with under Council's routine complaints management processes.

### **When must a Code of Conduct complaint be made?**

- 4.3 A Code of Conduct Complaint must be made within three months of the alleged conduct occurring or within three months of the Complainant becoming aware of the alleged conduct.
- 4.4 A complaint made after 3 months may only be accepted if the CEO, or, in the case of a complaint about the CEO, the Lord Mayor, is satisfied that there are compelling grounds for the matter to be dealt with under the Code of Conduct.

### **How may a Code of Conduct complaint about a Council Official other than the CEO be made?**

- 4.5 All Code of Conduct complaints, other than those relating to the CEO, are to be made to the CEO in writing.
- 4.6 Where a Code of Conduct complaint about a Council Official, other than the CEO cannot be made in writing, the complaint must be confirmed with the Complainant in writing as soon as possible after the receipt of the complaint
- 4.7 In making a Code of Conduct complaint about a Council Official, other than the CEO, the Complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.8 The CEO, or where the complaint is referred to a Conduct Reviewer, the Conduct Reviewer, must consider the Complainant's preferences in deciding how to deal with the complaint.
- 4.9 Notwithstanding clauses 4.5 and 4.6, where the CEO becomes aware of a possible breach of the Code of Conduct, he or she may initiate the process for consideration of the matter under these procedures without a written complaint.

## **How may a Code of Conduct complaint about the CEO be made?**

- 4.10 Code of Conduct complaints about the CEO are to be made to the Lord Mayor in writing.
- 4.11 Where a Code of Conduct complaint about the CEO cannot be made in writing, the complaint must be confirmed with the Complainant in writing as soon as possible after the receipt of the complaint.
- 4.12 In making a Code of Conduct complaint about the CEO, the Complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.13 The Lord Mayor, or where the complaint is referred to a Conduct Reviewer, the Conduct Reviewer, must consider the Complainant's preferences in deciding how to deal with the complaint.
- 4.14 Notwithstanding clauses 4.10 and 4.11 where the Lord Mayor becomes aware of a possible breach of the Code of Conduct by the CEO, he or she may initiate the process for consideration of the matter under these procedures without a written complaint.

## **Part 5 How Are Code Of Conduct Complaints Managed?**

### **How are Code of Conduct complaints about staff (other than the CEO) to be dealt with?**

- 5.1 The CEO is responsible for making enquiries or causing enquiries to be made into Code of Conduct complaints about members of staff of Council and for determining the outcome of such complaints.
- 5.2 Where the CEO decides not to make enquiries into a Code of Conduct complaint about a member of staff, the CEO must give the Complainant reasons in writing for their decision.
- 5.3 Without limiting clause 5.2, the CEO may decide not to enquire into the Code of matter on grounds that the complaint is trivial, frivolous, vexatious or is not made in good faith.
- 5.4 Enquiries made into staff conduct that might give rise to disciplinary action must occur in accordance with the relevant industrial instrument or employment contract and make provision for procedural fairness, including the right of an employee to be represented by their union.
- 5.5 Sanctions for staff depend on the severity, scale and importance of the breach and must be determined in accordance with any relevant industrial instruments or contracts.

### **How are Code of Conduct complaints about Delegates of Council and Council Committee Members to be dealt with?**

- 5.6 The CEO is responsible for making enquiries or causing enquiries to be made into Code of Conduct complaints about Delegates of Council and Council Committee Members and for determining the outcome of such complaints.
- 5.7 Where the CEO decides not to make enquiries into a Code of Conduct complaint about a Delegate of Council or a Council Committee Member, the CEO must give the Complainant reasons in writing for their decision.
- 5.8 Without limiting clause 5.7, the CEO may decide not to enquire into the Code of matter on grounds that the complaint is trivial, frivolous, vexatious or is not made in good faith.
- 5.9 Sanctions for Delegates of Council and/or members of Council Committees depend on the severity, scale and importance of the breach and may include one or more of the following:
  - a) censure;
  - b) requiring the person to apologise to any person or organisation adversely affected by the breach;
  - c) prosecution for any breach of the law;
  - d) removing or restricting the person's delegation; or

- e) removing the person from membership of the relevant Council Committee.

5.10 Prior to imposing a sanction against a Delegate of Council or a Council Committee Member under clause 5.9, the CEO, or any person making enquiries on behalf of the CEO, must comply with the requirements of procedural fairness. In particular:

- a) the substance of the allegation (including the relevant provision/s of Council's Code of Conduct that the alleged conduct is in breach of) must be put to the person who is the subject of the allegation;
- b) the person must be given an opportunity to respond to the allegation; and
- c) the CEO must consider the person's response in deciding whether to impose a sanction under clause 5.9.

### **How are Code of Conduct complaints about Conduct Reviewers to be dealt with?**

5.11 The CEO must refer all Code of Conduct complaints about Conduct Reviewers to the Office for its consideration.

5.12 The CEO must notify the Complainant of the referral of their complaint in writing.

5.13 The CEO must implement any recommendation made by the Office as a result of its consideration of a Code of Conduct complaint about a Conduct Reviewer.

### **How are Code of Conduct complaints about Administrators to be dealt with?**

5.14 The CEO must refer all Code of Conduct complaints about Administrators to the Office for its consideration.

5.15 The CEO must notify the Complainant of the referral of their complaint in writing.

### **How are Code of Conduct complaints about Councillors to be dealt with?**

5.16 The CEO must refer the following Code of Conduct complaints about Councillors to the Office:

- a) complaints alleging a breach of the pecuniary interest provisions of the Act;
- b) complaints alleging a failure to comply with a requirement under the Code of Conduct to disclose and appropriately manage conflicts of interests arising from reportable political donations;
- c) complaints alleging a breach of Part 8 of the Code of Conduct relating to the maintenance of the integrity of the Code of Conduct; or

- d) complaints which are the subject of a special complaints management arrangement with the Office under clause 5.40.

5.17 Where the CEO refers a complaint to the Office under clause 5.16, the CEO must notify the Complainant of the referral in writing.

5.18 Where the CEO considers it to be practicable and appropriate to do so, the CEO may seek to resolve Code of Conduct complaints about Councillors, other than those requiring referral to the Office under clause 5.16, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology instead of referring them to the Complaints Coordinator under clause 5.20.

5.19 Where the CEO resolves a Code of Conduct complaint under clause 5.18 to the CEO's satisfaction, the CEO must notify the Complainant in writing of the steps taken to resolve the complaint and this will finalise the consideration of the matter under these procedures.

5.20 The CEO must refer all Code of Conduct complaints about Councillors other than those referred to the Office under clause 5.16 or resolved under clause 5.18 to the Complaints Coordinator.

## **How are Code of Conduct complaints about the CEO to be dealt with?**

5.21 The Lord Mayor must refer the following Code of Conduct Complaints about the CEO to the Office:

- a) complaints alleging a breach of the pecuniary interest provisions of the Act;
- b) complaints alleging a breach of Part 8 of the Code of Conduct relating to the maintenance of the integrity of the Code of Conduct; and
- c) complaints which are the subject of a special complaints management arrangement with the Office under clause 5.40.

5.22 Where the Lord Mayor refers a complaint to the Office under clause 5.21, the Lord Mayor must notify the Complainant of the referral in writing.

5.23 Where the Lord Mayor considers it to be practicable and appropriate to do so, he or she may seek to resolve Code of Conduct complaints about the CEO, other than those requiring referral to the Office under clause 5.21, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology instead of referring them to the Complaints Coordinator under clause 5.25.

5.24 Where the Lord Mayor resolves a Code of Conduct complaint under clause 5.23 to the Lord Mayor's satisfaction, the Lord Mayor must notify the Complainant in writing of the steps taken to resolve the complaint and this will finalise the consideration of the matter under these procedures.

5.25 The Lord Mayor must refer all Code of Conduct complaints about the CEO other than those referred to the Office under clause 5.21 or resolved under clause 5.23 to the Complaints Coordinator.

## **Referral of Code of Conduct complaints to external agencies**

- 5.26 The CEO, Lord Mayor, a Conduct Reviewer or Conduct Review Committee may, at any time, refer a Code of Conduct complaint to an external agency or body such as, but not limited to, the Office, the Independent Commission Against Corruption, the NSW Ombudsman or the Police for its consideration, where they consider such a referral is warranted.
- 5.27 Where the CEO, Lord Mayor, a Conduct Reviewer or Conduct Review Committee refers a complaint to an external agency or body under clause 5.26, they must notify the Complainant of the referral in writing where it is appropriate for them to do so.
- 5.28 Referral of a matter to an external agency or body will finalise consideration of the matter under the Code of Conduct unless Council is subsequently advised otherwise by the referral agency or body.

## **Disclosure of the identity of Complainants**

- 5.29 In dealing with matters under these procedures, information that identifies or tends to identify Complainants is not to be disclosed unless:
- a) the Complainant consents in writing to such disclosure;
  - b) it is generally known that the Complainant has made the complaint as a result of the Complainant having voluntarily identified themselves as the person who made the complaint;
  - c) it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed;
  - d) a Conduct Reviewer or Conduct Review Committee is of the opinion that disclosure of the information is necessary to investigate the matter effectively; or
  - e) it is otherwise in the public interest to do so.
- 5.30 Clause 5.29 does not apply to Code of Conduct complaints made by Councillors about other Councillors or the CEO.
- 5.31 Where a Councillor makes a Code of Conduct complaint about another Councillor or the CEO and the Complainant Councillor considers that compelling grounds exist which would warrant information that identifies or tends to identify them as the Complainant not to be disclosed, they may request in writing that such information not be disclosed.
- 5.32 A request made by a Complainant Councillor under clause 5.31 must be made at the time they make a Code of Conduct complaint and must state the grounds upon which the request is made.
- 5.33 The CEO or Lord Mayor or, where the matter is referred, a Conduct Reviewer or Conduct Review Committee must consider a request made under clause 5.31 before disclosing information that identifies or tends to identify the Complainant Councillor however they are not obliged to comply with the request.

5.34 Where a Complainant Councillor makes a request under clause 5.31, the CEO or Lord Mayor or, where the matter is referred, a Conduct Reviewer or Conduct Review Committee will notify the Councillor in writing of their intention to disclose information that identifies or tends to identify them prior to disclosing the information.

## **Code of Conduct complaints made as public interest disclosures**

5.35 Code of Conduct complaints that are made as public interest disclosures under the PID Act are to be managed in accordance with the requirements of the PID Act, Council's Internal Reporting Policy and any guidelines issued by the NSW Ombudsman that relate to the management of public interest disclosures.

5.36 For a Code of Conduct complaint to be dealt with as a public interest disclosure, the Complainant must state at the outset and in writing at the time of making the complaint that it is made as a public interest disclosure.

5.37 Where a Councillor makes a Code of Conduct complaint about another Councillor or the CEO as a public interest disclosure, before the matter may be dealt with under these procedures, the Complainant Councillor must consent in writing to the disclosure of their identity as the Complainant.

5.38 Where a Complainant Councillor declines to consent to the disclosure of their identity as the Complainant under clause 5.37, the CEO or the Lord Mayor must refer the complaint to the Office for consideration. Such a referral must be made in accordance with section 26 of the PID Act.

## **Special complaints management arrangements**

5.39 The CEO may request in writing that the Office enter into a special complaints management arrangement with Council in relation to Code of Conduct complaints made by or about a person or persons.

5.40 Where the Office receives a request under clause 5.39, it may agree to enter into a special complaints management arrangement where it is satisfied that the number or nature of Code of Conduct complaints made by or about a person or persons has:

- a) imposed an undue and disproportionate cost burden on Council's administration of its Code of Conduct;
- b) impeded or disrupted the effective administration by Council of its Code of Conduct; or
- c) impeded or disrupted effective functioning of the Council.

5.41 A special complaints management arrangement must be in writing and must specify the following:

- a) the Code of Conduct complaints the arrangement relates to; and
- b) the period during which the arrangement will be in force.



- 5.42 The Office may, by notice in writing, amend or terminate a special complaints management arrangement at any time.
- 5.43 While a special complaints management arrangement is in force, an officer of the Office (the assessing Office of Local Governmental officer) must undertake the preliminary assessment of the Code of Conduct complaints specified in the arrangement in accordance with the requirements of these procedures except as provided by clause 5.44 below.
- 5.44 Where, following a preliminary assessment, the assessing Office of Local Governmental officer determines that a Code of Conduct complaint warrants investigation by a Conduct Reviewer or a Conduct Review Committee, the assessing Office of Local Governmental officer will notify the Complaints Coordinator in writing of their determination and the reasons for their determination. The Complaints Coordinator must comply with the recommendation of the assessing Office of Local Governmental officer.
- 5.45 Prior to the expiry of a special complaints management arrangement, the Office will, in consultation with the CEO, review the arrangement to determine whether it should be renewed or amended.
- 5.46 A special complaints management arrangement will expire on the date specified in the arrangement unless it is renewed under clause 5.45.

## Part 6 Preliminary Assessment

### Referral of Code of Conduct complaints to Conduct Reviewers

- 6.1 The Complaints Coordinator must refer all Code of Conduct complaints about Councillors or the CEO submitted to the Complaints Coordinator within 21 days of receipt of a complaint by the CEO or the Lord Mayor.
- 6.2 For the purposes of clause 6.1, the Complaints Coordinator will refer a complaint to a Conduct Reviewer selected from:
- a) a panel of Conduct Reviewers established by Council; or
  - b) a panel of Conduct Reviewers established by an organisation approved by the Chief Executive of the Office.
- 6.3 In selecting a suitable Conduct Reviewer, the Complaints Coordinator may have regard to the qualifications and experience of members of the panel of Conduct Reviewers.
- 6.4 A Conduct Reviewer must not accept the referral of a Code of Conduct complaint where:
- a) they have a conflict of interests in relation to the matter referred to them;
  - b) a reasonable apprehension of bias arises in relation to their consideration of the matter;
  - c) they or their employer has entered into one or more contracts with Council in the two years preceding the referral and they or their employer have received or expect to receive payments under the contract or contracts of a cumulative value that exceeds \$100K; or
  - d) at the time of the referral, they or their employer are Council's legal service providers or are a member of a panel of legal service providers appointed by Council.
- 6.5 For the purposes of clause 6.4(a), a Conduct Reviewer will have a conflict of interests in a matter where a reasonable and informed person would perceive that they could be influenced by a private interest when carrying out their public duty (see clause 4.1 of the Model Code of Conduct).
- 6.6 For the purposes of clause 6.4(b), a reasonable apprehension of bias arises where a fair-minded observer might reasonably apprehend that the Conduct Reviewer might not bring an impartial and unprejudiced mind to the matter referred to the Conduct Reviewer.
- 6.7 Where the Complaints Coordinator refers a matter to a Conduct Reviewer, they will provide the Conduct Reviewer with a copy of the Code of Conduct complaint and any other information relevant to the matter held by Council.

6.8 The Complaints Coordinator must notify the Complainant in writing that the matter has been referred to a Conduct Reviewer and advise them which Conduct Reviewer the matter has been referred to.

## **Preliminary assessment by a Conduct Reviewer**

6.9 The Conduct Reviewer is to undertake a preliminary assessment of a complaint referred to them by the Complaints Coordinator for the purposes of determining how the complaint is to be managed.

6.10 The Conduct Reviewer may determine to do one or more of the following in relation to a complaint referred to them by the Complaints Coordinator:

- a) to take no action;
- b) to resolve the complaint by alternative and appropriate means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology;
- c) to refer the matter back to the CEO or, in the case of a complaint about the CEO, the Lord Mayor, for resolution by alternative and appropriate means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, or apology;
- d) to refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, the Office or the Police;
- e) to investigate the matter; or
- f) to recommend that the Complaints Coordinator convene a Conduct Review Committee to investigate the matter.

6.11 In determining how to deal with a matter under clause 6.10, the Conduct Reviewer must have regard to the complaint assessment criteria prescribed under clause 6.27.

6.12 The Conduct Reviewer may make such enquiries the Conduct Reviewer considers to be reasonably necessary to determine what option to exercise under clause 6.10.

6.13 The Conduct Reviewer may request the Complaints Coordinator to provide such additional information the Conduct Reviewer considers to be reasonably necessary to determine what option to exercise in relation to the matter under clause 6.10. The Complaints Coordinator will, as far as is reasonably practicable, supply any information requested by the Conduct Reviewer.

6.14 The Conduct Reviewer must refer to the Office any complaints referred to him or her that should have been referred to the Office under clauses 5.16 and 5.21.

6.15 The Conduct Reviewer must determine to take no action on a complaint that is not a Code of Conduct complaint for the purposes of these procedures.

6.16 Where the Conduct Reviewer completes their preliminary assessment of a complaint by determining to exercise an option under clause 6.10, paragraphs (a), (b) or (c), they must

provide the Complainant with written notice of their determination and provide reasons for it, which will finalise the consideration of the matter under these procedures.

- 6.17 Where the Conduct Reviewer refers a complaint to another agency or body, they must notify the Complainant of the referral in writing where it is appropriate for them to do so.
- 6.18 The Conduct Reviewer may only determine to investigate a matter or to recommend that a Conduct Review Committee be convened to investigate a matter, where they are satisfied as to the following:
- a) that the complaint is a Code of Conduct Complaint for the purposes of these procedures;
  - b) that the alleged conduct, on its face, is sufficiently serious to warrant investigation; and
  - c) that the matter is one that could not or should not be resolved by alternative means.
- 6.19 The Conduct Reviewer may only determine to recommend that a Conduct Review Committee be convened to investigate a matter after consulting with the Complaints Coordinator and where they are satisfied that it would not be practicable or appropriate for the matter to be investigated by a sole Conduct Reviewer.
- 6.20 The Conduct Reviewer must complete their preliminary assessment of the complaint within 28 days of referral of the matter to them by the Complaints Coordinator.
- 6.21 The Conduct Reviewer is not obliged to give prior notice to, or to consult with, any person before making a determination in relation to their preliminary assessment of a complaint except as may be specifically required under these procedures.

## **Referral back to the CEO or Lord Mayor for resolution**

- 6.22 Where the Conduct Reviewer determines to refer a matter back to the CEO or to the Lord Mayor to be resolved by alternative and appropriate means, they must write to the CEO or, in the case of a complaint about the CEO, to the Lord Mayor, recommending the means by which the complaint may be resolved.
- 6.23 The Conduct Reviewer must consult with the CEO or Lord Mayor prior to referring a matter back to them under clause 6.22.
- 6.24 The CEO or Lord Mayor may decline to accept the Conduct Reviewer's recommendation. Where the CEO or Lord Mayor declines to do so, the Conduct Reviewer may determine to deal with the complaint by other alternative means under clause 6.10.
- 6.25 Where the Conduct Reviewer refers a matter back to the CEO or Lord Mayor under clause 6.22, the CEO or, in the case of a complaint about the CEO, the Lord Mayor, is responsible for implementing or overseeing the implementation of the Conduct Reviewer's recommendation.
- 6.26 Where the Conduct Reviewer refers a matter back to the CEO or Lord Mayor under clause 6.22, the CEO, or, in the case of a complaint about the CEO, the Lord Mayor, must

advise the Complainant in writing of the steps taken to implement the Conduct Reviewer's recommendation once these steps have been completed.

## **Complaints assessment criteria**

6.27 In undertaking the preliminary assessment of a complaint, the Conduct Reviewer may have regard to the following considerations:

- a) whether the complaint is a Code of Conduct complaint;
- b) whether the complaint is trivial, frivolous, vexatious or not made in good faith;
- c) whether the complaint discloses prima facie evidence of a breach of the Code of Conduct;
- d) whether the complaint raises issues that would be more appropriately dealt with by another agency or body;
- e) whether there is or was an alternative and satisfactory means of redress available to the Complainant in relation to the conduct complained of;
- f) whether the complaint is one that can be resolved by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, informal discussion, negotiation or apology;
- g) whether the issue/s giving rise to the complaint have previously been addressed or resolved;
- h) whether the conduct complained of forms part of a pattern of conduct;
- i) whether there were mitigating circumstances giving rise to the conduct complained of;
- j) the seriousness of the alleged conduct;
- k) the significance of the conduct or the impact of the conduct for Council;
- l) how much time has passed since the alleged conduct occurred; or
- m) such other considerations that the Conduct Reviewer considers may be relevant to the assessment of the complaint.

## **Part 7 Operations of Conduct Review Committees**

### **Operation of Conduct Review Committees**

- 7.1 Where a Conduct Reviewer recommends that the Complaints Coordinator convene a Conduct Review Committee to investigate a matter, the Conduct Reviewer must notify the Complaints Coordinator of their recommendation and the reasons for their recommendation in writing.
- 7.2 The Complaints Coordinator must convene a Conduct Review Committee comprising three Conduct Reviewers selected from:
- a) a panel of Conduct Reviewers established by Council; or
  - b) a panel of Conduct Reviewers established by an organisation approved by the Chief Executive of the Office.
- 7.3 In selecting suitable Conduct Reviewers for membership of a Conduct Review Committee convened under clause 7.2 the Complaints Coordinator may have regard to the following:
- a) the qualifications and experience of members of the panel of Conduct Reviewers; and
  - b) any recommendation made by the Conduct Reviewer about the membership of the committee.
- 7.4 The Conduct Reviewer who made the preliminary assessment of the complaint must not be a member of a Conduct Review Committee convened under clause 7.2.
- 7.5 A member of a panel of Conduct Reviewers may not be appointed to a Conduct Review Committee where they would otherwise be precluded from accepting a referral of the matter to be considered by the committee under clause 6.4.
- 7.6 Where the Complaints Coordinator convenes a Conduct Review Committee, they will advise the Complainant in writing that the committee has been convened and will provide details about the membership of the committee.
- 7.7 Where, after a Conduct Review Committee has been convened, a member of the committee becomes unavailable to participate in further consideration of the matter, the Complaints Coordinator may appoint another person from a panel of Conduct Reviewers to replace them.
- 7.8 Meetings of a Conduct Review Committee may be conducted in person or by teleconference.
- 7.9 The members of the Conduct Review Committee must elect a chairperson of the committee.
- 7.10 A quorum for a meeting of the Conduct Review Committee is two members.
- 7.11 Business is not to be conducted at any meeting of the Conduct Review Committee unless a quorum is present.

- 7.12 If a quorum is not present at a meeting of the Conduct Review Committee, it must be adjourned to a time and date that is specified.
- 7.13 Each member of the Conduct Review Committee is entitled to one vote in relation to a matter. In the event of an equality of votes being cast, the chairperson will have a casting vote.
- 7.14 If the vote on a matter is not unanimous, then this should be noted in the report of the Conduct Review Committee in which it makes its determination in relation to the matter.
- 7.15 The chairperson may make a ruling on questions of procedure and the chairperson's ruling is to be final.
- 7.16 The Conduct Review Committee may only conduct business in the absence of the public.
- 7.17 The Conduct Review Committee must maintain proper records of its proceedings.
- 7.18 The Complaints Coordinator will undertake the following functions in support of a Conduct Review Committee:
- a) provide procedural advice where required;
  - b) ensure adequate resources are provided including secretarial support;
  - c) attend meetings of the Conduct Review Committee in an advisory capacity; and
  - d) provide advice about Council's processes where requested.
- 7.19 The Complaints Coordinator must not be present at, or in sight of a meeting of, the Conduct Review Committee where it makes its final determination in relation to the matter.
- 7.20 The Conduct Review Committee may adopt procedures governing the conduct of its meetings that supplement these procedures. However any procedures adopted by the committee must not be inconsistent with these procedures.

## **Part 8 Investigations**

### **What matters may a Conduct Reviewer or Conduct Review Committee investigate?**

- 8.1 A Conduct Reviewer or Conduct Review Committee (Investigator) may investigate a Code of Conduct complaint that has been referred to them by the Complaints Coordinator and any matters related to or arising from that complaint.
- 8.2 Where an Investigator identifies further separate possible breaches of the Code of Conduct that are not related to, or arise from, the Code of Conduct complaint that has been referred to them, they are to report the matters separately in writing to the CEO, or, in the case of alleged conduct on the part of the CEO, to the Lord Mayor.
- 8.3 The CEO or the Lord Mayor is to deal with a matter reported to them by an Investigator under clause 8.2 as if it were a new Code of Conduct complaint in accordance with these procedures.

### **How are investigations to be commenced?**

- 8.4 The Investigator must at the outset of their investigation provide a written notice of investigation to the Subject Person. The notice of investigation must:
  - a) disclose the substance of the allegations against the Subject Person;
  - b) advise of the relevant provisions of the Code of Conduct that apply to the alleged conduct;
  - c) advise of the process to be followed in investigating the matter;
  - d) invite the Subject Person to make a written submission in relation to the matter within 28 days or such other reasonable period specified by the Investigator in the notice; and
  - e) provide the Subject Person the opportunity to address the Investigator on the matter within such reasonable time specified in the notice.
- 8.5 The Subject Person may, within 14 days of receipt of the notice of investigation, request in writing that the Investigator provide them with such further information they consider necessary to assist them to identify the substance of the allegation against them. An Investigator will only be obliged to provide such information that the Investigator considers reasonably necessary for the Subject Person to identify the substance of the allegation against them.
- 8.6 An Investigator may at any time prior to issuing a draft report, issue an amended notice of investigation to the Subject Person in relation to the matter referred to them.
- 8.7 Where an Investigator issues an amended notice of investigation, they will provide the Subject Person with a further opportunity to make a written submission in response to the amended notice of investigation within 28 days or such other reasonable period specified by the Investigator in the amended notice.



- 8.8 The Investigator must also, at the outset of their investigation, provide written notice of the investigation to the Complainant, the Complaints Coordinator and the CEO, or in the case of a complaint about the CEO, to the Lord Mayor. The notice must:
- a) advise them of the matter the Investigator is investigating; and
  - b) in the case of the notice to the Complainant, invite them to make a written submission in relation to the matter within 28 days or such other reasonable period specified by the Investigator in the notice.

## **Written and oral submissions**

- 8.9 Where the Subject Person or the Complainant fails to make a written submission in relation to the matter within the period specified by the Investigator in their notice of investigation or amended notice of investigation, the Investigator may proceed to prepare their draft report without receiving such submissions.
- 8.10 The Investigator may accept written submissions received outside the period specified in the notice of investigation or amended notice of investigation.
- 8.11 Prior to preparing a draft report, the Investigator must give the Subject Person an opportunity to address the Investigator on the matter being investigated. The Subject Person may do so in person or by telephone.
- 8.12 Where the Subject Person fails to accept the opportunity to address the Investigator within the period specified by the Investigator in the notice of investigation, the Investigator may proceed to prepare a draft report without hearing from the Subject Person.
- 8.13 Where the Subject Person accepts the opportunity to address the Investigator in person, they may have a support person or legal advisor in attendance. The support person or legal advisor will act in an advisory or support role to the Subject Person only. They must not speak on behalf of the Subject Person or otherwise interfere with or disrupt proceedings.
- 8.14 The Investigator must consider all written and oral submissions made to them in relation to the matter.

## **How are investigations to be conducted?**

- 8.15 Investigations are to be undertaken without undue delay.
- 8.16 Investigations are to be undertaken in the absence of the public and in confidence.
- 8.17 Investigators must make any such enquiries that may be reasonably necessary to establish the facts of the matter.
- 8.18 Investigators may seek such advice or expert guidance that may be reasonably necessary to assist them with their investigation or the conduct of their investigation.
- 8.19 An Investigator may request that the Complaints Coordinator provide such further information that the Investigator considers may be reasonably necessary for them to

establish the facts of the matter. The Complaints Coordinator will, as far as is reasonably practicable, provide the information requested by the Investigator.

## **Referral or resolution of a matter after the commencement of an investigation**

8.20 At any time after an Investigator has issued a notice of investigation and before they have issued a draft report, an Investigator may determine to:

- a) resolve the matter by alternative and appropriate means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology;
- b) refer the matter to the CEO, or in the case of a complaint about the CEO, to the Lord Mayor, for resolution by alternative and appropriate means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology; or
- c) refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, the Office or the Police.

8.21 Where an Investigator determines to exercise any of the options as prescribed by clause 8.20 after the commencement of an investigation, they must do so in accordance with the requirements of Part 6 of these procedures relating to the exercise of these options at the preliminary assessment stage.

8.22 Where an Investigator determines to exercise any of the options under clause 8.20 after the commencement of an investigation, they may by written notice to the Subject Person, the Complainant, the Complaints Coordinator and the CEO, or in the case of a complaint about the CEO the Lord Mayor, discontinue their investigation of the matter.

8.23 Where the Investigator discontinues their investigation of a matter under clause 8.22, this will finalise the consideration of the matter in accordance with these procedures.

8.24 An Investigator is not obliged to give prior notice to, or to consult with, any person before making a determination to exercise any of the options under clause 8.20 or to discontinue their investigation except as may be specifically required under these procedures.

## **Draft investigation reports**

8.25 When an Investigator has completed their enquiries and considered any written or oral submissions made to them in relation to a matter, they must prepare a draft of their proposed report.

8.26 The Investigator must provide their draft report to the Subject Person and invite them to make a written submission in relation to it within 28 days or such other reasonable period specified by the Investigator.

8.27 Where the Investigator proposes to make adverse comment about any other person (an affected person) in their report, they must also provide the affected person with relevant extracts of their draft report containing such comment and invite the affected person to

make a written submission in relation to it within 28 days or such other reasonable period specified by the Investigator.

- 8.28 The Investigator must consider written submissions received in relation to the draft report prior to finalising their report in relation to the matter.
- 8.29 The Investigator may, after consideration of all written submissions received in relation to their draft report, make further enquiries into the matter. Where as a result of making further enquiries, the Investigator makes any material change to their proposed report that makes new adverse comment about the Subject Person or an affected person, they must provide the Subject Person, or affected person as the case may be, with a further opportunity to make a written submission in relation to the new adverse comment.8.68.7
- 8.30 Where the Subject Person or an affected person fails to make a written submission in relation to the draft report within the period specified by the Investigator, the Investigator may proceed to prepare and issue their final report without receiving such submissions.
- 8.31 The Investigator may accept written submissions in relation to the draft report received outside the period specified by the Investigator at any time prior to issuing their final report.

## **Final investigation reports**

- 8.32 Where an Investigator issues a notice of investigation they must prepare a final report in relation to the matter unless the investigation is discontinued under clause 8.22.
- 8.33 An Investigator must not prepare a final report in relation to the matter at any time before they have finalised their consideration of the matter in accordance with the requirements of these procedures.
- 8.34 The Investigator's final report must:
- a) make findings of fact in relation to the matter investigated, and
  - b) make a determination that the conduct investigated either:
    - i. constitutes a breach of the Code of Conduct; or
    - ii. does not constitute a breach of the Code of Conduct; and
  - c) provide reasons for the determination.
- 8.35 Where the Investigator determines that the conduct investigated constitutes a breach of the Code of Conduct, the Investigator may make one or more of the following recommendations:
- a) that Council revise any of its policies or procedures;
  - b) that the Subject Person undertake any training or other education relevant to the conduct giving rise to the breach;
  - c) that the Subject Person be counselled for their conduct;

- d) that the Subject Person apologise to any person or organisation affected by the breach in such a time and form specified by the recommendation;
- e) that findings of inappropriate conduct be made public;
- f) in the case of a breach by the CEO, that action be taken under in accordance with the CEO's employment contract for the breach;
- g) in the case of a breach by a Councillor, that the Councillor be formally censured for the breach in accordance with section 440G of the Act;
- h) in the case of a breach by a Councillor, that Council resolves as follows:
  - i. that the Councillor be formally censured for the breach under section 440G of the Act, and
  - ii. that the matter be referred to the Office for further action in accordance with the misconduct provisions of the Act.

8.36 Where the Investigator determines that the conduct investigated does not constitute a breach of the Code of Conduct, the Investigator may make one or more of the following recommendations:

- a) that Council revise any of its policies or procedures; or
- b) that a person or persons undertake any training or other education.

8.37 In making a recommendation under clause 8.35, the Investigator may have regard to the following:

- a) the seriousness of the breach;
- b) whether the breach can be easily remedied or rectified;
- c) whether the Subject Person has remedied or rectified their conduct;
- d) whether the Subject Person has expressed contrition;
- e) whether there were any mitigating circumstances;
- f) the age, physical or mental health or special infirmity of the Subject Person;
- g) whether the breach is technical or trivial only;
- h) any previous breaches;
- i) whether the breach forms part of a pattern of conduct;
- j) the degree of reckless intention or negligence of the Subject Person;
- k) the extent to which the breach has affected other parties or Council as a whole;

- l) the harm or potential harm to the reputation of Council or local government arising from the conduct;
- m) whether the findings and recommendations can be justified in terms of the public interest and would withstand public scrutiny;
- n) whether an educative approach would be more appropriate than a punitive one;
- o) the relative costs and benefits of taking formal enforcement action as opposed to taking no action or taking informal action; or
- p) what action or remedy would be in the public interest.

8.38 At a minimum, the Investigator's final report must contain the following information:

- a) a description of the allegations against the Subject Person;
- b) the relevant provisions of the Code of Conduct that apply to the alleged conduct investigated;
- c) a statement of reasons as to why the Conduct Reviewer considered that the matter warranted investigation;
- d) a statement of reasons as to why the Conduct Reviewer considered that the matter was one that could not or should not be resolved by alternative means;
- e) where the matter is investigated by a Conduct Review Committee, a statement as to why the matter was one that warranted investigation by a Conduct Review Committee instead of a sole Conduct Reviewer;
- f) a description of any attempts made to resolve the matter by use of alternative means;
- g) the steps taken to investigate the matter;
- h) the facts of the matter;
- i) the Investigator's findings in relation to the facts of the matter and the reasons for those findings;
- j) the Investigator's determination and the reason for that determination; and
- k) any recommendations.

8.39 The Investigator must provide a copy of their report to the Complaints Coordinator, the Subject Person and the Complainant.

8.40 Where the Investigator has determined that there has not been a breach of the Code of Conduct, the Complaints Coordinator must provide a copy of the Investigator's report to the CEO or, where the report relates to the CEO's conduct, to the Lord Mayor and this will finalise consideration of the matter under these procedures.

- 8.41 Where the Investigator has determined that there has been a breach of the Code of Conduct and makes a recommendation or recommendations under clause 8.35, paragraph (a), the Complaints Coordinator must provide a copy of the Investigator's report to the CEO. Where the CEO agrees with the recommendation/s, the CEO is responsible for implementing the recommendation/s.
- 8.42 Where the Investigator has determined that there has been a breach of the Code of Conduct and makes a recommendation or recommendations under clause 8.35, paragraphs (b) or (c), the Complaints Coordinator must provide a copy of the Investigator's report to the CEO or, where the report relates to the CEO's conduct, to the Lord Mayor. The CEO is responsible for arranging the implementation of the recommendation/s where the report relates to a Councillor's conduct. The Lord Mayor is responsible for arranging the implementation of the recommendation/s where the report relates to the CEO's conduct.
- 8.43 Where the Investigator has determined that there has been a breach of the Code of Conduct and makes a recommendation/ or recommendations under clause 8.35, paragraphs (d) to (h), the Complaints Coordinator must, where practicable, arrange for the Investigator's report to be reported to the next ordinary Council meeting for Council's consideration unless the meeting is to be held within the four weeks prior to an ordinary local government election, in which case the report must be reported to the first ordinary Council meeting following the election.

## **Consideration of the final investigation report by Council**

- 8.44 The role of the elected Council in relation to a final investigation report is to impose a sanction where an Investigator determines that there has been a breach of the Code of Conduct and where he or she makes a recommendation in their final report under clause 8.35, paragraphs (d) to (h).
- 8.45 The elected Council is to close its meeting to the public to consider the final investigation report where it is permitted to do so under section 10A of the Act.
- 8.46 Where the Complainant is a Councillor, they must absent themselves from the meeting and take no part in any discussion or voting on the matter. The Complainant Councillor may absent themselves without making any disclosure of interests in relation to the matter unless otherwise required to do so under the Act or the Code of Conduct.
- 8.47 Prior to imposing a sanction, the elected Council must provide the Subject Person with an opportunity to make an oral submission to the elected Council. The Subject Person is to confine their submission to addressing the Investigator's recommendation/s.
- 8.48 Once the Subject Person has completed their oral submission they must absent themselves from the Council meeting and, where they are a Councillor, take no part in any discussion or voting on the matter.
- 8.49 The elected Council must not invite oral submissions from other persons for the purpose of seeking to rehear evidence previously considered by the Investigator.
- 8.50 Prior to imposing a sanction, the elected Council may by resolution:
- a) request that the Investigator make additional enquiries and/or provide additional information to it in a supplementary report; or

b) seek an opinion by the Office in relation to the report.

8.51 The elected Council may, by resolution, defer further consideration of the matter pending the receipt of a supplementary report from the Investigator or an opinion from the Office.

8.52 The Investigator may make additional enquiries for the purpose of preparing a supplementary report.

8.53 Where the Investigator prepares a supplementary report, they must provide copies of it to the Complaints Coordinator who will provide a copy each to Council, the Subject Person and the Complainant.

8.54 The Investigator is not obliged to notify or consult with any person prior to submitting the supplementary report to the Complaints Coordinator.

8.55 The Council is only required to provide the Subject Person a further opportunity to address it on a supplementary report where the supplementary report contains new information that is adverse to them.

8.56 Council may by resolution impose one or more of the following sanctions on a Subject Person:

- a) that the Subject Person apologise to any person or organisation affected by the breach in such a time and form specified by the resolution;
- b) that findings of inappropriate conduct be made public;
- c) in the case of a breach by the CEO, that action be taken under the CEO's contract for the breach;
- d) in the case of a breach by a Councillor, that the Councillor be formally censured for the breach under section 440G of the Act;
- e) in the case of a breach by a Councillor:
  - i. that the Councillor be formally censured for the breach under section 440G of the Act; and
  - ii. that the matter be referred to the Office for further action under the misconduct provisions of the Act.

8.57 The elected Council is not obliged to adopt the Investigator's recommendation/s. Where the elected Council does not adopt the Investigator's recommendation/s, it must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.

8.58 The elected Council may, by resolution, impose a sanction on the Subject Person under clause 8.56 different to the sanction recommended by the Investigator in their final report.

8.59 Where the elected Council resolves not to adopt the Investigator's recommendation/s, the Complaints Coordinator must notify the Office of the elected Council's decision and the reasons for it.

## **Part 9 Rights of Review**

### **Failure to comply with a requirement under these procedures**

9.1 Where any person believes that a person has failed to comply with a requirement prescribed under these procedures, they may, at any time prior to the elected Council's consideration of an Investigator's final report, raise their concerns in writing with the Office.

### **Practice rulings**

9.2 Where a Subject Person and an Investigator are in dispute over a requirement under these procedures, either person may make a request in writing to the Office to make a ruling on a question of procedure (a practice ruling).

9.3 Where the Office receives a request in writing for a practice ruling, the Office may provide notice in writing of its ruling and the reasons for it to the person who requested it and to the Investigator, where that person is different.

9.4 Where the Office makes a practice ruling, all parties are to comply with it.

9.5 The Office may decline to make a practice ruling. Where the Office declines to make a practice ruling, it will provide notice in writing of its decision and the reasons for it to the person who requested it and to the Investigator, where that person is different.

### **Requests for review**

9.6 A person who is the subject of a sanction imposed under Part 8 of these procedures, other than one imposed under clause 8.56, paragraph (e), may, within 28 days of the sanction being imposed, seek a review of the Investigator's determination and recommendation by the Office.

9.7 A review under clause 9.6 may be sought on the following grounds:

- a) that the Investigator has failed to comply with a requirement under these procedures; or
- b) that the Investigator has misinterpreted or misapplied the standards of conduct prescribed under the Code of Conduct; or
- c) that the elected Council has failed to comply with a requirement under these procedures in imposing a sanction.

9.8 A request for a review made under clause 9.6 must be made in writing and must specify the grounds upon which the person believes the Investigator or the elected Council has erred.

9.9 The Office may decline to conduct a review, where the grounds upon which the review is sought are not sufficiently specified.



- 9.10 The Office may undertake a review of a matter without receiving a request under clause 9.6.
- 9.11 The Office will undertake a review of the matter on the papers. However, the Office may request that the Complaints Coordinator provide such further information that the Office considers reasonably necessary for it to review the matter. The Complaints Coordinator must, as far as is reasonably practicable, provide the information requested by the Office.
- 9.12 Where a person requests a review under clause 9.6, the Office may direct the elected Council to defer any action to implement a sanction. The elected Council must comply with a direction to defer action by the Office.
- 9.13 The Office must notify the person who requested the review and the Complaints Coordinator of the outcome of the Office's review in writing and the reasons for its decision. In doing so, the Office may comment on any other matters the Office considers to be relevant.
- 9.14 Where the Office considers that the Investigator or the elected Council has erred, the Office may recommend that a decision to impose a sanction under these procedures be reviewed.
- 9.15 In the case of a sanction implemented by the CEO or Lord Mayor under clause, where the Office recommends that the decision to impose a sanction be reviewed:
- a) the Complaints Coordinator must provide a copy of the Division's determination in relation to the matter to the CEO or the Lord Mayor;
  - b) the CEO or Lord Mayor must review any action taken by them to implement the sanction;
  - c) the CEO or Lord Mayor must consider the Division's recommendation in doing so.
- 9.16 In the case of a sanction imposed by the elected Council by resolution under clause 8.56, where the Office recommends that the decision to impose a sanction be reviewed:
- a) the Complaints Coordinator must, where practicable, arrange for the Office's determination to be tabled at the next ordinary Council meeting unless the meeting is to be held within the four weeks prior to an ordinary local government election, in which case it must be tabled at the first ordinary Council meeting following the election; and
  - b) the elected Council must:
    - i. review its decision to impose the sanction;
    - ii. consider the Office's recommendation in doing so; and
    - iii. resolve to either rescind or reaffirm its previous resolution in relation to the matter.

9.17 Where having reviewed its previous decision in relation to a matter under clause 9.16 the elected Council resolves to reaffirm its previous decision, it must state in its resolution its reasons for doing so.

## **Part 10 Procedural Irregularities**

### **Procedural Irregularities**

- 10.1 A failure to comply with these procedures does not, on its own, constitute a breach of the Code of Conduct except as may be otherwise specifically provided under the Code of Conduct.
- 10.2 A failure to comply with these procedures will not render a decision made in relation to a matter invalid where:
- a) the non-compliance is isolated and/or minor in nature;
  - b) reasonable steps are taken to correct the non-compliance; or
  - c) reasonable steps are taken to address the consequences of the non-compliance.

## **Part 11 Practice Directions**

### **Practice Directions**

- 11.1 The Office may at any time issue a practice direction in relation to the application of these procedures.
- 11.2 The Office will issue practice directions in writing, by circular to all Councils.
- 11.3 All persons performing a function prescribed under these procedures must consider the Office's practice directions when performing the function.

## **Part 12            Reporting On Complaints Statistics**

### **Reporting on Complaints Statistics**

12.1 The Complaints Coordinator must arrange for the following statistics to be reported to the elected Council within 3 months of the end of September of each year:

- a) the total number of Code of Conduct complaints made about Councillors and the CEO under the Code of Conduct in the year to September;
- b) the number of Code of Conduct complaints referred to a Conduct Reviewer;
- c) the number of Code of Conduct complaints finalised by a Conduct Reviewer at the preliminary assessment stage and the outcome of those complaints;
- d) the number of Code of Conduct complaints investigated by a Conduct Reviewer;
- e) the number of Code of Conduct complaints investigated by a Conduct Review Committee;
- f) without identifying particular matters, the outcome of Code of Conduct complaints investigated by a Conduct Reviewer or Conduct Review Committee in accordance with these procedures;
- g) the number of matters reviewed by the Office and, without identifying particular matters, the outcome of the reviews; and
- h) the total cost of dealing with Code of Conduct complaints made about Councillors and the CEO in the year to September, including staff costs.

12.2 The Council is to provide the Office with a report containing the statistics referred to in clause 12.1 within 3 months of the end of September of each year.

## **Part 13      Confidentiality**

### **13 Confidentiality**

- 13.1 Information about Code of Conduct complaints, the management and investigation of Code of Conduct complaints is to be treated as confidential and is not to be publicly disclosed except as may be otherwise specifically required or permitted under these procedures.

# Model Code Procedure Flowchart

Office of Local Government

