

Procedures for the Administration of the Code of Conduct for the Lord Howe Island Board



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PART 1 INTRODUCTION

These Procedures are prescribed for the purposes of the administration of the Lord Howe Island Board (the Board) Code of Conduct. The Code of Conduct and these Procedures are made under sections 440 of the *Local Government Act 1993* (“the LG Act”).

Clause 101 of the *Lord Howe Island Regulation 2014* provides that Section 440 of the LG Act applies to the Board as if in that section references to:

- (a) a council were references to the Board, and
- (b) a councillor were references to a member of the Board, and
- (c) an ordinary election were references to an election required to be conducted under section 9A(b) of the *Lord Howe Island Act 1953* (the LHI Act)

Sections 440 of the LG Act requires that the Board 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 as prescribed by the Local Government (General) Regulation 2005.

In adopting procedures for the administration of the adopted code of conduct, the Board may supplement the Model Code Procedures. However provisions of the adopted procedures that are inconsistent with those prescribed under the Model Code Procedures will have no effect.

Section 12(3) of the LHI Act provides that the Board cannot employ staff. However staff may be employed under Part 4 of the *Government Sector Employment Act 2013* in the Government Service to enable the Board to exercise its functions. The conduct of the staff so employed (Board Administration staff) is governed by the provisions of that Act and relevant regulations, policies and Awards.

The Minister may remove an appointed member from office at any time for any or no reason and without notice (section 6(3) Schedule 1A LHI Act). The Minister may remove an elected member from office under the provisions of section 6(3) Schedule 1A LHI Act.

PART 2 DEFINITIONS

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

“the LG Act”	the <i>Local Government Act 1993</i>
“the LHI Act”	the <i>Lord Howe Island Act 1953</i>
“Board”	the Lord Howe Island Board
“Board Administration Staff”	person employed under Part 4 of the <i>Government Sector Employment Act 2013</i> in the Government Service to enable the Board to exercise its functions
“Board committee”	a committee established by resolution of the Board
“Board committee member”	a person other than a councillor or member of staff of a council who is a member of a council committee
“Board member”	a person elected or appointed to the Board pursuant to section 4 of the LHI Act
“Board official”	includes Board members, Board committee members, conduct reviewers and delegates of Board
“delegate of Board”	a person (other than a Board member or member of the Board Administration staff) or body and the individual members of that body to whom a function of the Board is delegated
“Chief Executive Officer”	Chief Executive Officer, Lord Howe Island Board
“Chief Executive, OLG”	Chief Executive, Office of Local Government
“code of conduct”	a code of conduct adopted under section 440 of the Act

“code of conduct complaint”	a complaint that alleges conduct on the part of a Board official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the Board’s code of conduct
“complainant”	a person who makes a code of conduct complaint
“complainant Board member”	a Board member who makes a code of conduct complaint
“complaints coordinator”	a person appointed by the Chief Executive Officer under these procedures as a complaints coordinator
“conduct reviewer”	a person appointed under these procedures to review allegations of breaches of the code of conduct by councillors or the Chief Executive Officer
“investigator”	a conduct reviewer or conduct review committee
“OLG”	the Office of Local Government
“subject person”	a person whose conduct is the subject of investigation by a conduct reviewer or conduct review committee under these procedures

PART 3 ADMINISTRATIVE FRAMEWORK

The establishment of a panel of conduct reviewers

- 3.1 The Board must by resolution establish a panel of conduct reviewers.
- 3.2 The Board may by resolution enter into an arrangement with one or more other local councils in NSW 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 the Board'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) an understanding of local government, and
 - b) knowledge of investigative processes including but not limited to procedural fairness requirements and the requirements of the *Public Interest Disclosures Act 1994*, and
 - c) knowledge and experience of one or more of the following:
 - i) investigations, or
 - ii) law, or
 - iii) public administration, or
 - iv) public sector ethics, or
 - v) alternative dispute resolution, and
 - d) meet the eligibility requirements for membership of a panel of conduct reviewers under clause 3.6.
- 3.6 A person is not be eligible to be a member of the panel of conduct reviewers if they are
 - a) a Board member, or
 - b) a nominee for election as a Board member, or
 - c) a Board Administration staff member, or
 - d) an employee of a local council in NSW, or
 - e) a member of the Commonwealth Parliament or any State Parliament or Territory Assembly, or
 - 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 panel of conduct reviewers established under this Part is to have a term of up to four years.
- 3.8 The Board may terminate the panel of conduct reviewers at any time by resolution.
- 3.9 When the term of the conduct reviewers concludes or is terminated, the Board must establish a new panel of conduct reviewers in accordance with the requirements of this Part.
- 3.10 A person who was a member of a previous panel of conduct reviewers established by the Board may be a member of subsequent panels of conduct reviewers established by the Board.

The appointment of complaints coordinators

- 3.11 The Chief Executive Officer must appoint a member of the Board Administration staff to act as a complaints coordinator. Where practicable, the complaints coordinator should be a senior and suitably qualified member of staff.
- 3.12 The Chief Executive Officer may appoint other Board Administration staff members to act as alternates to the complaints coordinator.
- 3.13 The Chief Executive Officer must not undertake the role of complaints coordinator.
- 3.14 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 *Public Interest Disclosures Act 1994*.
- 3.15 The role of the complaints coordinator is to:
 - a) coordinate the management of complaints made under the Board's code of conduct,
 - b) liaise with and provide administrative support to a conduct reviewer or conduct review committee, and
 - c) liaise with the OLG

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 Board official acting in their official capacity that on its face, if proven, would constitute a breach of the standards of conduct prescribed under the Board’s 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 Board’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 Chief Executive Officer, or, in the case of a complaint about the Chief Executive Officer, the Chief Executive, OLG, 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 Board official other than the Chief Executive Officer be made?

- 4.5 All code of conduct complaints other than those relating to the Chief Executive Officer are to be made to the Chief Executive Officer in writing.
- 4.6 Where a code of conduct complaint about a Board official other than the Chief Executive Officer 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 Board official other than the Chief Executive Officer, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.8 The Chief Executive Officer 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 Chief Executive Officer becomes aware of a possible breach of the Board's code of conduct, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

How may a code of conduct complaint about the Chief Executive Officer be made?

- 4.10 Code of conduct complaints about the Chief Executive Officer are to be made to the Chief Executive, OLG in writing.
- 4.11 Where a code of conduct complaint about the Chief Executive Officer 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 Chief Executive Officer, the complainant may nominate whether they want the complaint to be resolved by mediation or by other alternative means.
- 4.13 The Chief Executive, OLG 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 Chief Executive, OLG becomes aware of a possible breach of the Board's code of conduct by the Chief Executive Officer, he or she may initiate the process for the consideration of the matter under these procedures without a written complaint.

PART 5 HOW ARE CODE OF CONDUCT COMPLAINTS TO BE MANAGED?

How are complaints about Board Administration staff (other than the Chief Executive Officer) to be dealt with?

- 5.1 Section 12(3) of the LHI Act provides that the Board cannot employ staff. However staff may be employed under Part 4 of the *Government Sector Employment Act 2013* (GSE Act) in the Government Service to enable the Board to exercise its functions.
- 5.2 The conduct of the staff so employed is governed by the provisions of the GSE Act and relevant regulations, policies and Awards.
- 5.3 The Chief Executive Officer is responsible for making enquiries or causing enquiries to be made into complaints about members of Board Administration staff and for determining the outcome of such complaints.
- 5.4 Where the Chief Executive Officer decides not to make enquiries into a complaint about a member of staff, the Chief Executive Officer must give the complainant reasons in writing for their decision.
- 5.5 Without limiting clause 5.4, the Chief Executive Officer may decide not to enquire into the matter on grounds that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 5.6 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.
- 5.7 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 Board and Board committee members to be dealt with?

- 5.8 The Chief Executive Officer is responsible for making enquiries or causing enquiries to be made into code of conduct complaints about delegates of Board and Board committee members and for determining the outcome of such complaints.
- 5.9 Where the Chief Executive Officer decides not to make enquiries into a code of conduct complaint about a delegate of Board or a Board committee member, the Chief Executive Officer must give the complainant reasons in writing for their decision.

- 5.10 Without limiting clause 5.9, the Chief Executive Officer may decide not to enquire into the matter on grounds that the complaint is trivial, frivolous, vexatious or not made in good faith.
- 5.11 Sanctions for delegates of Board and/or members of Board 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 Board committee.
- 5.12 Prior to imposing a sanction against a delegate of Board or a Board committee member under clause 5.11, the Chief Executive Officer or any person making enquiries on behalf of the Chief Executive Officer must comply with the requirements of procedural fairness. In particular:
- a) the substance of the allegation (including the relevant provision/s of Board's code of conduct that the alleged conduct is in breach of) must be put to the person the subject of the allegation, and
 - b) the person must be given an opportunity to respond to the allegation, and
 - c) the Chief Executive Officer must consider the person's response in deciding whether to impose a sanction under clause 5.11.

How are code of conduct complaints about conduct reviewers to be dealt with?

- 5.13 The Chief Executive Officer must refer all code of conduct complaints about conduct reviewers to the OLG for its consideration.
- 5.14 The Chief Executive Officer must notify the complainant of the referral of their complaint in writing.
- 5.15 The Chief Executive Officer must implement any recommendation made by the OLG as a result of its consideration of a code of conduct complaint about a conduct reviewer.

How are code of conduct complaints about Board members to be dealt with?

- 5.16 The Chief Executive Officer must refer the following code of conduct complaints about Board members to the OLG:
- 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, and

5.17 Where the Chief Executive Officer refers a complaint to the OLG under clause 5.16, the Chief Executive Officer must notify the complainant of the referral in writing.

5.18 Where the Chief Executive Officer considers it to be practicable and appropriate to do so, the Chief Executive Officer may seek to resolve code of conduct complaints about Board members, other than those requiring referral to the OLG 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 Chief Executive Officer resolves a code of conduct complaint under clause 5.18 to the Chief Executive Officer's satisfaction, the Chief Executive Officer must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.

5.20 The Chief Executive Officer must refer all code of conduct complaints about Board members other than those referred to the OLG under clause 5.16 or resolved under clause 5.18 to the complaints coordinator.

How are code of conduct complaints about the Chief Executive Officer to be dealt with?

5.21 All code of conduct complaints about the Chief Executive Officer must be made or referred to the Chief Executive, OLG.

5.22 Where the Chief Executive, OLG considers it to be practicable and appropriate to do so, he or she may seek to resolve code of conduct complaints about the Chief Executive Officer, by alternative means such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology.

5.23 Where the Chief Executive, OLG resolves a code of conduct complaint under clause 5.22, the Chief Executive, OLG must notify the complainant in writing of the steps taken to resolve the complaint and this shall finalise the consideration of the matter under these procedures.

5.24 The Chief Executive, OLG may refer code of conduct complaints about the Chief Executive Officer other than those resolved under clause 5.23 to the complaints coordinator for investigation.

Referral of code of conduct complaints to external agencies

5.25 The Chief Executive Officer, Chief Executive, OLG or 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 OLG, the Independent Commission Against Corruption, the NSW Ombudsman or the Police for its consideration, where they consider such a referral is warranted.

5.26 Where the Chief Executive Officer, Chief Executive, OLG, conduct reviewer or conduct review committee refers a complaint to an external agency or body under clause 5.25, they must notify the complainant of the referral in writing where it is appropriate for them to do so.

5.27 Referral of a matter to an external agency or body shall finalise consideration of the matter under the code of conduct unless the Board is subsequently advised otherwise by the referral agency or body.

Disclosure of the identity of complainants

5.28 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 the disclosure, or
- 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, or
- c) it is essential, having regard to procedural fairness requirements, that the identifying information be disclosed, or
- 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.

5.29 Clause 5.28 does not apply to code of conduct complaints made by Board members about other Board members or the Chief Executive Officer.

5.30 Where a Board member makes a code of conduct complaint about another Board member or the Chief Executive Officer and the complainant Board member considers that compelling grounds exist that 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.

5.31 A request made by a complainant Board member under clause 5.30 must be made at the time they make a code of conduct complaint and must state the grounds upon which the request is made.

5.32 The Chief Executive Officer or Chief Executive, OLG or, where the matter is referred, a conduct reviewer or conduct review committee must consider a request made under clause 5.30 before disclosing information that identifies or tends to identify the complainant Board member but are not obliged to comply with the request.

5.33 Where a complainant Board member makes a request under clause 5.30, the Chief Executive Officer or Chief Executive, OLG or, where the matter is referred, a conduct reviewer or conduct review committee shall notify the Board member 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

5.34 Code of conduct complaints that are made as public interest disclosures under the *Public Interest Disclosures Act 1994* are to be managed in accordance with the requirements of that Act, the Board's internal reporting policy and any guidelines issued by the NSW Ombudsman that relate to the management of public interest disclosures.

5.35 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.

5.36 Where a Board member makes a code of conduct complaint about another Board member or the Chief Executive Officer as a public interest disclosure, before the matter may be dealt with under these procedures, the complainant Board member must consent in writing to the disclosure of their identity as the complainant.

5.37 Where a complainant Board member declines to consent to the disclosure of their identity as the complainant under clause 5.36, the Chief Executive Officer or the Chief Executive, OLG must refer the complaint to the OLG for consideration. Such a referral must be made under section 26 of the *Public Interest Disclosures Act 1994*.

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 Board members or the Chief Executive Officer submitted to the complaints coordinator within 21 days of receipt of a complaint by the Chief Executive Officer or the Chief Executive, OLG.
- 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 the Board, or
 - b) a panel of conduct reviewers established by an organisation approved by the Chief Executive of the OLG.
- 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, or
 - b) a reasonable apprehension of bias arises in relation to their consideration of the matter, or
 - c) they or their employer has entered into one or more contracts with the Board in the 2 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 \$100,000, or
 - d) at the time of the referral, they or their employer are the Board's legal service providers or are a member of a panel of legal service providers appointed by the Board.
- 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 Board's 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 the Board.
- 6.8 The complaints coordinator must notify the complainant in writing that the matter has been referred to a conduct reviewer and advise 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, or
 - b) to resolve the complaint by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
 - c) to refer the matter back to the Chief Executive Officer or, in the case of a complaint about the Chief Executive Officer, the Chief Executive, OLG, for resolution by alternative and appropriate strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation, or apology, or
 - d) to refer the matter to another agency or body such as, but not limited to, the ICAC, the NSW Ombudsman, or the Police, or
 - 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 determine to take no action on a complaint that is not a code of conduct complaint for the purposes of these procedures.
- 6.15 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 and this will finalise consideration of the matter under these procedures.
- 6.16 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.
- 6.17 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, and
 - 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.
- 6.18 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.
- 6.19 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.
- 6.20 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 Chief Executive Officer or Chief Executive, OLG for resolution

- 6.21 Where the conduct reviewer determines to refer a matter back to the Chief Executive Officer or to the Chief Executive, OLG to be resolved by alternative and appropriate means, they must write to the Chief Executive Officer or, in the case of a complaint about the Chief Executive Officer, to the Chief Executive, OLG, recommending the means by which the complaint may be resolved.
- 6.22 The conduct reviewer must consult with the Chief Executive Officer or Chief Executive, OLG prior to referring a matter back to them under clause 6.21.
- 6.23 The Chief Executive Officer or Chief Executive, OLG may decline to accept the conduct reviewer's recommendation. Where the Chief Executive Officer or Chief Executive, OLG declines to do so, the conduct reviewer may determine to deal with the complaint by other means under clause 6.10.
- 6.24 Where the conduct reviewer refers a matter back to the Chief Executive Officer or Chief Executive, OLG under clause 6.21, the Chief Executive Officer or, in the case of a complaint about the Chief Executive Officer, the Chief Executive, OLG, is responsible for implementing or overseeing the implementation of the conduct reviewer's recommendation.
- 6.25 Where the conduct reviewer refers a matter back to the Chief Executive Officer or Chief Executive, OLG under clause 6.21, the Chief Executive Officer, or, in the case of a complaint about the Chief Executive Officer, the Chief Executive, OLG, 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

- 6.26 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,
 - 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 the Board,
 - 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

- 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 the Board, or
 - b) a panel of conduct reviewers established by an organisation approved by the Chief Executive of the OLG.
- 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 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 shall 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 Board'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 (hereafter referred to as an “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 Chief Executive Officer, or, in the case of alleged conduct on the part of the Chief Executive Officer, to the Chief Executive, OLG.
- 8.3 The Chief Executive Officer or the Chief Executive, OLG 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, and
 - b) advise of the relevant provisions of the code of conduct that apply to the alleged conduct, and
 - c) advise of the process to be followed in investigating the matter, and
 - 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 Chief Executive Officer, or in the case of a complaint about the Chief Executive Officer, to the Chief Executive, OLG. 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 strategies such as, but not limited to, explanation, counselling, training, mediation, informal discussion, negotiation or apology, or
 - b) refer the matter to the Chief Executive Officer, or, in the case of a complaint about the Chief Executive Officer, to the Chief Executive, OLG, for resolution by alternative and appropriate strategies 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 OLG or the Police.
- 8.21 Where an investigator determines to exercise any of the options under 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 Chief Executive Officer, or in the case of a complaint about the Chief Executive Officer, the Chief Executive, OLG, discontinue their investigation of the matter.
- 8.23 Where the investigator discontinues their investigation of a matter under clause 8.22, this shall finalise the consideration of the matter under 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.
- 8.30 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 the Board 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 Chief Executive Officer, that action be taken under the Chief Executive Officer's contract for the breach,
- g) in the case of a breach by a Board member, that the Board member be formally censured for the breach,
- h) in the case of a breach by a Board member, that the Board resolves as follows:
 - i. that the Board member be formally censured for the breach

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 the Board revise any of its policies or procedures,
- 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 the Board as a whole,
- l) the harm or potential harm to the reputation of the Board 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,
- 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 reasons for that determination,
- 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 Chief Executive Officer or, where the report relates to the Chief Executive Officer's conduct, to the Chief Executive, OLG 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 Chief Executive Officer. Where the Chief Executive Officer agrees with the recommendation/s, the Chief Executive Officer 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 Chief Executive Officer or, where the report relates to the Chief Executive Officer's conduct, to the Chief Executive, OLG. The Chief Executive Officer is responsible for arranging the implementation of the recommendation/s where the report relates to a Board member's conduct. The Chief Executive, OLG is responsible for arranging the implementation of the recommendation/s where the report relates to the Chief Executive Officer'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 Board meeting for the Board's consideration unless the meeting is to be held within the 4 weeks prior to an ordinary Board election, in which case the report must be reported to the first ordinary Board meeting following the election.

Consideration of the final investigation report by Board

- 8.44 The role of the Board 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 makes a recommendation in their final report under clause 8.35, paragraphs (d) to (h).
- 8.45 The Board is to close its meeting to the public to consider the final investigation report where it is permitted to do so.

- 8.46 Where the complainant is a Board member, they must absent themselves from the meeting and take no part in any discussion or voting on the matter. The complainant Board member may absent themselves without making any disclosure of interests in relation to the matter unless otherwise required to do so under the Model Code.
- 8.47 Prior to imposing a sanction, the Board must provide the subject person with an opportunity to make an oral submission to the Board. 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 meeting and, where they are a Board member, take no part in any discussion or voting on the matter.
- 8.49 The Board 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 Board 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 OLG in relation to the report.
- 8.51 The Board may, by resolution, defer further consideration of the matter pending the receipt of a supplementary report from the investigator or an opinion from the OLG.
- 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 to the complaints coordinator who shall provide a copy each to the Board, 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 Board 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 A Board 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 Chief Executive Officer, that action be taken under the Chief Executive Officer's contract for the breach,
 - d) in the case of a breach by a Board member, that the Board member be formally censured
- 8.57 The Board is not obliged to adopt the investigator's recommendation/s. Where the Board does not adopt the investigator's recommendation/s, the Board must resolve not to adopt the recommendation and state in its resolution the reasons for its decision.
- 8.58 The Board 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 Board resolves not to adopt the investigator's recommendation/s, the complaints coordinator must notify the OLG of the Board'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 Board's consideration of an investigator's final report, raise their concerns in writing with the OLG.

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 OLG to make a ruling on a question of procedure (a practice ruling).
- 9.3 Where the OLG receives a request in writing for a practice ruling, the OLG 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 OLG makes a practice ruling, all parties are to comply with it.
- 9.5 The OLG may decline to make a practice ruling. Where the OLG 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 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 OLG.
- 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 Board 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 Board has erred.
- 9.9 The OLG may decline to conduct a review, where the grounds upon which the review is sought are not sufficiently specified.
- 9.10 The OLG may undertake a review of a matter without receiving a request under clause 9.6.
- 9.11 The OLG will undertake a review of the matter on the papers. However, the OLG may request that the complaints coordinator provide such further information that the OLG 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 OLG.
- 9.12 Where a person requests a review under clause 9.6, the OLG may direct the Board to defer any action to implement a sanction. The Board must comply with a direction to defer action by the OLG.
- 9.13 The OLG must notify the person who requested the review and the complaints coordinator of the outcome of the OLG's review in writing and the reasons for its decision. In doing so, the OLG may comment on any other matters the OLG considers to be relevant.
- 9.14 Where the OLG considers that the investigator or the Board has erred, the OLG 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 Chief Executive Officer or Chief Executive, OLG under clause 8.42, where the OLG recommends that the decision to impose a sanction be reviewed:
- a) the complaints coordinator must provide a copy of the OLG's determination in relation to the matter to the Chief Executive Officer or the Chief Executive, OLG, and
 - b) the Chief Executive Officer or Chief Executive, OLG must review any action taken by them to implement the sanction, and
 - c) the Chief Executive Officer or Chief Executive, OLG must consider the OLG's recommendation in doing so.
- 9.16 In the case of a sanction imposed by the Board by resolution under clause 8.56, where the OLG recommends that the decision to impose a sanction be reviewed:
- a) the complaints coordinator must, where practicable, arrange for the OLG's determination to be tabled at the next ordinary Board meeting unless the meeting is to be held within the 4 weeks prior to an ordinary local government election, in which case it must be tabled at the first ordinary Board meeting following the election, and
 - b) the Board must:

- i. review its decision to impose the sanction, and
- ii. consider the OLG'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 Board resolves to reaffirm its previous decision, the Board must state in its resolution its reasons for doing so.

PART 10 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, or
 - 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

- 11.1 The OLG may at any time issue a practice direction in relation to the application of these procedures.
- 11.2 The OLG 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 OLG's practice directions when performing the function.

PART 12

CONFIDENTIALITY

- 12.1 Information about code of conduct complaints and 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.